

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 16, 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
Jennifer Minich, 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
Gary Moore, 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
Kelly J. Heffner, Policy Office Director
Michele Tate, Regulatory Coordinator
Natasha Harley, Administrative Support

CALL TO ORDER AND APPROVAL OF MINUTES

Chairperson McGinty called the meeting to order at 9:08 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Prior to approving the minutes of the February 20, 2007, EQB meeting, chairperson McGinty requested that members of the Board introduce themselves. Following the introduction, Chairperson McGinty asked if there were any correction to the draft minutes.

Joseph Deklinski stated that the minutes should be corrected to show he is the alternate for Representative Scott E. Hutchinson and not Representative William Adolph, Jr. Chairperson McGinty acknowledged Mr. Dekinlinski's request and noted that the minutes would be amended. With no

further corrections or additions, Chairperson McGinty called for a motion to adopt the minutes of the February 20, 2007, EQB meeting, as amended per Mr. Deklinski's recommendation.

Michael Pechart moved to adopt the February 20, 2007, EQB meeting minutes. Bruce Tetkoskie seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – PUBLIC NOTICE ON DRINKING WATER SYSTEMS

Cathy Curran Myers, Deputy Secretary, Office of Water Management, presented a summary of the proposed rulemaking. Lisa Daniels, Division of Drinking Water Management, Deb Rotz, Bureau of Water Standards, and Marylou Barton, Assistant Counsel, assisted.

Following the Department's presentation, Mr. Tetkoskie asked if this rulemaking would require public water suppliers to include the expected duration of the event in their public notices. Ms. Daniels responded that those details would be provided in the notice if they are known. She further stated that as a part of the Department's regulatory proposal, the regulations require public water suppliers to provide periodic updates to the public on the status of the situation. Ms. Rotz added that previously the Department suggested that notification concerning the conclusion of an event (i.e. end of a boil water advisory) be communicated by the public water supplier; now, through this regulatory proposal, the Department is requiring such notification to take place.

David Strong moved to adopt the proposed rulemaking with a 60-day comment period. Walter Heine seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) CONSISTENCY

Joseph Pizarchick, Director, Bureau of Mining and Reclamation, presented a summary of the proposed rulemaking. Marc Roda, Assistant Counsel, assisted.

After Mr. Pizarchik's presentation, Richard Fox asked what affect the regulation would have on the workload of Department inspectors. Mr. Pizarchik responded that the proposed regulation would not result in a significant increase in workload for Department inspectors, since these individuals are already onsite conducting inspections and, as part of that activity, are observing safety-related issues at the site. The proposed regulation would give those inspectors explicit authority to identify safety issues and respond accordingly in a proactive fashion. Mr. Tetkoskie asked if the proposed rulemaking would apply to sites being reclaimed or if OSHA or MSHA guidelines would apply to those sites. Mr. Pizarchik responded that typically reclamation activities fall under the jurisdiction of OSHA; however, jurisdiction between OSHA and MSHA for reclamation sites depends on the value of coal extracted from the site and the specific reclamation contract in play.

Mr. Tetkoskie moved to adopt the proposed rulemaking with a 30-day comment period. Richard Manfredi seconded the motion, which was unanimously approved by the Board.

FINAL-OMITTED RULEMAKING – ALTERNATIVE FUELS INCENTIVE GRANT REGULATIONS

Daniel Griffiths, Director, Bureau of Energy and Innovative Technology Deployment, presented a summary of the final-omitted rulemaking. Susan Summers, Division of Technology Development, and Scott Perry, Assistant Counsel, assisted.

The Board did not have any comments or questions following the conclusion of Mr. Griffith's presentation.

William Hall moved to adopt the final-omitted rulemaking. Michael Pechart seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – HAZARDOUS WASTE AMENDMENTS

Thomas K. Fidler, Deputy Secretary, Office of Waste, Air, and Radiation Management, presented a summary of the proposed rulemaking. Rick Shipman, Bureau of Waste Management, and Kurt Klapkowski, Assistant Counsel, assisted.

