

Solid Waste Advisory Committee Meeting Minutes of December 15, 2022

The following members were present:

John Frederick, Chair
Eli Brill
Gordon Burgoyne
Mike Forbeck
Brian Guzzone
Jason Leck
Timothy O'Donnell
Joe Reinhart
Shannon Reiter
Joanne Shafer
Bob Watts
James Welty
Gerald Zona

The following alternates were present:

Elizabeth Bertha Vogel Holding, Inc./on behalf of Ed Vogel

The following members were absent:

Tanya McCoy-Caretti
Michele Nestor, Vice Chair
Gregg Pearson
Matthew Quesenberry
Ed Vogel

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

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| Derek Bartram | DEP Bureau of Waste Management (BWM) |
| Kevin Beer | DEP BWM |
| Wayne Bowen | Pennsylvania Recycling Markets Center (PennRMC) |
| Chad Clancy | DEP BWM |
| Laura Griffin | DEP Policy Office |
| April Hain | DEP BWM/Acting Recording Secretary |
| Laura Henry | DEP BWM/Liaison to the Committee |
| Lawrence Holley | DEP BWM |
| Josephine Martin | Management for Sustainability, LLC |
| Tom Mellott | DEP BWM |
| Ali Tarquino Morris | DEP BWM |
| Jessica Shilladay | DEP SCRO Waste Management Program |
| Nikolina Smith | DEP Bureau of Regulatory Counsel (BRC) |
| Chris Solloway | DEP BWM |
| Carl Spadaro | MAX Environmental Technologies, Inc. |

Jennifer Summers
Lucas Swanger
Donna

Professional Recyclers of Pennsylvania (PROP)
DEP BWM
No affiliation

Call to Order; Introduction of Members and Guests; Approval of Minutes of September 15, 2022; Old Business

John Frederick, Chair, called the December 15, 2022, Solid Waste Advisory Committee virtual meeting to order at 10:05 a.m. Roll call attendance was taken by Laura Henry. No public comments were received, and no new business was presented. Chair Frederick requested a motion to approve the September 15, 2022, SWAC-RFAC meeting minutes. Tim O'Donnell made a motion to approve the meeting minutes, seconded by Joanne Shafer; the motion carried unanimously.

Discussion Item: Bureau of Waste Management Non-Regulatory Update, Part 2

Ms. Henry introduced Solid Waste Program Specialist Derek Bartram and Environmental Group Manager Kevin Beer, to discuss minor revisions made to 4 additional documents reviewed as part of the Bureau of Waste Management's (BWM) technical guidance document (TGD) review and update.

The TGDs discussed included:

1. Document #250-4000-002: Enforcement Actions (Originally published 9/17/2005)
2. Document #250-4000-004: Program Implementation Guidance (Originally published 9/17/2005)
3. Document #254-5900-001: Guidelines for the Development and Implementation of Preparedness, Prevention and Contingency Plans for Generators and Burners of Waste Oil (Originally published 10/31/2002)
4. Document #254-3120-001: Performing Municipal and Residual Waste Facility Inspections (Originally published 9/17/2005)

Committee members presented concerns regarding BWM replacing "shall" with "should," particularly for the section of the Enforcement Actions TGD pertaining to DEP closing violations in eFACTS within 10 days. Members encouraged DEP to follow that schedule since companies are subject to criticism when they appear to be non-compliant in the DEP tracking system. Committee members were worried that using "should" and not "shall" would diminish staff's accountability to close violations in a timely manner. DEP clarified that replacing "shall" with "should" provides stylistic consistency across the documents and shows that DEP doesn't regulate through policy or guidance; "shall" is reserved for use in regulatory language.

DEP provided clarification regarding the Waste Oil TGD applicability to smaller waste oil generators and receivers, including municipalities.

A committee member questioned public availability of the Complaint Response Document referred to in the Program Implementation Guidance TGD. Correspondence following the meeting revealed the Complaint Response Document is a standard operating procedure (SOP) for DEP Service Representatives and was not intended for public use. BWM has since corrected the inaccurate reference to the Complaint Response Policy in the Program Implementation Guidance TGD.

Action Item: Draft Final Rulemaking, MAX Delisting Rule

Tom Mellott, Program Manager, Division of Hazardous Waste Management, discussed the draft final rulemaking for the delisting of F039 filter cake waste generated at MAX Environmental Technologies, Inc.'s (MAX) Bulger and Yukon facilities located in the Southwest Region. The F039 waste is a multisource leachate hazardous waste (HW) resulting from the disposal of more than one restricted waste classified under Subtitle D of the federal regulations.

This rulemaking would amend 25 Pa. Code § 261a Appendix IXa, Table 1a to provide specific conditional delisting for the wastewater treatment filter cake at both facilities. The delisting/exclusion would be conditional, and the waste would still be regulated under Pennsylvania's residual waste regulations. MAX will be required to analyze the delisted waste prior to disposal and manage the waste as hazardous until the results of that analysis are received.

Mr. Mellott presented a brief timeline for the delisting petitions and proposed rulemaking. At the June 2019 EQB meeting, DEP recommended that both the Yukon and Bulger petitions be addressed in a single rulemaking. EQB concurred with this recommendation and DEP proceeded with preparing a single rulemaking. DEP proceeded with the draft proposed rulemaking on the following timeline:

1. September 2020: SWAC/RFAC was presented with the draft proposal rulemaking and voted unanimously to approve DEP's recommendation to present it to EQB.
2. September 21, 2020: EQB adopted the proposed rulemaking for publication to solicit public comment.
3. January 8, 2022: proposed rulemaking published in the *Pennsylvania Bulletin*, opening a 45-day public comment period; 3 virtual public meetings were also held during this time.

A total of 18 public comments were received during the public comment period. Fourteen commenters provided similar comments that DEP categorized as either *Historic Acceptance of Oil and Gas Industry Waste and it's possible contamination by TENORM Radium 226 and Radium 228* and *Compliance History of MAX Environmental Technologies*. Other comments included whether the delisting complied with EPA RCRA corrective actions, the availability of delisting documents during the pandemic, and community trust in the facility and community support in approving the filter cake delisting for the Bulger and Yukon facilities. DEP will provide responses to all comments in a comment response document.

Mr. Mellott asked, on behalf of DEP, that SWAC concur with DEP advancing the final rulemaking to the EQB for consideration.

Following discussion and clarification on the sampling requirements presented, Jason Leck made a motion to concur with DEP's recommendation to move the draft final rulemaking to EQB; seconded by Mr. O'Donnell. The motion carried unanimously.

New Business

Ms. Henry informed members that the package reappointing and appointing candidates to SWAC and RFAC was recently routed for approval, and that the 2023 meetings dates (March 30th, June 22nd, and October 19th, respectively) were recently published in the *Pennsylvania Bulletin*.

Ms. Henry also reminded committee members that election of officers would take place during the March 30th meeting, and members were encouraged to notify Chair Frederick if interested in being a part of the Nominations Committee.

Adjourn

Mr. Frederick requested a motion for adjournment; Mr. O'Donnell made the motion and the meeting adjourned at 11:03 a.m.