

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
October 12, 2010**

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 Spilla, alternate for Secretary Allen 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, Pennsylvania Game Commission
Richard Manfredi, Citizens Advisory Council
David Spotts, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Michael Pechart, alternate for Secretary Russell Redding, Department of Agriculture
Dr. James Logue, alternate for Acting Secretary Michael Huff, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, alternate for Doug Brennan
Michele Tate, Regulatory Coordinator
Randal (Duke) Adams, Acting Director, Policy Office

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Hanger called the meeting to order at 9:05 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the September 21, 2010, EQB meeting minutes.

Michael Pechart moved to approve the September 21, 2010, EQB meeting minutes.

Richard Fox seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: OIL AND GAS WELL CASING AND CEMENTING (25 Pa Code, Chapter 78)

J. Scott Roberts, Deputy Secretary for Mineral Resources Management, provided an overview of the final rulemaking. Liz Nolan, Assistant Counsel, Bureau of Regulatory Counsel, and Eugene Pine, Professional Geologist Manager, Bureau of Oil and Gas Management, assisted with the presentation.

Following the Department's presentation, Edward Yim asked whether the final rulemaking requires the well operator to notify the Department if the cement casing does not return to the surface. Deputy Secretary Roberts responded yes. Mr. Yim asked what the penalty is if the operator does not notify the Department under these circumstances. Deputy Secretary Roberts replied that the Department would

issue a violation to the company for failure to comply with the regulations. Mr. Pine added that the amount of the fine would depend on the specific technicalities of the loss that occurred. Mr. Yim asked whether this rulemaking changes the existing reporting requirements. Deputy Secretary Roberts said that it does not. Mr. Yim asked whether the Department is aware of instances where fracturing fluid has contaminated water supplies or wells due to improper casing or cementing. Deputy Secretary Roberts said that the Department has not encountered any instances where frac fluids from the well depth have contaminated a water supply; however, the Department has seen instances where water supply contamination has occurred due to the improper handling of materials at the well surface.

Richard Fox asked whether most of the changes included in the final rulemaking apply to unconventional formations wells. Deputy Secretary Roberts replied that most of the changes apply to all oil and gas wells across the board. Mr. Pine added that this rulemaking enhances the standards for all wells, whether deep or shallow, as it is equally important for both to be properly cemented. Mr. Fox asked whether the formations other than Marcellus, as mentioned under the “Definitions” section on page two of the Annex A, refer to formations deeper than Marcellus. Deputy Secretary Roberts said that two are deeper (Mandata and Utica) and two are shallower (Rhinestreet and Burkett).

Patrick Henderson commended the Department for its work on the development of the final rulemaking, and expressed appreciation to Secretary Hanger for holding public hearings on the proposal. Mr. Henderson asked for examples of what the Department is looking for when it mentions “enhanced drilling,” under the “Definitions” section on page two of the Annex A. Mr. Pine responded that enhanced drilling would require the use of lateral/horizontal drilling technology. Mr. Pine identified examples of enhanced drilling and further expanded by stating that essentially any changes in the way a well is drilled in comparison to how it was drilled ten years ago would be considered an enhancement. Mr. Henderson asked for clarification on what information needs to be disclosed to the Department and to the public in reference to frac chemicals. Ms. Nolan explained that the regulation provides that the well operator may designate specific portions of the stimulation record as containing a trade secret or confidential proprietary information and that the Department shall prevent disclosure of such designated confidential information to the extent permitted by the Right to Know Law, which provides a procedure for dealing with records that contain trade secret or confidential proprietary information. Ms. Nolan continued to state that if the Department were to receive a request for a designated record, the Department would notify the submitter of that request within five business days, and then the operator would have five business days to provide input on the confidential nature of that information, at which time the Department would either disclose or withhold that record from the requestor in accordance with the Right to Know Law. Mr. Henderson stated that many legislators have received correspondence concerning the impact of hydraulic fracturing increasing the potential for radon contamination, and asked whether the Department is looking into this or has any information of the validity of these concerns. Deputy Secretary Roberts replied that the Department has not considered those issues under this rulemaking; however, the Bureau of Radiation Protection has been examining issues concerning radioactive materials that may be found in low doses within the Marcellus Shale.

