

**Solid Waste Advisory Committee (SWAC) &  
Recycling Fund Advisory Committee (RFAC)  
Meeting Minutes of September 10, 2020**

**The following SWAC/RFAC members were present:**

Robert Watts, Vice Chair	Timothy O'Donnell
Eli Brill	Gregg Pearson
Gordon Burgoyne	Matthew Quesenberry
Michael Forbeck	Joseph Reinhart
John Frederick	Shannon Reiter
Representative Matt Gabler (RFAC)	Joanne Shafer
Jason Leck	Gerald Zona

**The following alternates were present:**

Elizabeth Bertha (on behalf of Edward Vogel)  
Timothy Collins (on behalf of Senator Steve Santarsiero) (RFAC)  
Keith Salador (on behalf of James Welty)  
Nick Troutman (on behalf of Senator Gene Yaw) (RFAC)

**The following members were absent:**

Michele Nestor, Chair  
Joyce Hatala  
Tanya McCoy-Caretti  
Randall York

**The following guests and Department of Environmental Protection (DEP) staff members were present:**

Stacey Albin	Pennsylvania Resources Council (PRC)
Jackie Binder	DEP Bureau of Waste Management (BWM)/Recording Secretary
Bob Bylone	Pennsylvania Recycling Markets Center (PRMC)
Chad Clancy	DEP BWM
Kate Cole	DEP Policy Office
Tina Curry	No affiliation
Hoa Dao	DEP BWM
Amy Mazzella DiBosco	Greater Lebanon Refuse Authority/Professional Recyclers of PA (PROP)
Ashley Funk	Mountain Watershed Association
Laura Griffin	DEP Policy Office
Ronald Grutza	Pennsylvania State Association of Boroughs (PSAB)
Patrick Henderson	Marcellus Shale Coalition (MSC)
Laura Henry	DEP BWM/Liaison to the Committees
Lawrence Holley	DEP BWM
Darek Jagiela	DEP Office of Communications
Glendon King	PA House Environmental Resources and Energy Committee
Cathy Lodge	No affiliation

Lisa Marcucci	Environmental Integrity Project
Melissa Marshall	Mountain Watershed Association
Josephine Martin	No affiliation
Michelle Mathason	Lancaster County Solid Waste Management Authority (LCSWMA)
Tom Mellott	DEP BWM
Mary Margaret Monser	Ambler Environmental Advisory Council
Ali Tarquino Morris	DEP BWM
Todd Pejack	DEP BWM
Nikolina Smith	DEP Bureau of Regulatory Counsel (BRC)
Krishnan Ramamurthy	DEP Office of Waste, Air, Radiation and Remediation (WARR)
Ann Saurman	City of Allentown
Valerie Shaffer	DEP WARR
Jessica Shilladay	DEP Southcentral Regional Office (SCRO) Waste Program
Madison Stromswold	Greenlee Partners, LLC
Jennifer Summers	PROP
Beth Ann Taylor	Taylor Environmental/PROP
Jan Thomas	No affiliation
M.P. Tomei	PA Senate
Brenda Vance	No affiliation
Mark Vottero	DEP BWM

**SWAC/RFAC Call to Order; Introduction of Members and Guests; Approval of Minutes of June 3, 2020 (SWAC and RFAC); Old Business**

Laura Henry, DEP Liaison to the Committee, explained the rules of engagement for the virtual meeting. Questions, comments, and discussion of Committee members would be handled directly after each agenda item, while comments from the public on all agenda items would be given and addressed during the allotted public comment period. Questions and comments for both members and the public would be addressed in the order they were received, and questions could also be asked using the chat function of WebEx. Voting on action items would be taken using roll call.

Robert Watts, Vice Chair, called the September 10, 2020, joint SWAC and RFAC meeting to order at 10:14 a.m. Mr. Watts began by expressing condolences to Chair Michele Nestor upon the passing of her husband.

Ms. Henry conducted roll call attendance for the meeting.

Mr. Watts called for a motion to approve the minutes of the June 3, 2020, Solid Waste Advisory Committee meeting. Gerald Zona made a motion to approve the minutes; seconded by John Frederick. In a roll call vote, the motion carried unanimously.

**Draft Proposed Rulemaking; MAX Bulger and Yukon Facilities Hazardous Waste Delisting Petitions**

Tom Mellott, Chief, Division of Hazardous Waste Management, presented information regarding the proposed rulemaking to delist certain hazardous wastes generated by MAX Environmental Technologies, Inc. at its Bulger and Yukon facilities. Mr. Mellott explained that a delisting petition was the mechanism by which any individual can petition to exclude, or delist, waste generated by a particular facility from

the list of hazardous wastes under the federal Resource Conservation and Recovery Act of 1976 (RCRA) and Pennsylvania's Solid Waste Management Act (SWMA). Under 40 CFR §§ 260.20 and 260.22, a person may petition to remove waste from hazardous waste control by excluding the waste from the lists of hazardous wastes in 40 CFR §§ 261.31 and 261.32. The petitions are then submitted to the Environmental Quality Board (EQB) in accordance with the procedures established in the Board's Petition Policy at 25 Pa. Code Chapter 23.

