

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
December 15, 2009

VOTING MEMBERS OR ALTERNATES PRESENT

John Hanger, Chairman, Secretary, Department of Environmental Protection
Kenneth Graham, alternate for Secretary Sandi Vito, Department of Labor and Industry
Danielle Spila, alternate for Secretary Allen D. Biehler, Department of Transportation
Wayne Gardner, alternate for Chairman James H. Cawley, Public Utility Commission
Edward Yim, 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
Michael DiMatteo, alternate for Carl Roe, Executive Director, PA Game Commission
Timothy D. Schaeffer, alternate for Dr. Douglas Austen, Executive Director, PA Fish and Boat Commission
Dr. Walter Meshaka, alternate for Barbara Franco, Executive Director, PA Historical and Museum Commission
Patricia Allan, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Paul Opiyo, alternate for Secretary George Cornelius, Department of Community and Economic Development
Michael Pechart, alternate for Acting Secretary Russell Redding, Department of Agriculture
Dr. James Logue, alternate for Secretary Everette James, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel
Kelly J. Heffner, Policy Office Director
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Hanger called the meeting to order at 9:08 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business—the November 17, 2009, EQB meeting minutes.

Michael Pechart moved to approve the November 17, 2009, EQB meeting minutes. Timothy Schaeffer seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: ENVIRONMENTAL LABORATORY ACCREDITATION AMENDMENTS (25 Pa Code, Chapter 252)

Michael Sherman, Deputy Secretary for Field Operations, presented an overview of the final rulemaking. Martina McGarvey, Director, Bureau of Laboratories, Aaren Alger, Chief, Laboratory Accreditation Program, and Scott Perry, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, no Board member presented questions on the rulemaking

Edward Yim moved to approve the final rulemaking. Mr. Pechart seconded the motion, which was approved by a majority of Board members. Joseph Deklinksi voted in opposition to the motion.

CONSIDERATION OF FINAL RULEMAKING: STREAM REDESIGNATIONS (BLUE EYE RUN, ET AL) (25 Pa Code, Chapter 93)

John Hines, Deputy Secretary for Water Management, presented an overview of the final rulemaking. Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, and Michelle Moses Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Jolene Chinchilli asked for clarification from the Department regarding statistics it provided concerning the percentage of streams in Pennsylvania that are designated as Exceptional Value (EV). Specifically, she inquired whether 4% of all streams in the Commonwealth are EV or whether 4% of all streams evaluated by the Department are EV. Dana Aunkst responded and clarified that 4% of all streams in Pennsylvania are EV. Following Ms. Chinchilli's inquiry, Mr. Schaeffer stated the PA Fish and Boat Commission's appreciation of the Department's continued use of the best science available to give streams their proper designation. He also commented that the PA Fish and Boat Commission reviewed the rulemaking and concurred with the Department's conclusions.

Mr. Strong moved to approve the final rulemaking. Mr. Schaeffer seconded the motion, which was approved by the Board. Mr. Deklinski voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: ADMINISTRATION OF THE LAND RECYCLING PROGRAM (25 Pa Code, Chapter 250)

Tracey Vernon, Acting Deputy Secretary for Community Revitalization and Local Government Services, presented an overview of the proposed rulemaking. Troy Conrad, Director, Land Recycling Program, and Kurt Klapkowski, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Edward Yim inquired whether the list of regulated substances updated by the proposed rulemaking includes those chemicals that are used for drilling in the Marcellus Shale formation. Kurt Klapkowski responded that the proposed rulemaking was not developed with any specific focus on the chemicals used in the Marcellus Shale formation. He further noted that the tables in the rulemaking include the Statewide Health Standards for those chemicals for which appropriate toxicological data are available. Mr. Klapkowski also clarified that there may be substances that are used in drilling in the Marcellus Shale region that are not reflected in the tables included in the rulemaking, because the Department does not have available toxicological data on those substances.

Patrick Henderson commented on the concerns raised by the Department's advisory boards that the existing limitations for MTBE do not reflect health-based criteria as required in Act 2. In light of those concerns, Mr. Henderson asked if the Board could request that the Department seek specific guidance

from EPA on what the applicable health based standards should be for MTBE. Chairman Hanger responded that the Department would be happy to seek specific guidance from EPA regarding health based standards for MTBE.

Mr. Henderson moved to accept the proposed rulemaking with a 30-day public comment period. Richard Fox seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: ADMINISTRATION OF THE UNIFORM ENVIRONMENTAL COVENANTS ACT (25 Pa Code, Chapter 92a)

Tracey Vernon, Acting Deputy Secretary for Community Revitalization and Local Government Services, presented an overview of the proposed rulemaking. Troy Conrad, Director, Bureau of Land Recycling and Waste Management, Kurt Klapkowski, Assistant Counsel, and Michael Buchwach, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Danielle Spila requested that the Department work with the Department of Transportation (PennDOT) as it proceeds with the public comment process on the proposal. She noted that there are aspects of the rulemaking, in particular those that involve acquiring a right of way that would impact PennDOT and therefore would require the agency to fully understand the rulemaking and its impacts, so that it may provide input on the rulemaking. Chairman Hanger acknowledged Ms. Spila's request and stated that the Department would be happy to continue to work with PennDOT on the proposed rulemaking.

In light of the fact that local governments are informed of when an environmental covenant is filed on property located within its jurisdiction, Walter Heine asked whether local governments take any responsibility for enforcing an environmental covenant. Ms. Vernon replied that under the proposed rulemaking local governments are not responsible for enforcing the environmental covenant.

Mr. Yim moved to approve the proposed rulemaking with a 30-day public comment period. Mr. Henderson seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED AMENDMENTS: PROTOCOL FOR THE PRESENTATION OF REGULATIONS UNDER THE REGULATORY REVIEW ACT

Doug Brennan, Counsel to the Board, provided an overview of the amendments the Department proposed to the Protocol for the Presentation of Regulations under the Regulatory Review Act.

Following Mr. Brennan's remarks, Mr. Henderson stated his appreciation of the Department's efforts to amend the protocol and stated that he supports the amendments, which he believes provide a fair resolution. Mr. Deklinski also commented that he shared Mr. Henderson's sentiments.

Mr. Henderson moved to adopt the revised protocol, as presented to the Board at the December 15, 2009, Board meeting. Mr. Fox seconded the motion, which was unanimously approved by the Board.

ADJOURN:

With no further business before the Board, Mr. Pechart moved to adjourn the meeting. Dr. Meshaka seconded the motion, which was unanimously approved by the Board. The December 15, 2009, meeting of the Board was adjourned at 9:54 a.m.