

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
April 21, 2015

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Acting Secretary, Department of Environmental Protection
Eileen Cipriani, alternate for Kathy Manderino, Acting Secretary, Department of Labor and Industry
Kathryn Tartaglia, alternate for Leslie Richards, Acting Secretary, Department of Transportation
Pam Witmer, alternate for Robert Powelson, Chairman, PA Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Representative John Maher, 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
Tim Schaeffer, alternate for John Arway, Executive Director, PA Fish and Boat Commission
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and
Museum Commission
Sam Robinson, alternate for John Hanger, Secretary, Governor's Office of Policy and 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 Dennis Davin, Acting Secretary, Department of Community and
Economic Development
Michael Smith, alternate for Russell Redding, Acting Secretary, Department of Agriculture
Atmaram Nambiar, alternate for Karen Murphy, Acting Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Patrick McDonnell, Director, Policy Office
Kim Childe, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order at 9:01 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the October 21, 2014, EQB meeting minutes.

**Adam Pankake made a motion to adopt the October 21, 2014, EQB meeting minutes.
Richard Fox seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF PROPOSED RULEMAKING: CONTROL OF VOC EMISSIONS FROM AUTOMOBILE AND LIGHT-DUTY TRUCK ASSEMBLY COATING OPERATIONS AND HEAVIER VEHICLE COATING OPERATIONS (25 Pa. Code Chapter 129)

Ken Reisinger, Acting Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the proposed rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Kristen Furlan, Assistant Director, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Representative John Maher inquired as to the number of tons of reductions volatile organic compound (VOC) reduction number – whether it is 500 or 100 tons.

Acting Deputy Secretary Reisinger confirmed the number as 524 tons per year.

Representative Maher commented that, while he is in favor of reducing VOCs and is supportive of moving this regulation forward, he pointed out that there is a proposal to reduce 500 tons of VOCs from one source while the state is considering a \$10 million subsidy to introduce 200,000 tons from another source.

**Representative Vitali made a motion to adopt the proposed rulemaking.
William Fink seconded the motion, which was unanimously approved by the Board.**

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

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations provided an overview of the final rulemaking. Tom Callaghan, Director, Bureau of Mining Programs, and Joe Iole, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Richard Fox inquired as to whether any money from the gross receipts tax has ever been transferred.

Deputy Secretary Stefanko responded that no money has been transferred.

**Adam Pankake made a motion to adopt the final rulemaking.
Michael DiMatteo seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF PROPOSED RULEMAKING: REVISED TOTAL COLIFORM RULE (25 Pa. Code Chapter 109)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the proposed rulemaking. Lisa Daniels, Director, Bureau of Safe Drinking Water, and Bill Cumings, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Ms. Heffner extended gratitude and compliments to the staff on their exemplary work in developing this rulemaking. She acknowledged that it takes a great effort to work to develop a rule that implements EPA requirements while continuing to maintain a program.

Following the presentation, Deputy Secretary Heffner remarked that a 60-day public comment period is proposed along with two public hearings for this proposed rulemaking in order to allow for maximum public feedback. She noted that the federal revised total coliform rule will go into effect on April 1, 2016. Given where this rulemaking is in the process currently, DEP has requested an extension from the EPA as the April 1, 2016 implementation date for the state rule is not feasible. While the rulemaking is in development and moving through the regulatory process, program staff will be educating regional offices, public water suppliers, and other regulated entities this summer.

Deputy Secretary Heffner also acknowledged a letter that was sent to members of the Board concerning disinfection limits included in the proposed rulemaking. Stakeholders who sent this letter are interested in having additional discussions regarding this particular aspect of the proposal. Deputy Secretary Heffner commented that the Department would be open to said additional discussion, acknowledging that stakeholder engagement is integral to our rulemaking development and review process.

