

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**August 19, 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  
Bryan Kendro, 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  
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  
William Fink, 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 9:00 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the July 15, 2014, EQB meeting minutes.

**Burt Waite moved to adopt the July 15, 2014, EQB meeting minutes.**  
**Dr. Shaikh seconded the motion, which was unanimously approved by the Board.**

## **CONSIDERATION OF RECOMMENDATION: ASHLEY FUNK PETITION TO ESTABLISH REGULATIONS TO REDUCE FOSSIL FUEL CARBON DIOXIDE EMISSIONS**

Ashley Funk, accompanied by her attorney, Mr. Ken Kristl, made a brief presentation.

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the petition. Joyce Epps, Director, Bureau of Air Quality, and Robert Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Representative Vitali inquired as to what the next steps would be should the EQB approve the petition. Deputy Secretary Brisini responded that if the petition was approved, there may be movement to pursue regulation. He noted; however, that such a regulation would regulate all sources of carbon dioxide emissions, which could cause some difficulty as Pennsylvania is not authorized to regulate all sources of emissions as some sources are regulated at the national level. Further, Deputy Secretary Brisini made mention of the proposed national regulations recently released for public comment.

Doug Brennan added that the Board serves in an advisory capacity for matters of this nature. The Board has not been given the statutory authority to direct DEP to take an action of this nature (see Section 1920-A of the Administrative Code). The Board, by rejecting DEP's recommendation and accepting the petition, would be recommending that DEP initiate a rulemaking that would meet the conditions of the petition. However, DEP would not be required to initiate a rulemaking based on the recommendation by the Board, under the existing statute establishing the powers and duties of the Board.

Representative Vitali stated that the PA Code allows for the initiation of a regulatory process by a private citizen and if the petition is accepted today, than a rulemaking process should be initiated.

Mr. Brennan clarified that the Board will decide whether or not to accept DEP's recommendation. If the Board votes to reject DEP's recommendation and accept the petition, the Board would essentially be advising DEP to move forward with a regulation. The Board has no statutory authority to require DEP to initiate a rulemaking.

John Walliser requested clarification regarding what activities related to CO2 emissions could be regulated by DEP. He asked if there is a description in DEP's presentation of activities that can and cannot be regulated beyond what DEP already regulates.

Deputy Secretary Brisini noted that a description of that type was not provided in the presentation. Descriptions of national proposals were included as well as state-level legislative action. However, where DEP has or does not have the authority to regulate was not described.

Representative Vitali noted that, in DEP's presentation, it was mentioned that one reason the Board should accept DEP's recommendation to deny the petition was that the petition would not achieve the atmospheric concentration of 350ppm of CO2. Representative Vitali followed by asking if DEP could explain what steps could be taken to reach that goal and if the measures currently undertaken and described by DEP could achieve that outcome.

Secretary Brisini answered that he could not describe the exact measures that would allow for that goal to be achieved as that would require considerable assessment of where the emissions originate. DEP's approach has been to address the emissions as the source of them is known. DEP then takes regulatory action.

Representative Vitali asked how DEP arrived at the conclusion that the petition would not meet the desired outcome CO2 emissions reduction.

Deputy Secretary Brisini responded that DEP reviewed global emissions, considered the U.S. contribution to those emissions and assessed the amount of CO2 that would be reduced looking at the linear effect on the environment.

Representative Vitali asked if DEP is stating that by reducing CO2 emissions in Pennsylvania, it will not solve the global CO2 emissions problem or if DEP is stating that the petition, as it is written, will not achieve the advocated reductions.

Deputy Secretary Brisini responded that the petition will not achieve the desired goal of 350ppm even if the recommendations therein were to be implemented on a national level. He continued that a variety of testimony has been given in support of this and that a calculation has been performed as a linear extrapolation of the effect on the environment from the reductions that shows that this work must be done globally to achieve meaningful reductions – to achieve the reductions suggested in the petition. Pennsylvania cannot act alone and, even if the recommendations in the petition were to be implemented here, the reductions could be nullified by what's happening elsewhere.

Representative Vitali asked if this means that what the petition is suggesting actually would not be enough.

