

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**July 15, 2014**

**VOTING MEMBERS OR ALTERNATES PRESENT**

E. Christopher Abruzzo, Chairman, Secretary, Department of Environmental Protection  
Eric Kratz, alternate for Julia Hearthway, Secretary, Department of Labor and Industry  
Kathryn Tartaglia, alternate for Barry Schoch, Secretary, Department of Transportation  
Pam Witmer, alternate for Robert Powelson, Chairman, PA Utility Commission  
Representative Greg Vitali, Pennsylvania House of Representatives  
Chase Schaszberger, alternate for Representative Ron Miller, Pennsylvania House of Representatives  
Richard Fox, alternate for Senator John Yudichak  
Adam Pankake, alternate for Senator Gene Yaw  
Michael DiMatteo, alternate for Matthew Hough, Executive Director, PA Game Commission  
Burt Waite, Citizens Advisory Council  
David Spotts, alternate for John Arway, Executive Director, PA Fish and Boat Commission  
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and  
Museum Commission  
Matthew O'Donnell, alternate for Jennifer Branstetter, Director, Governor's Office of Policy & Planning  
Cynthia Carrow, Citizens Advisory Council  
David Hess, Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
John Walliser, Citizens Advisory Council  
Paul Opiyo, alternate for C. Alan Walker, Secretary, Department of Community and Economic  
Development  
Ben Junkin, alternate for George Greig, Secretary, Department of Agriculture  
Dr. Irshad Shaikh, alternate for Michael Wolf, Secretary, Department of Health

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Hayley Book, Director, Policy Office  
Doug Brennan, Director, Bureau of Regulatory Counsel  
Laura Edinger, Regulatory Coordinator

**CALL TO ORDER AND APPROVAL OF MINUTES**

The meeting was called to order at 9:03 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the May 21, 2014, EQB meeting minutes.

**Adam Pankake moved to adopt the May 21, 2014, EQB meeting minutes.**  
**Pam Witmer seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: LAND RECLAMATION FINANCIAL GUARANTEES AND BIOENERGY CROP BONDING (25 Pa Code Chapters 77, 86, 87, 88, 89, 90, 211)**

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations provided an overview of the proposed rulemaking. Tom Callaghan, Director, Bureau of Mining Programs, Bill Allen, Bureau of Mining Programs, and A.J. Wissinger, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

There were no questions or comments following the presentation.

**Richard Fox made a motion to adopt the proposed rulemaking.**

**David Hess seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: REGULATED MEDICAL AND CHEMOTHERAPEUTIC WASTE (25 Pa Code Chapters 271, 272, 273, 284, 285, 287, 288, 299)**

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the final rulemaking. Ken Reisinger, Director, Bureau of Waste Management, Ali Tarquino-Morris, Chief of Program Development Section, and Susan Despot, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Representative Vitali requested additional information regarding the provision in the final rule that allows for the use of the U.S. Postal Service for shipping medical waste.

Bureau Director Ken Reisinger noted that the U.S Postal Service (USPS), in cooperation with waste management, developed a program by which USPS provides shipping boxes to medical facilities. Mr. Reisinger provided an overview of the program, explaining that this service is many times utilized by small, rural facilities. Essentially, the facilities will place a bag in a box that is then sealed and locked. The facility will then call USPS for pick up. USPS will pick up the box and the material is then shipped to Texas where the entire box is incinerated.

Representative Vitali inquired if any questions had been raised regarding this service. Mr. Reisinger responded that this is a standard nationwide practice and no questions were posed pertaining to this aspect of the final regulation.

Richard Fox inquired if medical waste generated in Pennsylvania has been increasing or decreasing over time.

Mr. Reisinger responded that data of that nature has not been evaluated.

Deputy Secretary Brisini noted that DEP has provided additional direction to hospitals to clarify regulations and to ensure the waste is treated appropriately. Mr. Reisinger added that DEP is currently reaching out to medical facilities, to clarify existing waste regulations. This outreach effort will continue once the new regulations are published and effective. The roll out effort will include additional outreach to clarify the new regulations. As a specific example, there are some questions in the regulated community as to how saturated gauze needs to be for it to be considered medical waste. DEP will explain

that this could be a judgment call – not every small bandage needs to be sent for incineration, but bandages coming from an operating room would need to be handled as medical waste.

David Spotts asked if medical waste is classified as hazardous.

Mr. Reisinger responded that regulated waste is not classified as hazardous waste. It is treated as municipal waste both inside and outside of Pennsylvania.

**Dr. Shaikh made a motion to adopt the final rulemaking.**

**Pam Witmer seconded the motion, which was unanimously approved by the Board.**

### **PRESENTATION OF SCIENCE UPDATE: IONIC COMPOSITION OF PENNSYLVANIA'S SURFACE WATERS AND CHLORIDE AND SULFATE TOXICITY TESTING**

Kelly Heffner, Deputy Secretary for Water Management provided the science update. Lee McDonnell, Director, Bureau of Point and Nonpoint Source Management, Rod Kime, Chief, Division of Water Quality Standards, and Michele Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Mr. Fox asked how DEP determines which NPDES permits have to do the monitoring for molybdenum and dioxane.

Bureau Director Lee McDonnell responded that one of the requirements for any NPDES permit renewal for major discharge is to have a toxicological screening. DEP currently has approximately 150 pollutants on that list. Molybdenum and dioxane were added in. DEP requires three samples to cover that spectrum of pollutants. Once the samples are analyzed, DEP determines whether or not a monitoring report for that permit is needed.

