

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
February 18, 2014

VOTING MEMBERS OR ALTERNATES PRESENT

Dana Aunkst, Acting Chairman, Executive Deputy Secretary for Programs, Department of Environmental Protection (DEP)
Eric Kratz, alternate for Julia Hearthway, Secretary, Department of Labor and Industry
Kathryn Tartaglia, alternate for Barry Schoch, Secretary, Department of Transportation
Pamela Witmer, alternate for Robert Powelson, Chairman, PA Utility Commission
Sarah Clark, alternate for Representative Greg Vitali
Jonathan Lutz, alternate for Representative Ron Miller
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
Terry Dayton, alternate for 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
Jeff Kazlauskas, alternate for Jennifer Branstetter, Director, Governor's Office of Policy and Planning
Cynthia Carrow, Citizens Advisory Council
Walter Heine, 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. James Logue, 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

Acting Chairman Aunkst noted a change to the agenda from the one that was originally sent out. The Presentation of Findings: Perkiomen Creek Report will be postponed until a later EQB meeting to give the petitioner additional time to review the report.

The meeting was called to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the January 21, 2014, EQB meeting minutes.

**Walter Heine moved to adopt the January 21, 2014, EQB meeting minutes.
Cynthia Carrow seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL RULEMAKING: Control of VOC Emissions from Flexible Packaging Printing Presses, Offset Lithographic Printing Presses, and Letterpress Printing Presses; and Adhesives, Sealants, Primers, and Solvents (25 Pa Code Chapter 121, 129, and 130)

Vince Brisini, Deputy Secretary for Waste, Air, Radiation, and Remediation, provided an overview of the final rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Kristen Furlan, Assistant Director and Mediation Coordinator, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, the Board did not pose any questions or comments about the final rulemaking or the Department's presentation.

Richard Fox moved to adopt the final rulemaking. Pam Witmer seconded the motion, which was approved by a majority of the Board members. Jonathan Lutz voted in opposition to the final rulemaking.

CONSIDERATION OF PROPOSED RULEMAKING: Administration of the Land Recycling Program (25 Pa Code Chapter 250)

Vince Brisini, Deputy Secretary for Waste, Air, Radiation, and Remediation, provided an overview of the final rulemaking. George Hartenstein, Director, Bureau of Environmental Cleanup and Brownfields, and Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Walter Heine stated that the report contends that two of the Department's advisory committees support these regulations regarding the Administration of the Land Recycling Program. However, the committees do not support DEP's decision to retain the groundwater MSC for MTBE. Mr. Heine inquired why this may be an issue.

Deputy Secretary Brisini responded that MTBE (Methyl Tertiary Butyl Ether) is an oxygenate of gasoline that has been replaced by ethanol. MTBE use results in more complete combustion of gasoline in motor vehicles. It was discovered in the 1980's that MTBE spills resulted in contamination of groundwater. The standard of 20 ppm (parts per million) is the level at which you can detect that material by odor and taste, and has been in place since 1997. It was the decision of the Department that it was more appropriate to leave the standard at 20 ppm.

Mr. Heine asked why the committees would want the standard to be raised.

Deputy Secretary Brisini speculated that raising the standard would provide for easier clean-up. Mr. Hartenstein added that the committees believe the Department should calculate the MSCs based on toxicity without considering taste and odor.

Terry Dayton moved to adopt the proposed rulemaking. Richard Fox seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: Stony Run Watershed, Fayette County
(25 Pa Code §93.9v)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Lee McDonnell, Director, Bureau of Point and Non-Point Source Management, and Michele Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Terry Dayton asked about which streams are used for comparison. Specifically he asked why a comparison stream from Greene County was used.

Deputy Secretary Heffner deferred the question to the petitioner. The petitioner would be asked the question once his presentation was complete.

Nicholas Kennedy presented on behalf of petitioner, Mountain Watershed Association, the petition for the redesignation of the Stony Run Watershed. Mr. Kennedy presented for the petition to be considered for further study.

Following Mr. Kennedy presentation, Mr. Dayton asked that his previous question be addressed regarding stream comparison.