Following the Department's presentation, Mr. Fox asked several questions regarding the elimination of the financial test and corporate guarantee provisions. Specifically, he asked how many companies in Pennsylvania currently use the financial test and corporate guarantee, and how many companies the Department has had difficulties with. Deputy Secretary Fidler responded that currently 16 companies and 23 facilities, with some companies having more than one facility in Pennsylvania, are using the corporate guarantee provision. Deputy Secretary Fidler added that the Department has had problems with only a single large entity, with respect to the use of the corporate guarantee. Mr. Fox further inquired by asking if EPA still plans to allow the use of the financial test and corporate guarantee provisions. Deputy Secretary Fidler responded that while the EPA continues to provide for the financial test and corporate guarantee, it also has concerns over the reliability of the financial test. He added that it is expected EPA will issue additional changes or further guidance on the financial test provisions.

Mr. Fox further asked why the Department feels it is imperative to eliminate the financial test and corporate guarantee provisions in the regulations if the Department has had problems with only one company and only a small universe of companies are using it. Deputy Secretary Fidler responded that the proposal is being made to eliminate the "self-assurance" process because of the experience the Department has had with it within the Commonwealth. He added that currently a third party such as an environmental insurance company is not provided for within the regulations. He noted that the Department would like to entertain and receive comments on its proposal of providing for the option of closure insurance, as a more reliable means of the financial test process. Mr. Deklinski asked if commercial insurance of this type is hard to obtain or if it is readily available. Deputy Secretary Fidler responded that environmental insurance is readily available and commonly obtained as part of cleanup projects where there are a significant amount of unknowns. Patrick Henderson concurred and noted that closure insurance is readily available nationally and is currently being used in several states. Mr. Fox further inquired if, within the current process outlined in the regulations, the Department plays a role in directing which option the facility should choose to prove financial assurance for closure. Rick Shipman replied that the responsibility to choose the option is with the facility -- not with the Department. The Department only verifies if the facility meets the regulatory requirements necessary for the option selected. Mr. Fox encouraged the Department to closely examine any comments that may be received on the proposal that encourage the Department to retain the corporate guarantee and financial test provisions and that encourage flexibility as to the appropriate option for the specific facility.

Joanne Denworth moved to adopt the proposed rulemaking. Mr. Manfredi seconded the motion, which was unanimously approved by the Board.

Following the Board's vote, Chairperson McGinty recognized Mr. Deklinski, who read the following statement for the record on behalf of Representative Hutchinson:

"My vote on this proposed regulation simply reflects my desire to move this draft forward to the public input phase. I remain concerned over the portion of this proposal that suggests eliminating the financial test and corporate guarantee provisions contained in current regulation. I strongly urge the department to seek serious input on this proposed change and to carefully consider including a broad array of possible financial guaranty options."

REPORT ON PETITION TO ADOPT A REGULATION – RESTRICTING THE IDLING OF COMMERCIAL DIESEL-POWERED VEHICLES

Deputy Secretary Thomas K. Fidler, Office of Waste, Air and Radiation Management, presented a report to the Board on the Department's assessment of the idling restriction petition submitted to the EQB by the Clean Air Board of Central Pennsylvania, Inc. In the report, the Department concluded it is authorized by the Air Pollution Control Act to adopt and enforce a statewide anti-idling regulation and recommended that the EQB direct the Department to develop such a rule. Assisting Deputy Secretary Fidler with his presentation were Joyce Epps, Director, Bureau of Air Quality, and Arleen Shulman, Chief, Mobile Sources Section.

Following the Department's presentation, Reverend Jennifer McKenna of the Clean Air Board of Central Pennsylvania, Inc. expressed her gratitude to the Department for the work it has completed in the review and assessment of the petition.

Mr. Heine noted that in evaluation of other states' idling restriction programs, such as Maryland, it appears that the programs are not effective and that coordination among the enforcement agencies is virtually non-existent. He encouraged the Department to work with enforcement stakeholders at both the state and local levels to ensure an effective program. Deputy Secretary Fidler responded that coordination of enforcement is going to be a significant challenge associated with the development of an idling restriction regulation. He noted that the Department has been working closely with PennDOT and the PA State Police in evaluating the petition and looking for opportunities for enforcement coordination.