Deputy Secretary Brisini continued that Pennsylvania does not operate in isolation. The 350ppm needs to be a global goal that goes beyond the state level. The question becomes how much can the global concentration be impacted.

Representative Vitali shifted the discussion to activities Pennsylvania is currently undertaking to reduce CO2 emissions such as AEPS. He asked if DEP has calculated the annual percentage reduction for current reduction measures.

Deputy Secretary Brisini stated that DEP has not calculated the annual emissions reduction per measure. He stated that, for a variety of reasons, quantification of those measures would be estimates at best. He continued that there are market forces also leading to emissions reductions. For example, PA can expect a 20-25% reduction from the electric generation sector from 2005-2016. This reduction is not driven by regulations such as what are proposed in the petition.

Walter Heine stated that this is a complicated situation and reiterated that the petitioner is proposing that certain criteria are set in regulation to achieve specific emissions reductions. He continued that market forces cannot be relied upon for further reductions.

Deputy Secretary Brisini agreed that regulations also play a large role in emissions reductions. He provided examples of how certain regulations have resulted in the retirement of coal plants or fuel switching leading to permanent emissions reductions. He noted that regulations are part of an overall holistic strategy being employed currently by the state to continually reduce emissions.

Commissioner Witmer reminded the Board that in recommending or not recommending the initiation of a rulemaking, DEP, as part of its obligation, is to not only set a goal but to ensure that the goal can be met. She continued that at this point in time, it would seem that a six percent CO2 emissions reductions from all sources would not be achievable from a technology and cost perspective.

John Walliser inquired if the Board could vote to accept DEP's recommendation for now but allow the petitioners the opportunity to amend and resubmit the petition in less than two years' time if the petitioner was to clarify specific items in the petition to focus on actions that DEP has the authority to address. This would waive the 2-year prohibition on resubmission of a petition.

Doug Brennan responded that the Board could make that decision to waive the 2-year prohibition as that condition is included in a policy so it is not binding.

Mr. Walliser stated while he is sympathetic to DEP's statement that Pennsylvania does not operate in isolation and can only contribute so much to global emissions reduction, he believes that there is more that can be done. He continued that he would like to know if the petitioner would be amenable to modifying the petition accordingly and resubmitting.

A brief discussion ensued concerning procedure. Secretary Abruzzo confirmed with Deputy Secretary Brisini that the recommendation from DEP is to not pursue a regulatory amendment as proposed in the petition. Secretary Abruzzo then opened the floor for motions.

Representative Miller made a motion to accept DEP's recommendation to deny the petition. Bill Fink seconded the motion. Discussion of the motion ensued.

Mr. Walliser asked if the Board would be willing to consider an amendment to the motion allowing the petitioners to amend and resubmit their petition without prejudice.

Mr. Fox stated his support of Representative Miller's original motion. He further stated that the petition process should only be modified for narrow circumstances such as conflict with federal law, outdated regulations, and for oversight. While he appreciates the effort, the interest, and the passion of the petitioners, he does not believe that allowing for modification and resubmission of the petition would be the best way to achieve the goals set forth in the petition. Mr. Fox continued that he believes that environmental policy should be set by the legislature, not through the EQB petition process.

Representative Vitali stated that he agrees with Mr. Walliser's idea to allow the petitioner to amend and resubmit the petition. He believes this would provide the petitioner the opportunity to put forth a feasible regulatory recommendation which will provide achievable additional CO2 emissions reductions.

**John Walliser made a motion to accept DEP's recommendation to deny the petition, but made an amendment to allow the petitioners, if they so choose, to resubmit the petition specific to Pennsylvania and actions achievable by DEP without prejudice to bypass the 2-year stay. Representative Vitali seconded the motion. Motion failed by a vote of 14-6. Doug McLearn, Cynthia Carrow, Walter Heine, John Walliser, Representative Vitali, and David Spotts voted in support of the amended motion.**

Secretary Abruzzo stated that, with the defeat of Mr. Walliser's motion, the Board will return to the original motion made by Representative Miller and seconded by Mr. Fink.