Representative Maher thanked Deputy Secretary Heffner for her excellent presentation. He stated that the proposal, as it relates to coliform, is understood and appreciated. However, there is some concern regarding disinfectant residuals. It is known that the Small Water Systems Technical Advisory Center had a great deal of input in the development of this regulation. It appears that this allowed the smaller water systems to have more of an impact on the regulation to the exclusion of the larger water systems. Representative Maher continued that he supposes this is understandable with the rules as they are. However, the larger systems, with a more robust staff of scientists and engineers, have expressed concerns with the thresholds for the residual disinfectants. Representative Maher noted that he personally harbors concerns about how much chlorine he may be ingesting – even if it takes years to have an impact, there is still significant concern. Further, he remarked that a standard of testing with a 100% success rate seems to be overly optimistic as there could be false positives.

Representative Maher concluded by stating that it is his understanding that the Department would be willing to consider breaking the regulation into two parts and proceeding with the sections that pertain to coliform but holding the rest in order to hold conversations with the larger water systems in Pittsburgh, Philadelphia, York and areas like this across the state. He suggested a motion for discussion.

Patrick McDonnell made a statement for clarification remarking that his understanding is that this motion would amend the regulation such that it would only include the federal coliform rule and remove the aspects not related to that.

Representative Maher confirmed that this is what his motion involves. He additionally noted that the motion is made with the expectation that the part of the regulation that does not concern the federal coliform rule will be revisited in short order once conversations take place as previously discussed.

Representative Maher made a motion to amend the regulation such that it would only include the federal coliform rule and remove the aspects not related to that. Adam Pankake seconded the motion.

Representative Vitali inquired as to whether the portion of the regulation related to disinfectant residuals would need to start at the beginning of the regulatory process. He asked, essentially, how soon this regulation could be brought back to the Board for consideration.

Mr. McDonnell stated that the Department is effectively at the beginning of the regulatory process in this case as this is a proposed rulemaking that is under consideration. We would not expect to be starting over except to the extent that the part of the regulation not related to coliform would come back to the Board as proposed at a future meeting.

Richard Fox asked what sections would be split from the regulation in its current form.

Representative Maher responded that he had spent a great deal of time attempting to determine how the regulation could be divided and was unsure how it could best be done. As such, he had considered a motion to keep the regulation intact but have the Board consider it at a future meeting once conversations with the larger water systems could take place. However, he wanted to ensure that the coliform rule could continue to move forward and did not want to halt the progress of that part of the regulation that does not require additional stakeholder engagement.

Mr. Fox stated that he agrees with the motion but wants to make sure that the Department would be reasonably able to divide the regulation.

Deputy Secretary Heffner stated that she believes the Department could divide the regulation into two pieces. She noted that, in splitting this regulation and initiating extended stakeholder engagement, the regulation that does not include the federal coliform components will not be ready for Board consideration for three or four more months. She reaffirmed that stakeholder input is taken very seriously and that it will take a bit of time to engage in meaningful conversation, to review information provided by stakeholders and to consider various other sources of data to ensure that numbers included in the other regulatory package are correct. Deputy Secretary Heffner additionally remarked that, in the other rulemaking, the disinfectant residual number will need to increase. It cannot stay at 0.02mg/L as that is not useful for the regulation nor is it protective for the citizens of the Commonwealth.

John Walliser asked if the splitting of this regulation will have an impact on meeting the EPA deadline.

Deputy Secretary Heffner responded that the Department has requested an extension from the EPA and that as long as both parts of this regulation move through the regulatory process at a reasonable pace, a problem with the EPA is not anticipated. The time spent moving the regulations forward through the process and in discussion will need to be carefully monitored to ensure that there is not an issue with the EPA but the Department believes this can be done, and she noted that she has been in conversation with the EPA keeping them informed of the Department's progress.

The motion was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: BROWNS CREEK; GREEN COUNTY
(25 Pa. Code § 93.9v)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Josh Lookenbill, Program Manager, Division of Water Quality Standards, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Mr. Fox noted that the petition states, "longwall coal mining has been approved and is underway in the petition area and that additional mining as proposed will proceed as soon

as pending permits are issued”. He inquired as to what effect this study may have on permits that have been issued and also permits that are pending.

