

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**June 20, 2017**

**VOTING MEMBERS OR ALTERNATES PRESENT**

Scott Perry, Acting Chairman, Deputy Secretary for Oil and Gas Management,  
Department of Environmental Protection  
Jennifer Rapach, alternate for Kathy Manderino, Secretary, Department of Labor and Industry  
Emma Lowe, alternate for Leslie Richards, Secretary, Department of Transportation  
Andrew Place, alternate for Gladys Brown, Chairman, Public Utility Commission  
Richard Fox, alternate for Representative Mike Carroll  
Jonathan Lutz, alternate for Representative John Maher  
Joanne Manganello, alternate for Senator John Yudichak  
Adam Pankake, alternate for Senator Gene Yaw  
Mike DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission  
Walter Heine, Citizens Advisory Council  
Mark Hartle, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission  
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and  
Museum Commission  
Cynthia Carrow, Citizens Advisory Council  
William Fink, Citizens Advisory Council  
Don Welsh, 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  
Sharon Watkins, alternate for Karen Murphy, Secretary, Department of Health

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Laura Edinger, Regulatory Coordinator  
Jessica Shirley, 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 the May 17, 2017, EQB meeting minutes.

**Michael Smith made a motion to adopt the May 17, 2017, EQB meeting minutes.  
John Walliser seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES; AND PENNSYLVANIA RADON MITIGATION SYTEM FEE (25 Pa. Code Chapters 218 and 240)**

This final-form rulemaking amends 25 Pa. Code, Chapters 218 and 240 and adjusts the radioactive materials licensing and radon certification fees. The amendments in Chapter 218 will increase the annual fees for radioactive material licenses, with one exception, and increase the hourly rate professional fee associated with certain full-cost recovery licenses. The amendments in Chapter 240 will increase the application fees for certification of radon services and add a new requirement and fee for active mitigation systems installed or passive mitigation systems converted to active mitigation systems in this Commonwealth.

George Hartenstein, Acting Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final rulemaking. Dave Allard, Director for the Bureau of Radiation Protection, and Keith Salador, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Commissioner Place requested clarification regarding which radon mitigation systems would be impacted by the increased fee. Specifically, he inquired as to what subset of the 13,000 total mitigation systems in this Commonwealth the fee would apply. Mr. Allard responded that the mitigation fee would apply to all new mitigation systems installed or passive systems that are activated or have a fan added to the system. The fee would not apply retroactively to any systems that are already installed and activated. Deputy Secretary Hartenstein confirmed that the 13,000 number references active systems.

Commissioner Place expressed concern that applying a fee to those who install or activate radon mitigation systems could deter more people from installing systems. He inquired if there would be a way to socialize this cost. Deputy Secretary Hartenstein responded that other alternatives to support the radon program would involve assessing higher fees on certified testers and mitigators – many of which are small businesses. Also, fees are already being raised for those entities. He further explained that other states implement a similar fee. While it is not a perfect solution, DEP is doing everything possible to keep the radon protection program strong in Pennsylvania. For example, DEP staff recently received and reviewed radon reports for Cumberland County. DEP staff identified a cluster of homes that showed higher levels of radon, and staff then provided free testing services to those affected. The fees included in this rulemaking allow DEP to continue that work to protect public health and safety.

Commissioner Place inquired regarding federal funding. Specifically, he asked if the figure included in the rulemaking related to the fee income includes the federal funding. Deputy Secretary Hartenstein confirmed that the income total presented includes the federal funding.