Representative Vitali argued against Representative Miller's motion. He stated his belief that climate change is the most important environmental issue the planet faces. He believes that the legislature and the Governor have been unable to adequately address and act on this issue. As such, the petition process is a legitimate process to pursue regulatory amendments to decrease CO2 emissions. This process is provided in Pennsylvania law and the EQB has authority to act. While he understands that PA is undertaking measures to reduce emissions, he believes more could be done. Specifically, with regard to the Alternative Energy Portfolio Standards, Pennsylvania has been surpassed by other states. For example, Pennsylvania's reduction goal is an 8% reduction by 2020 while New Jersey's goal is a 17% reduction by 2022. He stated that he would not venture to run his AEPS bill this term for fear that it may be eliminated. He continued that the PA solar sunshine program which provided rebates to homeowners for solar panels has ended. He mentioned that Act 129 could be strengthened as far as reducing demand for electricity, but more can be done and more needs to be done. He believes that voting to deny this petition is tantamount to dodging the larger problem of the impending impacts of climate change. He therefore encouraged the Board to vote against Representative Miller's motion.

Representative Miller stated that he has faith in the legislative process and the citizens of Pennsylvania to let people representing them make these difficult decisions. While he appreciates Representative Vitali's passion on this issue, he asked that the Board vote in favor of his motion to deny the petition.

Secretary Abruzzo stated that we are well past the point where a line has been crossed and action must be taken to address the issues associated with climate change. He does not believe that anyone on the Board or within DEP would disagree with that. He asserted that it is absolutely necessary that we move away from the notion that nothing is being done. He continued that a great deal of progress is being made in Pennsylvania with regard to emissions reductions. Pennsylvania has made significant strides over the last decade. Two different administrations and different legislatures have made forward progress on these issues. To examine this issue as an all or nothing proposition is to ignore all of the effort that has been made in Pennsylvania. This is not to suggest that more could not be done. However, practicable methods have yet to be identified to achieve the desired outcomes or overcome associated challenges. He understands emissions reductions are important and that this is an issue that will persist over time. Secretary Abruzzo further noted that there is currently movement on the national level to address these issues. From his perspective, he stated that it is very difficult to achieve the desired goals for Pennsylvania absent a strategic national energy policy that works collaboratively with a strategic national environmental policy so that states are not forced to compete with one another with regard to reductions and then manage associated economic consequences. Secretary Abruzzo concluded by firmly stating that we are doing our part in Pennsylvania. He disagrees with the petitioner when she asserted that Pennsylvania is doing nothing. That statement ignores the significant amount of work that Pennsylvanians have done over the last decade. This problem was not created overnight, nor will it be solved overnight. This is an issue of the day and it needs to be addressed and meaningful efforts must be pursued to reduce emissions across the board. Good work is being done in Pennsylvania and that work will progress as feasible paths are increasingly identified to allow continued forward momentum.

**Representative Miller made a motion to accept DEP's recommendation to deny the petition. William Fink seconded the motion, which was approved by a majority of Board members by a vote of 17 - 3. John Walliser, Walter Heine and Representative Vitali voted in opposition to the motion.**

**CONSIDERATION OF RULEMAKING PETITION: BEAVER CREEK; DELAWARE COUNTY**  
**(25 Pa Code § 93.9g)**

Lee McDonnell, Director, Bureau of Point and Non-Point Source Management provided an overview of the petition. Rodney Kime, Environmental Program Manager, Bureau of Point and Non-Point Source Management; Robert Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, and Josh Lookenbill, Monitoring Section Chief, Division of Water Quality Standards, assisted with the presentation.

Following the presentation, James Schmid, consulting ecologist based in Delaware County, made a brief presentation. Accompanying him was Richard Raiders, the attorney representing Beaver Valley Conservancy in this matter.

Richard Fox inquired if the streams in the petition are all currently warm water fisheries. Mr. Schmid answered that this is correct. Everything in the petition is currently designated as warm water fishery.