Walter Heine seconded Mr. Henderson’s commendation of the Department’s hard work on the final rulemaking. Mr. Heine asked whether it would be the homeowner’s or well operator’s responsibility to take samples of their drinking water to determine whether or not the well is contaminated. Deputy Secretary Roberts replied that individuals do not need to have their water tested, but the Department encourages such testing in order to ensure the purity of their water. Deputy Secretary Roberts continued that, if there is oil and gas drilling taking place near the homeowner’s property, there is a rebuttable presumption zone that applies to the property, but that only deals with who bears the burden of proof in demonstrating that the operator caused the problem. Deputy Secretary Roberts stated that the Oil and Gas

Act provides that any well operator who pollutes a water supply must restore or replace that water supply with an alternate source adequate in quality and quantity for the purposes it serves. Deputy Secretary Roberts continued that within the rebuttable presumption zone, the operator has to prove that they did not cause the contamination; if it is outside of that zone, it is the Department that will perform an investigation. Mr. Heine inquired about the zone or distance applicable to the rebuttal presumption and asked if it is a hard number. Deputy Secretary Roberts replied that the zone distance is 1,000 feet. Chairman Hanger emphasized the importance of people who own a private water well to test their water on a regular basis, regardless of whether or not they reside in an area where drilling is occurring. Chairman Hanger added that if the driller does not do a pre-drilling test and problems arise, the owner will have to prove the problems were caused by the drilling.

Dave Strong stated that he believes that many well-owners do not know what to test for, nor do they understand the cost involved in testing their well water. Mr. Strong stated it would behoove the Department to publicly state what people should test for, and also that the Department should develop water well standards. Chairman Hanger agreed with Mr. Strong about the water well standards and expressed appreciation for his comment.

Mr. Yim asked whether the concentration mix is considered proprietary in regard to the disclosure of frac chemicals. Deputy Secretary Roberts said that it can be. Chairman Hanger mentioned that the Department strongly encourages that all companies join the three companies—Range Resources, EQT, and Chief—that are already voluntarily disclosing fracking materials, formulas and volumes. Chairman Hanger stated that since 2008, the Department has been posting on its website a list of disclosed chemicals that are reportedly used in the fracking process; the Department updated that list in the spring of 2010.

Mr. Heine asked whether the Department is going to develop something that would aid well owners in determining what to test for. Deputy Secretary Roberts said that he will meet with his colleagues in the water supply program to explore options, whether it be a Fact Sheet, a web page, etc, that the Department can develop. Mr. Strong noted that the Penn State Cooperative Extension has created its own webpage which lists information including legal aspects, ballpark costs for testing, labs that can do tests, etc., and suggested talking to them. Chairman Hanger stated that the Department has a standard list of materials to test for when checking into a claim that a well has been contaminated. Mr. Strong said it would be nice to have a concentration range and expected background levels as well.

Mr. Yim read the following statement on behalf of Representative Camille “Bud” George:

"I truly commend the Department for taking this much-needed measure to ensure that drilling for oil and gas in Pennsylvania will be done safely. But I want to emphasize that this is just the beginning of the steps that we need to take to protect our citizens and our water, and more needs to be done.

I am troubled that this rulemaking still relies heavily on the industry's self-reporting. I need not remind this group that Marcellus operators just in the first six months of this year racked up over 560 violations, many of them of serious nature. This amounts to three violations per day, for which they pay anemic fines.

In addition, issues related to proper waste disposal and temporary waste storage must be addressed quickly. In particular, the current practice of using open pits to store some of the most toxic water in the world, hoping that they won't spill into our streams, springs and groundwater is simply not sustainable and is inadequate to protect our citizens and our water. I urge the Department's attention to these issues.