EQB received the petitions for leachate system sludge (listed as F039 hazardous waste) generated at MAX Environmental Technologies, Inc.'s Bulger and Yukon facilities on May 2, 2019. The petitions requested two separate delistings for 2 separate locations; however, the regulatory Annex was ultimately written to show it as one delisting for 2 separate locations.

DEP received the petitions from EQB for further study on June 18, 2019. As part of the petition, the petitioner must demonstrate that the waste being delisted no longer meets the criteria for which the waste was originally listed as hazardous. The analysis of the sludge provided by the petitioner showed it did not exceed the UTS (Universal Treatment Standards), and therefore no longer met the criteria for being listed as F039 hazardous waste. DEP provided its evaluation of the delisting to the petitioner on May 29, 2020; no comment was received in response. Based on its evaluation, DEP recommended that the sludge generated in the treatment system at the MAX Bulger facility and the MAX Yukon facility both be delisted as an F039 waste. DEP presented its recommendation to the EQB on June 16, 2020, and the EQB approved the petitions for proposed rulemaking. In accordance with the Policy for Development and Review of Regulations, the Hazardous Waste Management Program proceeded with development of the proposed regulatory language and associated rulemaking documents for preliminary review.

It is important to note that when delisted, the waste at both MAX facilities will still be regulated as a residual waste. Further, the proposed regulatory language provides for conditional exclusion of the waste stream, including testing requirements that must be met by the petitioner prior to waste disposal. Management of the sludge material prior to sample verification would continue to be as a hazardous waste; only after sample verification will the sludge be handled as residual waste. The discharge from MAX Environmental Technologies wastewater treatment plants will still be managed under their NPDES Permit.

Laura Griffin, DEP Regulatory Coordinator, provided an overview of the public comment process for regulations and all the different points in the process at which the public can provide comments on a regulation. More information is available on the DEP website under "Public Participation."

Mike Forbeck requested clarification that the delisting petition pertained strictly to the sludge generated and not the leachate from the MAX wastewater treatment facilities. Mr. Mellott responded that the filter cake was waste generated that had previously been disposed of at the facility. By definition, under the Federal regulations it was defined as an F039 and MAX believes that the material no longer carries any of the characteristics which would have caused that material to be hazardous.

Bob Watts requested a motion to concur with the DEP recommendation to move the draft proposed rulemaking to EQB as written. Members requested more discussion.

John Frederick asked for context on the analysis sent by Mountain Watershed Association in their written comments; and questioned the numbers on the analysis and how the filter cake is non-hazardous. Mr. Mellott responded that he did not have the results in front of him and that the sample

results were the wrong sample analysis of the discharge and not directly applicable to the actual delisting of the sludge itself. He stated that this will be addressed more fully in a Comment and Response document to be presented at later date and time.

John Fredrick then asked about the arsenic in the leachate; specifically, where does the arsenic end up after the processing is done? Mr. Mellott responded that the arsenic remains in the filter cake and if delisting is approved, MAX will have the ability to either dispose of it at their Yukon facility or any other Subtitle D Facility in Pennsylvania, noting that this delisting is valid only in Pennsylvania. Mr. Mellott reiterated that filter cakes would be managed as a hazardous waste until sample results came back that would indicate that the waste meets the conditions of the delisting. Filter cakes are currently being disposed of at an offsite hazardous waste facility.

Joanne Shafer asked if delisting takes place with all the parameters set forth, would it still be considered residual waste as opposed to municipal waste and must be tracked? Mr. Mellott answered that, yes, it would be managed as a residual waste and in the delisting, there is specific language that states that each load would continue to be tested to ensure that it meets the conditions of the delisting. If it fails, it will continue to be managed as a hazardous waste.

Bob Watts again called for a motion from the Committee to concur with the Department's recommendation that the draft proposed rulemaking advance to the Environmental Quality Board for its consideration as written. The motion was made by Eli Brill and seconded by Joanne Shafer. In a roll call vote, the motion carried with 8 Yay votes, 1 Nay vote, and 5 abstentions.

Mr. Watts adjourned the SWAC meeting at 11:03 a.m.