Mr. Fox asked if this is only applicable to major discharges.

Mr. McDonnell responded that is correct. Currently this is applicable to all of the major discharges

Mr. Fox inquired as to the cost of the contract with Stroud.

Division Chief Rod Kime responded that the contract cost approximately \$120,000 annually.

Walter Heine inquired as to if DEP has been able to determine if there is any relationship between the ionic concentrations and the small mouth bass problem that DEP has been studying.

Mr. Kime responded that it is unlikely that the ionic composition in the Susquehanna River is affecting the bass. The Susquehanna's ionic composition is average/normal, and DEP has not determined that there is anything unusual about it.

Commissioner Pam Witmer noted that it was mentioned that DEP hopes to get back out into the field to do more sampling. She inquired if sampling is not able to be completed due to heavy rains by the time the contract ends at the end of the year, is there a concern that enough samples may not be collected.

Mr. Kime responded that samples collected to date should adequately characterize ionic composition, and DEP is confident, given familiarity with the streams being sampled, that the composition will not significantly change. However, it is still important that 125 samples are collected so that there is a reasonable sample size to effectively assess the ionic composition. DEP believes that this can be accomplished and is confident that the ionic composition will not appreciably change.

Mr. Spotts thanked DEP for the update and commented that it appears that the Stroud report will contain a great deal of helpful information and will be completed by December of this year. He asked if the Board will be hearing proposed criteria for chloride in 2015.

Deputy Secretary Heffner noted that DEP will need to evaluate the Stroud report and then determine whether or not to concur with the findings in the report. Once that determination is made, DEP will decide how to proceed with criteria for chloride – whether it will be rolled into the next triennial review or whether it needs its own separate proposal.

**No action needed on this item.**

### **OTHER BUSINESS:**

#### *Chapter 78 Update – Splitting the Proposed Rulemaking*

Policy Director Hayley Book explained to the Board that Senate Bill 1378 proposed to split Chapter 78 into two parts – one part pertaining to conventional wells and another part pertaining to unconventional wells. Recent changes to the fiscal code require what SB 1378 proposed. Thus, DEP will be making adjustments to Chapter 78 of Title 25 pertaining to oil and gas wells. Chapter 78 will be split into two chapters. Chapter 78-A will address unconventional wells. Chapter 78, the existing chapter, will relate only to conventional wells. All language that is currently contained in Chapter 78 pertaining to unconventional wells will be moved to the new Chapter 78-A. This endeavor is not going to require a new proposed regulation for Subchapter C. It is only a change in the format to the existing proposed regulation. This will not require DEP start the proposed rulemaking process from the beginning. DEP will move forward with the existing proposed Subchapter C regulations. The rulemaking will exist as one rulemaking package split into two chapters – one for unconventional and one for conventional. It is important to note that a number of commentators requested the splitting of this regulatory package to separately address conventional and unconventional drilling. By separating the rulemaking package into two chapters, DEP is satisfying that request. DEP will amend the rulemaking as necessary in response to comments received and the availability of new information relevant to the implementation of this rulemaking. DEP will also be issuing an Advanced Notice of Final Rulemaking (ANFR). DEP will announce the ANFR and open the new Chapter 78 and 78-A for a thirty-day public comment period. It is anticipated that the ANFR will be announced in 2015 and amendments to Chapters 78 and 78-A as one package will then be finalized and the final rulemaking package will be developed.

Representative Vitali commented that this appears to be only a formatting adjustment. He noted that the regulations currently have some provisions that apply only to conventional and others that apply only to unconventional and some that apply to both. He asked if the changes made in separating the regulation will essentially only change where the provisions are found in the rulemaking.

Ms. Book stated that, at this stage, the only changes being made are the formatting changes. As DEP reviews public comments received, additional changes may need to be made to one or both of the

chapters. However, at this stage, DEP is merely separating the current text. Nothing that will apply to unconventional operators will be in Chapter 78 and nothing that applies to conventional operators will be in Chapter 78-A.

Representative Vitali inquired if the separation of the regulation will cause a delay.

Ms. Book responded that separating the regulation will not require DEP to start over from the beginning and initiate a new proposed rulemaking. However, from a procedural standpoint, it will take some time to separate the regulation into the two chapters. While this will take a bit of time, it will certainly not derail the process from the original intent and it will not require the opening of a new public comment period for a new proposed regulation.

John Walliser inquired as to DEP's interpretation of the inclusion of "other laws of the Commonwealth" in the language in the fiscal code – specifically how that language may affect provisions under the Clean Streams Law of the Air Pollution Control Act.

Ms. Book responded that Chapter 78 is currently the only place where the language conventional and unconventional is found. Therefore, DEP is assuming this applies only to Chapter 78.

Burt Waite commented that at the Oil and Gas Technical Advisory Board meeting, there was a question as to whether or not DEP would utilize the ANFR process. He inquired if an ANFR will be released for additional public comment.

Ms. Book responded that DEP has decided affirmatively to move forward with the ANFR process for this rulemaking.

#### *Ashley Funk Petition Update*

Ms. Book provided an update to the Board regarding the Ashley Funk petition. DEP is preparing the final response to this petition, and it is anticipated that DEP's recommendation and response to the Ashley Funk petition will be on the agenda for the August 19 EQB meeting.

#### *Next Board Meeting*

The next meeting of the Board is scheduled for Tuesday, August 19, 2014. 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, Burt Waite moved to adjourn the meeting. John Walliser seconded the motion, which was unanimously approved by the Board. The July 15, 2014, meeting of the Board was adjourned at 9:49 a.m.