Mr. Kennedy responded that, through the biological assessment, a stream closer to Stony Run had been sampled; however, the incorrect stream had been sampled. Since the consultant already had the data from the stream in Greene County, the Association asked the Department if that data would be suitable for stream testing purposes, and the Department allowed the use of that data.

Mr. Dayton commented that it seems odd to accept the use of that data because streams in western Greene County do not resemble those in northeastern Fayette County.

Mr. Kennedy stated that the biological assessment goes into more detail.

Jonathon Lutz inquired as to who the property owners are along the stream and if it is all private property.

Mr. Kennedy responded that he believes that it is a mix. There are campgrounds; a rod and gun club along the stream, and possibly some state lands. However, he is not entirely sure who owns the property around the watershed.

Pam Witmer asked if there are existing commercial or investment lots within the watershed.

Mr. Kennedy responded that there are, based on the Association's findings, two natural gas well pads located within the watershed. He further commented that there has been coal mining in the past within the watershed.

David Spotts moved to accept the rulemaking petition for further study by the Department. Cynthia Carrow seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF THREE-YEAR REPORT: National Pollutant Discharge Elimination System (NPDES) Permit and Annual Fees (25 Pa Code 92a)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the three-year fee report. Lee McDonnell, Director, Bureau of Point and Non-Point Source Management, and Jason Oyler, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Terry Dayton asked if the Department had considered breaking this report down program by program to see if one program may be operating more efficiently or effectively than others.

Deputy Secretary Heffner responded that the Chapter 92 report is specifically for NPDES so the breakdown would be more permit by permit or select group of industry by industry. She commented that she is not sure that we have looked into that level of detail for the report. Mr. McDonnell confirmed that the Department has not gone that far in the analysis but the Chapter 92a report includes all NPDES facilities.

OTHER BUSINESS:

Acting Chairman Aunkst stated that the Department has been getting a number of inquiries as to the status of the review of the Ashley Funk petition. He stated that the petition is currently under review and is taking longer than initially had been anticipated. The Department expects to have a report completed by March 19th.

Acting Chairman Aunkst also spoke about the necessity of printing and mailing hard copies of materials for EQB meetings. He announced that the Department would like to start sending materials out electronically only, in order to save paper and time, but those who would still like to receive hard copies should let Laura Edinger know. She will make sure that hard copies are sent upon request. Acting Chairman Aunkst added that the Department would like to move toward the electronic distribution of materials in order to enhance efficiency.

Doug McLearen asked if the current electronic distribution process can be maintained; that is, materials continue to be posted to the EQB website and then an email is sent to Board members when the materials are available online.

Acting Chairman Aunkst stated that the current process used to distribute materials electronically will be kept in place.

Acting Chairman Aunkst provided an update on the Proposed Chapter 78, Subchapter C, Oil and Gas Surface Activities Regulations. He announced all nine of the public hearings have concluded. There were around 293 commentators who provided testimony with an estimated 1,200 attendees at the hearings. Some commentators spoke at multiple hearings. Additionally, roughly 11,000 comments have been received so far. The comments represent a wide variety of perspectives, and it is good that the Department and the Board have provided ample opportunity for stakeholder input. The public comment period will close on March 14, 2014. Given the exceptional number of comments received and still coming in, putting together the comment/response document will take some time for this proposed rulemaking. The Department will take the time necessary to carefully consider and respond to the comments. Changes will be made to the regulations between the proposed and the final.

Acting Chairman Aunkst also commended Department staff and the members of the EQB who helped at the public hearings. The hearings took a lot of work and time for EQB members and Department staff, and that effort is greatly appreciated.

Acting Chairman Aunkst announced that all EQB members need to complete the Office of Surface Mining (OSM) form. He asked that all forms be completed and sent to Laura Edinger by March 1st.

The next meeting of the Board is scheduled for Tuesday, March 18, 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, Terry Dayton moved to adjourn the meeting. Ben Junkin seconded the motion, which was unanimously approved by the Board. The February 18, 2014, meeting of the Board was adjourned at 9:57 a.m.