### **RFAC: Review of FY 2019-2020 Recycling Fund Expenditures and FY 2021-2022 Recycling Fund Spending Plan**

Larry Holley, Chief, Division of Waste Minimization and Planning, DEP, provided an overview of the expenditures of the Recycling Fund for the previous fiscal year, and planned expenditures for the upcoming fiscal year.

Mr. Holley began by reviewing the Act 101, Section 901 Municipal Waste Planning and Household Hazardous Waste (HHW) Education Grant awards. Typically, these grants fund planning revisions, feasibility studies, waste composition studies etc.; 12 grants were awarded totaling \$578,778. Of these grants, 5 funded municipal waste planning, totaling \$356,660; and 7 were HHW Education, totaling \$222,118. Act 190 allowed DEP to move the HHW education program under planning with an 80/20 split versus the previous 50/50 split. This increase allowed DEP to give communities more assistance, and in turn, an increase in these types of grants and further expansion of the HHW Education Program has been realized. Currently, DEP is reviewing 4 HHW Education Grants totaling \$131,399 and 3 planning grant requests totaling \$161,246. 19 projects will ultimately be funded from FY 2019-2020 monies, totaling \$871,423.

Mr. Holley also discussed the Section 902 Recycling Program Development and Implementation Grants. During Round 58, DEP received a total of 86 applications by the March 22, 2019, deadline totaling \$14.8 million. DEP was able to fund all the applications submitted in this round. Awards for the current grant round (59) are moving closer to finalization. DEP received 132 applications requesting \$28 million; DEP anticipates awarding \$24 - \$25 million to those applicants with eligible requests. DEP anticipates making

the announcement of these awards in October 2020; and future rounds of 902 Grants will be accepted through the eGrants system.

Ms. Shafer asked if all contracts have been executed in Round 58. Mr. Holley deferred to Mark Vottero, who responded that in Round 57 there were one or two contracts that didn't meet the deadline to execute their grant; and Round 58 grants are still attempting to be executed. COVID-19 caused issues with the timeliness of paper applications; DEP has been in contact with the applicants via email to move forward with the grants requested.

Mr. Holley then discussed Section 903 County Recycling Coordinator Grants. There were 59 applications totaling \$1,784,127.83 in FY19-20. Most counties have an active coordinator and therefore, took advantage of the program. DEP continues to reach out to and work with those counties that do not have a coordinator.

Mr. Holley went on to discuss Section 904 Recycling Performance Grants. Overall, DEP has seen a downward trend in awards. DEP awarded \$20 million in FY 19-20, which was in line with what was anticipated. There was been a switch in 2019 to submission of applications through the eGrants system and therefore, applications did not come in as quickly as anticipated. DEP extended the application deadline to December 30, 2020.

Lastly, Mr. Holley reviewed the Food Recovery Infrastructure Grant. 145 applicants submitted by the May 8, 2020, deadline and \$9,694,899 was awarded. Due to COVID-19, the original budget available increased from the anticipated \$2 million up to \$10 million. DEP is still actively executing contracts, and the process overall was a success. DEP anticipates quantifiable data on how many people these entities fed as a result of this program sometime next year. These grants enabled applicants to utilize the monies awarded to supplement their program and purchase storage units, preparation units, freezers, pallet jacks, refrigerated trucks, etc. The program was extremely well-received throughout the Commonwealth.

Representative Gabler asked Mr. Holley to expand upon the changes made to the program in response to COVID-19. Mr. Holley explained that food was being disposed of unnecessarily due to food chain supply issues. Additionally, DEP regularly requires in-person meetings with our Regional Coordinators to discuss and review the applications; however, due to COVID-19 restrictions and the inability to interact in-person, DEP eliminated that provision of the grant program for the initial solicitation. This provision will be reinstated as DEP moves forward with the program to facilitate further grants and have access to onsite evaluations when possible.

Nick Troutman asked when the next round would be opened; Mr. Holley responded that DEP planned to open another round in the Spring of 2021. Moving forward, DEP plans to establish an outreach program to inform all those counties that did not participate in this round in addition to all other counties already participating.

Members commended and thanked Mr. Holley and his staff for the success of the program during the COVID-19 pandemic and for assisting those counties in need.

## **RFAC: FY 2021-2022 Recycling Fund Spending Plan**

Mr. Holley concluded by presenting the proposed Spending Plan for the Recycling Fund. Spending was at the same levels as last year, or better, and found that teleworking had minimal to no impact. There was a slight uptick in residential waste generation and a decrease in commercial waste generation as expected. Mr. Holley also stated that the Reimbursement for Host Municipality Review of Permit Applications has not been utilized in two (2) fiscal years, and DEP is evaluating the viability of that program going forward.

