

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 17, 2016

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Secretary, Department of Environmental Protection
Nsungwe Shamatutu, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Roger Cohen, alternate for Leslie Richards, Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown, Chairman, PA Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Jonathan Lutz, alternate for Representative John Maher
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
Tom Shervinskie, 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 Sarah Galbally, Secretary, Governor's Office of Policy and Planning
Cynthia Carrow, Citizens Advisory Council
William Fink, Citizens Advisory Council
Don Welsh, Citizens Advisory Council
John Walliser, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Michael Smith, alternate for Russell Redding, Secretary, Department of Agriculture
Sharon Watkins, alternate for Karen Murphy, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Patrick McDonnell, Policy Director
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 approval of meeting minutes.

First considered were the February 3, 2016, EQB meeting minutes, as amended.

Michael DiMatteo made a motion to adopt the February 3, 2016, EQB meeting minutes as amended. John Walliser seconded the motion, which was unanimously approved by the Board.

Second, the approval of the April 19, 2016, EQB meeting minutes were considered

Burt Waite made a motion to adopt the April 19, 2016, EQB meeting minutes. William Fink seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: ENVIRONMENTAL LABORATORY ACCREDITATION (25 Pa. Code Chapter 252)

Martina McGarvey, Director for Bureau of Laboratories provided an overview of the proposed rulemaking. Aaren Alger, Chief for Laboratory Accreditation Program, and Bill Cumings, Bureau of Regulatory Council, assisted with the presentation.

Jonathan Lutz inquired if there are plans in development to improve accreditation efficiency. Martina McGarvey responded that labs are using electronic processing and working to further develop the laboratory accreditation program. She additionally noted that it would be helpful to be empowered to fill vacancies. The program currently has vacancies for the funded complement and more staff would mean faster turn-around time. In developing the proposed rule, members of the Laboratory Accreditation Advisory Committee remarked that they would be willing to pay more for faster turn-around time.

Representative Vitali made a motion to adopt the proposed rulemaking. Sharon Watkins seconded the motion, which was unanimously approved by the Board.

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

John Stefanko, Executive Deputy Secretary for Programs provided an overview of the final rulemaking. Tom Callaghan, Director for Bureau of Mining Programs, and Joseph Iole, Bureau of Regulatory Counsel, assisted with the presentation.

Richard Fox noted that DEP program staff mentioned in the presentation that Pennsylvania has had robust remaining programs since the 1980s. He asked if other coal mining states have similar programs. Executive Deputy Secretary Stefanko responded that he is not aware of other states having some similar programs but he affirmed that Pennsylvania's program allows a great deal of reclamation work to be done that would ordinarily fall under an abandoned mine land program.

Michael DiMatteo made a motion to adopt the final rulemaking. Cynthia Carrow seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS:

Kim Childe provided an update regarding the Ashley Funk petition and subsequent litigation involving the EQB. In September of 2015, Ashley Funk and five minors filed, through their guardian, a petition for review with the Commonwealth Court. This petition has been amended several times since filing. The last amendment was filed on January 21, 2016. Ms. Childe explained that, very generally, the petition is asking the court to declare that the Commonwealth should further regulate carbon dioxide emissions and greenhouse gas emissions necessary for the commonwealth to fulfill its duties, under Article 1 Section 27 of the Constitution. There are other components included in the petition but that is the general theme.

Ms. Childe continued that the reason for the update for this petition today is that the EQB is named as one of the respondents along with the Governor, DEP, DCNR, PennDOT, Agriculture, the Secretaries of all of the named agencies, and the PUC and its chairperson. The Office of General Council is currently representing all of the respondents (except the PUC) through DEP's Office of Chief Council. The Office of Attorney General is representing the PUC. Both offices have filed preliminary objections to the petition for review in supporting briefs and are seeking to have the manner dismissed. There are oral arguments scheduled on those preliminary objections for June 6, 2016 in Commonwealth Court.

Ms. Childe provided additional background noting that the petition for review that was filed with the EQB, was originally filed back in 2012 and revised and re-submitted in 2013 seeking largely the same regulatory change – regulation of carbon dioxide and greenhouse gas emissions. The Board accepted the petition and asked DEP to evaluate it. DEP evaluated the content of the petition and prepared a report to the Board. In July of 2014, DEP recommended against accepting Ms. Funk's petition for rulemaking in large part due to the numerous activities that DEP was undertaking in that regard including the efforts through the Climate Change Action Plan, and various other efforts. The Board, at its August 2014 meeting, reviewed the matter and decided to not accept the petition. Ms. Funk did not appeal the decision of the EQB, which is one of the bases for the preliminary objections that are currently being raising before the court. Ms. Childe stated that if Board members are interested in the brief that was filed in support of the preliminary objections, DEP will be glad to provide it.

NEXT MEETING:

The next meeting of the Environmental Quality Board is tentatively planned for Tuesday, June 21, 2016.

ADJOURN:

Representative Vitali moved to adjourn the meeting.

John Walliser seconded the motion, which was unanimously approved by the Board.

The May 17, 2016, meeting of the Board was adjourned at 9:25 a.m.