Michelle Moses responded that the decision to accept a petition for further stream study, itself, is not going to have an effect on the permit for the underground mines. The acceptance of the petition for further study will direct the Department to conduct an existing use determination of the stream. If there is a wastewater treatment discharge from a permitted facility, since the stream is already designated High Quality, an antidegradation analysis would have been required for any discharges. A similar analysis is conducted for Exceptional Value water. Ms. Moses continued that with respect to undermining streams, the classification is not the issue; rather it is a question of whether the flow of the water is resulting in diminution or changing the natural state. That determination is made through the mining program’s permit application process. An applicant would have to conduct a background study before mining commences that evaluates the biological health and flow of the stream. That evaluation is applied if it is determined that restoration will be needed.

Representative Maher requested an explanation of the petition process as it relates to stream redesignation. Specifically, he asked whether owners of property or mineral rights, who might be impacted by a stream redesignation, are notified.

Deputy Secretary Heffner responded that, before a petition comes to the Board for consideration for further evaluation, if outreach has been done previous to that point, it would have been done by the petitioner.

Representative Maher asked if outreach is included as part of the completeness review and he asked if, over the course of an evaluation, the Department conducts outreach to those whose property rights may be affected.

Josh Lookenbill responded that a general notice to the public is issued and also notices are issued to specific stakeholders who may be impacted.

Representative Maher noted that, with regard to this petition, permits have been issued and some are pending. He asked if those who hold the permits or who have applied for permits have been notified about the submission of this petition.

Ms. Moses explained that this petition is at the very beginning of the process. She noted that the Board’s petition policy lists the steps that are to be taken for petition review and lists what qualifiers must be met in order for a petition to be considered complete. She explained that when a petition is submitted, the Department will begin reviewing the petition for completeness and will make a determination in that regard and make a recommendation to the Board. If the Board accepts a petition for further study, a notice of the petition’s acceptance by the Board is published in the Pennsylvania Bulletin. In addition, the Department posts notice of its intent to study the stream in both the Pennsylvania Bulletin and on its website. Municipalities are notified directly. The Department solicits data from the public and performs its own data collection process. Once data is collected and analyzed, the Department will prepare a draft report, which is shared with the public for comment. Once the report is final, the Department will present it to the Board with a recommendation. If the Department recommends a change to the stream designation, the Board will decide whether to move forward with a rulemaking to redesignate the stream.

The petitioner, Steve Kunz, on behalf of the Citizens Coal Council, was invited to give his presentation to the Board.

Following the petitioner's presentation, Representative Maher asked Mr. Kunz if he resides in the area included in the petition. Mr. Kunz responded that he does not live in that area. Representative Maher continued the conversation asking if Mr. Kunz knows who owns the land. Mr. Kunz responded that the mineral rights are primarily owned by the coal companies. The coal companies have also purchased much, but not all, of the surface land. Representative Maher asked if any of the property owners have joined in this petition. Mr. Kunz responded that he is in possession of letters of support from the Greene County Watershed Alliance, but they do not own the land.

Representative Maher further asked if the petitioner is contesting the permit application that refers to these same streams. Mr. Kunz responded that they are not pursuing that. He further acknowledged that the Citizens Coal Council did file an appeal of the original longwall mine permit. He explained that the appeal process takes quite a long time and the Citizens Coal Council did not have adequate funding to prosecute that appeal. Given this obstacle, they opted to utilize the petition process to protect the stream.

John Walliser made a motion to accept the rulemaking petition for further study by the Department. Representative Vitali seconded the motion, which was approved by a majority of Board members by a vote of 16-3. William Fink, Representative Maher and Burt Waite voted in opposition to the motion.

