

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 20, 2015

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Acting Secretary, Department of Environmental Protection
Eileen Cipriani, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Kathryn Tartaglia, alternate for Leslie Richards, Secretary, Department of Transportation
Pam Witmer, alternate for Gladys Brown, Chairman, PA Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Jonathan Lutz, alternate for 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
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
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, Secretary, Department of Community and
Economic Development
Michael Smith, alternate for Russell Redding, Secretary, Department of Agriculture

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

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

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 April 21, 2015, EQB meeting minutes.

**Michael DiMatteo made a motion to adopt the April 21, 2015, EQB meeting minutes.
Jonathan Lutz seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL RULEMAKING: CONTROL OF VOC EMISSIONS FROM FIBERGLASS BOAT MANUFACTURING MATERIALS (25 Pa. Code Chapter 129)

Ken Reisinger, Acting 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, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, there were no questions.

John Walliser made a motion to adopt the final rulemaking.

Walter Heine seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: REMINING REQUIREMENTS (25 Pa. Code Chapters 87, 88 and 90)

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

Following the presentation, David Spotts asked if the proposed rulemaking will allow for additional reclamation projects. Specifically, he inquired if the Program foresees this rulemaking opening up areas for remining. Mr. Spotts additionally inquired about the calculation of baseline data and how this new calculation allows for additional remining.

Deputy Secretary Stefanko confirmed that the goal of the rulemaking is to allow for additional reclamation projects. Further, he explained that the proposed method to calculate effluent limitations allows for more flexibility and creates further options for remining operations. This will improve the existing discharges at remining sites as well.

Burt Waite made a motion to adopt the proposed rulemaking.

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

PRESENTATION OF THREE YEAR REPORTS – REGULATORY FEE AND PROGRAM COST ANALYSIS REPORTS: NONCOAL AND COAL MINING PROGRAM FEES

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations provided an overview of mining program fees. Tom Callaghan, Director, Bureau of Mining Programs, and Joseph Iole, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Commissioner Pam Witmer inquired as to the components included in the program costs. Deputy Secretary Stefanko explained that, in order to determine program costs, DEP staff evaluates workload and reviews the number of hours required to complete a permit review depending on the type of permit. DEP also evaluates the number of hours required to complete an inspection and other corresponding activities. The majority of the costs for both the Noncoal and Coal Mining programs are personnel costs. An adjustment is made to incorporate administrative costs which are shared by both programs.

Commissioner Witmer asked if there is a way to accommodate for the decrease in permit activity versus number of staff. Deputy Secretary Stefanko responded that decreased activity is accommodated. He explained that there have been reductions in staff over the years, and DEP does an analysis of workload to ensure we have the proper staff to meet the needs of the industry. DEP takes into account where adjustments are required. A decrease in permitting activity will not necessarily reduce workload, as there are still a number of active permits that require inspection. For example, if a decrease is observed in permitting, DEP will conduct a workload analysis and will reassign, as necessary, permanent staff positions to conduct inspections rather than process and review permit applications. The workforce will be shifted as needed to meet the needs of applicants.

Richard Fox inquired if the Noncoal or Coal programs receive any general fund revenue. Deputy Secretary Stefanko responded that the coal program receives general fund monies at this time but the Noncoal program does not, although some of the costs of the Noncoal program are shared by the Coal program. Mr. Fox further asked what percentage of general fund money is received. Mr. Callaghan responded that 50% of the Coal program is paid by federal funds and 50% is paid by state funds. Of the state funding for the Coal program, 85% of the state funding comes from the general fund.

Mr. Fox asked by how much the Noncoal permit applications have declined and what the reason may be for this decline. Mr. Callaghan responded that the number of applications prior to implementation of the fees was 600. This number has declined to 450. Mr. Callaghan explained that the reason for this decline is that several small Noncoal operators left the mining business once the administrative fees were implemented in 2012. Deputy Secretary Stefanko added that this was an unintended consequence of the fee implementation.

Mr. Fox asked if a rebound of applications is a possibility. Deputy Secretary Stefanko noted that the Noncoal program could see a small rebound due to the implementation of the transportation bill, but a substantial increase is not anticipated.

John Walliser inquired as to the timing of the potential implementation of the fees. Deputy Secretary Stefanko affirmed that we expect to have the fee packages ready for EQB consideration early in 2016.

Mr. Walliser also asked if, in consultation with the Mining Reclamation Advisory Board (MRAB), if DEP plans to review issues included in the fourth five-year Act 54 Report in terms of perceived needs of DEP related to inspection and permitting. Deputy Secretary Stefanko responded that we will be reporting back to MRAB on all of issues related to fees, including the Act 54 report recommendations. DEP will work with MRAB in assessing what fee increases may be needed.