**Sharon Watkins made a motion to adopt the final rulemaking.**

**Mark Hartle seconded the motion, which was approved by a majority of the Board.**

**William Fink voted in opposition to the motion.**

**CONSIDERATION OF FINAL RULEMAKING: WATER QUALITY STANDARDS – CLASS A STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)**

Section 303(c)(1) of the federal Clean Water Act requires states to periodically review and revise, as necessary, water quality standards. The regulatory changes included in this final-form rulemaking are the

result of stream evaluations conducted by DEP in response to a submittal of data from the Pennsylvania Fish and Boat Commission (PFBC) under 25 Pa. Code § 93.4c (relating to implementation of antidegradation requirements). Section 93.4c(a)(1) pertains to the process for changing a designated use of a stream. In this final-form rulemaking, redesignations rely on § 93.4b(a)(2)(ii) to qualify streams for High Quality (HQ) designations based upon their classifications as Class A wild trout streams. A surface water that has been classified a Class A wild trout stream by the PFBC, based on species-specific biomass standards, following public notice and comment, qualifies for HQ designation. The PFBC Commissioners approved these waters after public notice and comment.

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the final rulemaking. Lee McDonnell, Director for the Bureau of Clean Water, and Michelle Moses, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Mr. Lutz inquired about the level of outreach conducted by DEP to municipalities and small businesses. He noted that the regulatory analysis form that accompanies the regulation references 39 facilities with National Pollutant Discharge Elimination System (NPDES) permits that may be impacted by this regulation. Specifically, Mr. Lutz asked if DEP had contacted the 39 potentially impacted facilities. He voiced concern that these facilities may not be aware but need to be made aware of the redesignation before they are considering making a change to the permit. Deputy Secretary Aunkst responded that the standard review process for redesignation rulemakings includes public notification at several different points in the process. However, it does not include reaching out to each individual stakeholder that may be impacted. While this redesignation rulemaking had only 39 potentially impacted facilities, others may have several thousand. The notification process does include public notice on DEP's website as well as in the *Pennsylvania Bulletin*. Deputy Secretary Aunkst noted that the accountability for monitoring such activity is with the permit holders. Mr. McDonnell added that larger facilities were likely notified if they hold NPDES permits, as some of these existing use determinations occurred between the years 2000 and 2012. The NPDES permit cycle lasts for five years and so permit holders would have been engaged during the permit renewal process during that time. He acknowledged the possibility that some permit holders may have still been unaware of the redesignation and noted that, because of this, we could consider additional outreach in the future.

Mr. Hartle noted a couple of inconsistencies in the data that the Pennsylvania Fish and Boat Commission provided for the stream redesignations and the redesignations included in the final rulemaking. However, overall, the Commission is supportive of the rulemaking.

**Andrew Place made a motion to adopt the final rulemaking.**

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

### **PRESENTATION OF 3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT – DAM SAFETY AND WATERWAY MANAGEMENT (25 Pa. Code Chapter 105)**

The current regulations governing Dam Safety and Waterway Management at 25 Pa. Code Chapter 105 became effective on February 16, 2013. Chapter 105 encompasses two Programs, the Dam Safety Program and the Water Obstruction and Encroachment (WO&E) Program, and is applicable to any individuals or entities seeking authorization to perform the activities regulated therein. Within the WO&E Program area also lies the responsibility for the processing of Submerged Lands License Agreements (SLLAs). 25 Pa. Code § 105.13(l) requires DEP to review the adequacy of fees once every three years and provide a written report to the EQB. The purpose of this report is to identify any disparity between

the amount of program revenue generated by the fees and program administration costs, and make recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments. DEP is not seeking to amend the existing fee schedule included in 25 Pa. Code Chapter 105 at this time.

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the fee report. Ramez Ziadeh, Acting Executive Deputy Secretary for Programs and Director for the Bureau of Waterways Engineering and Wetlands, and Jesse Walker, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

There was no discussion after the presentation.