I say all this knowing that we in the legislature have to do our part to address the problems associated with drilling in unconventional reservoirs, and I thank the Department and its staff for their

hard work under challenging circumstances on these vital issues that will have a lasting footprint in Pennsylvania.

Thank you."

In closing remarks, Chairman Hanger expressed his appreciation to those involved in helping shape the final regulations, which he believes are as strong as any in the country. He further noted that the diverse input received on the rulemaking led to significantly strengthening the regulations, which he believes will reduce the incidents and problems associated with gas migration in Pennsylvania. Chairman Hanger also commended Department staff for their hard work on the rulemaking, including the leadership of Scott Perry, Director of the Department's Bureau of Oil and Gas Management.

Mr. Strong moved to adopt the final rulemaking. Mr. Henderson seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: COAL MINING PERMIT FEES (25 Pa Code, Chapter 86)

J. Scott Roberts, Deputy Secretary for Mineral Resources Management, provided an overview of the proposed rulemaking. Tom Callaghan, Director, Bureau of Mining and Reclamation, assisted with the presentation.

Following the presentation, Mr. Manfredi asked whether permit fees are being tied to the cost of review and suggested developing some kind of formula that would adjust fees accordingly when the costs associated with permit reviews rises. Mr. Manfredi suggested establishing an escrow fund that would enable the Department to charge applicants whose applications are more complex and take more time to review. Deputy Secretary Roberts replied that the Department structured the fees differently and even though some applications take longer to review than others, the Department did not consider developing an escrow fund to absorb any extra costs of processing more complex applications. Deputy Secretary Roberts continued that the total permit cost for the program would be between \$1.5 and \$2 million dollars. Chairman Hanger added that the amount of the fee increase represents only a portion of the total cost to the program and this is a compromise with the Mining and Reclamation Advisory Board (MRAB). Chairman Hanger continued that the program is not charging on a case by case basis depending on the time it takes to review and process a permit application, due to the administrative burden and the controversy that would arise. Mr. Fox stated that, as an alternate on the MRAB, the Board worked extensively for over a year with the Department and the coal industry in an attempt to refine the most equitable fee package for all parties involved.

Ms. Denworth moved to adopt the proposed rulemaking, with a 30-day public comment period. Mr. Fox seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.

CONSIDERATION OF FINAL RULEMAKING: DAM SAFETY AND WATERWAY MANAGEMENT (25 Pa Code, Chapter 86)

John Hines, Deputy Secretary for the Office of Water Management, provided an overview of the final rulemaking. Patricia McSparran, Director, Bureau of Waterway Engineering, Roger Adams, Senior Civil Engineer Manager, Bureau of Waterways Engineering, and Meg Murphy, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Danielle Spila requested that a pending rulemaking the Department is working on regarding water encroachments be shared with PennDOT prior to it being reviewed by the Water Resources Advisory Committee. Deputy Secretary Hines responded and stated that PennDOT would have an opportunity to review the draft rulemaking. Ms. Denworth questioned if the Department was comfortable with removing the language in 105.102(b) concerning work being conducted under the oversight and supervision of a professional engineer approved by the Department. Ms. McSparran responded that the Department was comfortable with removing the language concerning the Department's approval because there is already a licensing board for professional engineers.

Richard Manfredi moved to adopt the final rulemaking. Edward Yim seconded the motion, which was approved unanimously by the Board.

OTHER BUSINESS:

Chairman Hanger announced that the next meeting of the Board is scheduled for Tuesday, November 16, 2010. The meeting will convene at 9:00 a.m. in room 105 of the Rachel Carson State Office Building, Harrisburg.

ADJOURN:

With no further business before the Board, Mr. Strong moved to adjourn the meeting. Mr. Gardner seconded the motion, which was unanimously approved by the Board. The October 12, 2010, meeting of the Board was adjourned at 10:20 a.m.