Mr. Fox asked if the petition requests an upgrade to exceptional value. Mr. Schmid replied that the petition requests that the streams be upgraded as appropriate once DEP has completed its testing and applied the biological metrics comparing the streams. He continued that in southeastern Pennsylvania, the comparison is typically made with Roth Run of French Creek State Park in Chester County. Previous requests Mr. Schmid made to DEP to upgrade a stream in Delaware County were successful (in Delaware County, a small stream tributary to Crum Creek in Marple Township). As a result of DEP's investigation, that stream is now the one and only stream designated as exceptional value in Philadelphia, Montgomery, or Delaware counties. It was upgraded from warm water fishery to exceptional value. The same upgrade could potentially occur with Beaver Creek. The sampling conducted on behalf of the Conservancy was limited and not all of the streams within the Beaver Creek watershed could be covered. Additionally, not all of those streams are currently shown on DEP's hydrography. Mr. Schmid noted that there are streams within this watershed that warrant recognition that have associated wetlands with bog turtles and other endangered species which represent exceptional value wetlands. He additionally mentioned that there is a proposal currently under review concerning the development of several hundred acres of land long held by the Woodlawn Trust as public open space. This is concerning for the streams' potential degradation should this development be approved.

**Representative Vitali made a motion to accept the petition for further study.**

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

**CONSIDERATION OF RULEMAKING PETITION: UPPER PARADISE CREEK; MONROE COUNTY (25 Pa Code § 93.9c)**

Lee McDonnell, Director, Bureau of Point and Non-Point Source Management provided an overview of the petition. Rodney Kime, Environmental Program Manager, Bureau of Point and Non-Point Source Management; Robert Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, and Josh Lookenbill, Monitoring Section Chief, Division of Water Quality Standards, assisted with the presentation.

Following the presentation, there were no questions.

**David Spotts made a motion to accept the petition for further study.**

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

**PRESENTATION OF THREE-YEAR REPORT: REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT – RADIATION PROTECTION PROGRAM:**

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the three-year report. Dave Allard, Director, Bureau of Radiation Protection, and Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation. Bob Lewis, Radon Division Chief, provided additional supporting information during the discussion of this report after the conclusion of the presentation.

Mr. Fox inquired as to the current radon certification fee. Mr. Lewis responded that the fee varies depending on what is being certified, citing examples of certifications for testers, mitigators, and laboratories. He stated that a fee could be anywhere from \$350 to \$1,000 for a two-year time period.

Mr. Allard introduced Mr. Lewis to the Board and added: for an individual, the testing would be \$350 every two years; for a mitigator the fee would be \$300 every two years; and for a laboratory, the fee would be \$400 every two years.

Mr. Fox asked what would be the fee for installation. Deputy Secretary Brisini responded that a \$50 home mitigation installation fee has been discussed. That fee would provide the necessary funding. Additionally, the purpose of the fee would be to ensure that all mitigations are being conducted in a fashion that achieves the desired outcome. DEP would look at a certain minimum percentage of mitigators and a certain minimum percentage of the sites would be inspected to ensure that mitigation activities have been successful. Employing this method of spot-checking will offer the most cost-effective solution to ensuring success.

Mr. Fox followed up by asking if the \$50 fee would be paid by the homeowner. Deputy Secretary Brisini answered that the cost would ultimately be borne by the homeowner. He added that this; however, is a tiny fraction of what a mitigation system costs.

**No action needed on this item.**

**OTHER BUSINESS:**

Hayley Book updated the Board concerning the proposed oil and gas regulations. She noted that DEP is currently working on bifurcating the rulemaking and will provide an update, along with a concept paper, at the next Oil & Gas Technical Advisory Board (TAB) meeting on September 25, 2014.

Mr. Walliser asked for clarification if the referenced concept paper will address Subchapter C or Subchapter D. Ms. Book confirmed that it will address Subchapter C.

Ms. Book announced that an EQB meeting will not be held in September.

**NEXT MEETING:**

The next meeting of the Board is scheduled for Tuesday, October 21, 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, Matthew O'Donnell moved to adjourn the meeting. Dr. Shaikh seconded the motion, which was unanimously approved by the Board. The August 19, 2014, meeting of the Board was adjourned at 10:26 a.m.