Eric Madden added that targeted enforcement plus education would be best in establishing an effective idling restriction regulation in the Commonwealth. Ms. Denworth asked how many states currently have idling restriction laws or programs in place. Ms. Shulman responded that 14 states plus the District of Columbia currently have anti-idling programs. Deputy Secretary Fidler added that most of the states surrounding Pennsylvania have implemented idling restriction programs.

Mr. Henderson inquired if the petition was designed to reduce the emissions of PM_{2.5} as well as toxic air contaminants and NO_x, all of which are currently regulated emissions. Deputy Secretary Fidler responded in the affirmative and stated that the issue of greatest concern associated with diesel exhaust emissions in the Commonwealth is the contribution it makes to NO_x and PM_{2.5}. He noted that the Commonwealth has 17 counties currently designated as nonattainment for the National Ambient Air Quality Standards (NAAQS) for PM_{2.5}; therefore, it's a significant issue and problem within the Commonwealth. Mr. Henderson also inquired if the Department has the authority, absent this petition, to initiate an anti-idling regulation? Ms. Epps responded that the Department does have the authority under Section 5 of the Air Pollution Control Act to adopt air pollution control measures including an idling restriction regulation. Mr. Henderson further inquired if the Department has examined the issue

of truck idling in the last several years. Ms. Epps responded that the Department has periodically looked at this issue and has contemplated whether it should develop idling restriction regulations. She further commented that idling is a national issue that all states are grappling with, demonstrated by the fact that EPA has developed a model rule for states that want to address this issue.

Mr. Henderson also asked if the Department anticipates amending its State Implementation Plan to take credit for any associated air pollution reductions that may result from the implementation of this regulation. Ms. Epps responded that historically she couldn't recall a regulation that the Department did not submit a SIP revision in order to receive credit; therefore, she anticipates the Department would follow suit for this particular issue. Mr. Henderson also inquired whether the Department would grandfather existing idling restriction municipal ordinances into any potential statewide regulation. Rick Mather replied that the Air Pollution Control Act does not provide the Department with the authority to pre-empt municipal ordinances; however, the Department anticipates that an effective state-wide idling restriction law would dampen the need for local municipalities to enact their own separate ordinances. In conclusion, Mr. Henderson asked if the Department would be including school bus idling in its idling restriction regulation. Ms. Shulman responded that both the EPA model law and the petitioner's suggested regulatory language would include school buses among the vehicles to which an idling restriction would apply. She noted that while studies show that 96% of the idling is done by trucks, restrictions of school bus idling may be considered as a component in the Department's regulation.

Mr. Hall asked the Department about the larger truck stops that have alternative systems in place so that trucks do not have to idle. Deputy Secretary Fidler responded that the Department has assisted with the installation of several electrified systems in truck stops across the Commonwealth. Mr. Fox asked if the regulation is adopted, would the focus of enforcement action be on the property owner where idling is taking place or on the truck driver who is operating the vehicle that is idling? Deputy Secretary Fidler responded that the Department would examine all aspects of comparable idling restriction programs in other states to determine what works most effectively.

In conclusion, Mr. Tetkoskie asked if language would be considered in the rulemaking to address idling issues relative to traffic conditions, such as road closures, shut downs due to accidents, etc? Ms. Shulman responded that the petitioner's language and the EPA model law address those situations and would be examined by the Department in the development of this rule.

Paul Opiyo moved to accept the recommendation on the petition. Mr. Tetkoskie seconded the motion. The motion passed, with Mr. Deklinski voting in opposition.

OTHER BUSINESS:

Chairperson McGinty announced that the next EQB meeting is scheduled for June 19, 2007, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

ADJOURNMENT:

With no further business before the Board, Mr. Pechart moved to adjourn the meeting. Mr. Manfredi seconded the motion. The May 16, 2007, meeting of the EQB was adjourned at 10:51 a.m.