Representative Gabler had several questions regarding the PA Department of Transportation (PennDOT) funding grant; specifically, whether there was any discussion with PennDOT concerning asphalt recycling and whether the grant was focused on local or state-maintained roads. Mr. Holley responded that PennDOT is proposing a pilot project in conjunction with local governments and will perform an evaluation to ascertain what roads would be acceptable and suited for use of grant monies.

Representative Gabler asked for clarification on the projected spending in the out years causing concerning decreases in the Fund. Mr. Holley explained that spending cannot be projected because the Commonwealth's accounting system does not account for rollovers and lapses in spending; i.e., if there are monies that weren't spent the previous FY, they "roll over" into the next years' available funds. Therefore, the funding levels aren't as bad as they look on paper. In general, decreases to the Recycling Fund result in decreases in grant awards.

Mr. Frederick commented that the PROP Legislative Committee has been discussing the importance of the serious impact when monies are diverted from the Recycling Fund to support other funds. PROP understands that we are in difficult times right now; however, it is hopeful that the diversions will not continue with the frequency that they have in the past.

Bob Watts asked for a motion to approve the Recycling Fund Spending Plan. Joanne Shafer made a motion to approve; seconded by Gordon Burgoyne. The motion carried by unanimous roll call vote.

### **Public Comment; New Business**

Ms. Henry relayed that the representatives of Mountain Watershed Association had removed themselves from public comment.

Cathy Lodge, resident of Robinson and Smith Townships, provided public comment on the MAX Environmental delisting petitions and rulemaking. Ms. Lodge opened her remarks by expressing her disappointment with how the meeting was conducted; specifically, the Committee voting on the rulemaking prior to receipt of public comments and asked the SWAC to rescind their vote and table the rulemaking until public comments were heard and evaluated. Ms. Lodge then read comments she had submitted in a letter prior to the meeting that outlined concerns from several concerned residents of Robinson and Smith Townships regarding MAX Environmental's Bulger and Yukon facilities. These concerns included: 1) suspension of rulemaking proceedings until EPA makes its final determination for required remediation at MAX facilities under RCRA; 2) MAX's long history of non-compliance; 3) potential for residential water well contamination and other concerns related to MAX's acceptance of oil and gas wastes; and 4) lack of availability of documents and information to the public for the petitions and rulemaking in relation to office closures due to the COVID-19 pandemic.

Representative Gabler expressed his thanks to everyone on the Committee for the opportunity to work with the group, indicating that he will be completing his tenure with the General Assembly on November

30, 2020, and as such, will no longer be a member of RFAC. He stated that it has been a pleasure to serve and work with the RFAC and SWAC.

Eli Brill asked about when the proposed rulemaking for Rural Transfer Stations will be presented to the EQB. Ms. Henry responded the timeline had been pushed back due to COVID-19 and required telework. However, the proposed rulemaking package is being worked on, and DEP tentatively plans to present it to the EQB in late Spring/early Summer 2021.

Mary Margaret Monser, Ambler Environmental Advisory Council, questioned if there are any funds available to educate the public about waste reduction and reuse, stating many good/reusable items end up at the curb for disposal. Mr. Holley replied that funds are available through Section 902 recycling implementation grants for local governments to educate residents about waste management and recycling. Ms. Monser indicated she will highlight these grants to her local government officials.

Bob Bylone, President/Executive Director of the Pennsylvania Recycling Markets Center, discussed the emergence of a program it has been working on called "Circular Merchant." The Circular Merchant is a program that is planned for release within the next few months. It is an online trading platform for items that can be reused and/or recycled but are often placed in landfills. There will be an area on this platform that will be strictly business to business; however, there will be a platform that would allow for private citizens to search for specific items that they may need that are not available due to obsolescence, such as historic windows. With the advancement of technology, the platform is set up to be reactive and in "real time," thereby enabling individuals or businesses to request a specific item. If and when it becomes available, a push notification will be sent alerting the user of the item's availability.

John Frederick reiterated his request to continue to move the Act 101 refinement discussions forward.

Ms. Henry stated that the next SWAC meeting is scheduled for Wednesday, December 9, 2020, and the virtual WebEx platform will again be used. She also noted that Committee appointments will be ending December 31, 2020, and she will be sending out emails to solicit interest in being appointed or reappointed to the Committee for the upcoming 2021/2022 term. Lastly, Ms. Henry reminded members that officers are elected in odd numbered years; therefore, the Committee Chair will also be forming a Nominating Committee to solicit candidates for Chair and Vice Chair for the upcoming period.

Mr. Watts asked for a motion to adjourn the meeting. John Frederick made a motion to adjourn, seconded by Eli Brill; the motion carried by unanimous roll call vote. The meeting adjourned at 12:16 p.m.