**No formal action required by the Board.**

**PRESENTATION OF 3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT – ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS OPERATORS’ CERTIFICATION PROGRAM (25 Pa. Code Chapter 302)**

The current regulations governing Administration of the Water and Wastewater Systems Operators’ Certification Program at 25. Pa. Code Chapter 302 became effective on September 18, 2010. Chapter 302 establishes the policies and procedures for the State Board for Certification of Water and Wastewater Systems Operators and DEP in implementing duties and responsibilities under the Water and Wastewater Systems Operators’ Certification Act. Chapter 302 ensures that approximately 5,040 Water Operators and 4,960 Wastewater Operators have the appropriate knowledge, skills, and abilities to make the necessary process control decisions at treatment facilities. Chapter 302 also ensures that Pennsylvania’s Operator Certification Program will continue to meet the federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act for all State drinking water programs. 25 Pa. Code § 302.202 specifies that DEP will review the adequacy of the fees established in this section at least once every three years and provide a written report to the EQB. DEP recommends retaining the fee schedule currently established in 25 Pa. Code Chapter 302. As such, DEP recommends no regulatory amendments to modify program fees.

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the fee report. Ed Chescattie, Bureau of Safe Drinking Water, and Bill Cumings, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Mr. Welsh referred to the decline in the overall number of certified operators and asked if DEP is aware of systems that have trouble filling vacancies due to a lack of qualified applicants. Mr. Chescattie responded that DEP is aware that there are systems that do not have certified operators. He noted that, a few years ago, DEP started employing targeted outreach to those systems in order to offer low-cost training sessions in areas geographically close to the facilities where operators are needed. DEP attempts to identify the reason why individuals employed at these facilities have not become properly certified. He further noted that DEP has seen that the number of water/wastewater systems that would require certified operators mirrors the number of certified operators available. Currently, DEP has over 8,500 available certified operators and 5,477 systems that would require a certified operator. In many cases, it is less a case of supply and demand and more a matter of where the systems are located.

Commissioner Place asked if this was referencing municipal authorities. Mr. Chescattie responded that systems requiring certified operators can be municipal authorities or they can be individually-owned systems that are very small in size. Systems can produce 100,000 gallons per day up to almost 100 million gallons per day. The Chapter 302 and 109 regulations specify what triggers a water system to become a public water system, a community water system, or a non-community water system all of which are required to have a certified operator.

Commissioner Place commented that DEP has systems that should have certified operators but lack said operators. He inquired if those systems that lack certified operators are mostly small rural systems. Mr. Chescattie responded that a particular subset comprises the group that should have certified operators but does not and he affirmed that those are typically small systems in rural parts of this Commonwealth. Some are municipal authorities and some are water associations (customers are the owners and decision-makers of the water system).

**No formal action required by the Board.**

**OTHER BUSINESS:**

*Regulatory Update* – Currently, there are two proposed rulemakings open for public comment. The Radiological Health rulemaking opened for public comment on May 13 and the comment period will close on June 26. Two comments have been received to date. The proposed Industrial Cleaning Solvents rulemaking that the Board adopted on March 21 of this year was published in the bulletin on June 17, opening a 64-day public comment period that will close on August 21. Three public hearings are scheduled for July 18, 19, and 20. No comments have been submitted for this regulation yet. Comments can be reviewed by accessing DEP’s eComment tool on the website. The final Environmental Laboratory Accreditation rulemaking that the Board adopted on April 18 of this year was unanimously approved by the Independent Regulatory Review Commission on June 15. The rulemaking was submitted to the Office of Attorney General for their 30-day review. Once approved by the OAG, it can be published, at which time the rulemaking will become effective.

*Next EQB Meeting* – The next meeting of the EQB is tentatively planned for Tuesday, August 15, 2017. The July EQB meeting is cancelled.

*Last Meeting for Mark Hartle* – Mark Hartle announced he will retire from the Pennsylvania Fish & Boat Commission, effective July 15, 2017. Acting Chairman Perry thanked him on behalf of the Board and the citizens of the Commonwealth of Pennsylvania for his many years of exemplary service.

**ADJOURN:**

With no further business before the Board, Michael Smith moved to adjourn the meeting. Cynthia Carrow seconded the motion, which was unanimously approved by the Board. The June 20, 2017, meeting of the Board was adjourned at 10:00 a.m.