Jonathan Lutz commented on the costs of benefits and salaries. He believed the stated costs of benefits as 87% of salaries to be high. He noted that DEP used 40% to calculate the benefit cost and yet the resulting benefit cost was determined to be 87% of salary. He asked for explanation of the 47% discrepancy. Mr. Callaghan responded that the increase in the percentage of benefits costs looks particularly high due to the comparison of the numbers from the last fee increase rulemaking to the numbers used today. The last fee increase rulemaking was finalized in 2012. Given the length of time taken to finalize the rule, the numbers used in that rule were outdated by three years. Benefits in 2009 were based on federal rates and accounted for 40% of the costs of salaries. DEP's fiscal management now provides us with current salary and benefit numbers, taking into account the experience level of the mining workforce, which is significant and contributes to the increased percentage of benefits. Mr. Callaghan additionally noted that DEP will need to continue to review these numbers as we move forward with the rulemaking process for implementing increased fees. Deputy Secretary Stefanko added that the mining program has several

employees who are or will be eligible for retirement over the next couple of years which could change this number and reaffirmed that DEP will continually review the salary and benefit numbers when considering additional fees.

No action needed on this item.

PRESENTATION: PETITION POLICY AND PROCESS

Kim Childe, Counsel to the EQB, provided an overview of the petition policy and process.

Following the presentation, Commissioner Witmer commented that there does not appear to be a proactive requirement placed on the petitioner, for any type of petition, regarding outreach to impacted landowners or current permit holders. She asked if there is a rationale for that.

Ms. Childe responded that there is no burden on the petitioner for outreach in advance of submitting a petition, but DEP provides outreach once a petition is received and reviewed. She noted that DEP provides notification throughout the petition review and approval process.

Commissioner Witmer continued that if an individual has applied for and received a permit or owns land near a petition subject area, either the landowner and/or permit holder, would have an interest in what is currently happening in the subject area. If a petitioner is proposing to make a change to the area, it seems that a landowner/permit holder should be notified in advance of published notification in a newspaper or in the *Pennsylvania Bulletin*.

Ms. Childe stated that landowners and permit holders are provided with advance notice by DEP. The notification process for petitions is similar to that of the permitting process. For an individual who is receiving a permit, public notification is provided to the community in which the permittee resides alerting the community to the activities that the permittee will be undertaking. The notification process for petitioned watersheds is not unlike the permit notification process.

Michelle Moses provided additional information concerning the stream petition process. She stated that the notification process for stream petitions is extensive. Specific landowners and permittees are not given notice individually, but a broad outreach campaign is conducted for every petition accepted for further study. Notices of intent to assess and stream reports are advertised on DEP's website and in the *Pennsylvania Bulletin*. Specific notice is provided to municipalities, county planning commissions, and to all regional and/or district DEP offices. Additionally, DEP reaches out to other agencies.

Mr. Fox stated that the Board receives many stream petitions and the action that the Board is typically asked to take is to vote in favor or against DEP's recommendation to carry out a study to determine if a watershed meets higher quality water standards. Then DEP carries out said study. If DEP should determine that the watershed does meet the higher standard, DEP is obligated to protect the stream at its newly designated use, regardless of whether a rulemaking is developed to formally change the codified stream designation. Ms. Childe confirmed that this is correct. If DEP concludes after conducting a study that a stream meets a more protective water quality standard, it protects that existing use .

OTHER BUSINESS:

Acting Secretary Quigley provided the Board with an update on the Chapter 78 Oil & Gas Surface Regulations. He noted that the Advanced Notice of Final Rulemaking (ANFR) was published on April 4, 2015, opening a public comment period on the draft final rulemaking. Three hearings were held: April 29th in Washington, PA, April 30th in Warren and May 4th in Williamsport. Approximately 125 commentators provided testimony at the hearings. The public comment period for the draft final rulemaking concluded on May 19, 2015. DEP has received over 3,000 comments – 320 of which are unique, the rest are form letters. These comments are in addition to the testimony provided at the hearings. DEP will continue to accept hard copy comments that were mailed and postmarked prior to May 19th. IRRC and the standing legislative committees received comments as they were submitted. Comments are posted to IRRC's website, so all public comments are accessible.

Mr. Fox inquired as to when this rulemaking may come back to the Board for consideration. Patrick McDonnell responded that the tentative plan is for DEP to present the final rule to the Board late this year or early next year.

NEXT MEETING:

The next meeting of the Environmental Quality Board is tentatively planned for Tuesday, August 18, 2015. No June or July meetings are being planned.

ADJOURN:

With no further business before the Board, Bill Fink moved to adjourn the meeting. John Walliser seconded the motion, which was unanimously approved by the Board. The May 20, 2015, meeting of the Board was adjourned at 9:50 a.m.