CONSIDERATION OF RULEMAKING PETITION: HOSENSACK CREEK; LEHIGH AND MONTGOMERY COUNTIES (25 Pa. Code § 93.9f)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Josh Lookenbill, Program Manager, Division of Water Quality Standards, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, there were no questions from the Board for the Department. The petitioner was invited to present. Faith Zerbe, representing the petitioner, the Delaware Riverkeeper Network and co-petitioners Donna Wright and Ellen Copland, both with Lower Milford Township gave prepared remarks to the Board pertaining to this petition.

During the petitioners' presentation, it was noted that the Hosensack Creek watershed is included in the Upper Perkiomen Watershed. Last year the Board concluded a review of a petition for the Upper Perkiomen Watershed. Last March, Board members voted to allow the petitioners to come back with a new petition that includes updated or new data. The Board exercised its discretion, under its Petition Policy, to reconsider a matter previously before it. All presenters extended their gratitude to Board members for the opportunity to put forth this new petition.

Representative Maher made a motion to accept the rulemaking petition for further study by the Department. Tim Schaeffer seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS:

Acting Secretary Quigley spoke about the Office of Surface Mining (OSM) forms. Each member of the Board is required to complete the forms and submit to Laura Edinger by May 1, 2015. Ms. Edinger added that alternates must also fill out the OSM form. The form requests information from the previous year, and it still does apply to current and present board members.

Acting Secretary Quigley extended gratitude in recognizing the Citizens Advisory Council (CAC) for holding hearings pertaining to the Bituminous Mine Subsidence and Land Conservation Act (Act 54) report. The hearings were well-attended and the CAC received helpful feedback. He explained to the Board that Act 54 requires DEP to report on surface impacts of mine subsidence every five years. The CAC accepted public comments through April 14 and accepted public testimony at two public hearings in March. He thanked the CAC for their diligence and work in this area and remarked that the Department looks forward to seeing the recommendations that come forth from this effort.

Representative Maher initiated a discussion concerning the oil and gas regulations (Chapters 78 and 78a). He stated that it is his understanding that the Board is responsible for formulating, adopting, and promulgating regulations. As such, he requested that the members of the Board be provided with the comment/response document that will be included as part of the rulemaking package. He noted that he would like to have the document released to the Board so that Board members can begin working their way through the more than 24,000 comments that will be included therein.

Patrick McDonnell responded noting that the rulemaking is currently in a draft final rulemaking stage. He explained that the Department has issued an advance notice of final rulemaking, and we are in the midst of a 45-day comment period. There will be three hearings that will take place starting at the end of next week and into the following week, with the comment period ultimately closing on May 19. The advance notice process is outside the traditional Regulatory Review Act processes. It is a Department action to release the draft final rule to gather additional comments. Regarding the comment/response document, this document is specifically a document that will encompass all of the comments that the Department receives in creation of the final rulemaking. When we are at the point of a final rulemaking, there will be a finalized comment/response document. Mr. McDonnell further explained until all comments have been received – including comment received for the draft final rulemaking under the advance notice of final rulemaking - we cannot have a final comment/response document as all comments will not have been received for which a response can be formulated.

Representative Maher stated that he does not require the final finished product. He is requesting that Board members receive the document in its current form with the understanding that it will change.

Acting Secretary Quigley reaffirmed that the document is not at a point where it can be shared and that it will be shared with the Board upon its completion.

Commissioner Pam Witmer, following up on previous conversation relating to the petition process, offered that it might be helpful for Board members, especially new members, for the Department to walk through the petition policy and process.

Acting Secretary Quigley stated that the Department would gladly offer that presentation to the Board.

NEXT MEETING:

The next meeting of the Environmental Quality Board will be on Wednesday, May 20, 2015. Meetings are usually held the third Tuesday of every month, but this meeting was moved to accommodate primary election day on Tuesday.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Adam Pankake seconded the motion, which was unanimously approved by the Board. The April 21, 2015, meeting of the Board was adjourned at 10:37 a.m.