

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
October 18, 2016

VOTING MEMBERS OR ALTERNATES PRESENT

Kelly Heffner, Acting Chairperson, Special Deputy Secretary for Water Resources Planning,
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, Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Jonathan Lutz, alternate for Representative John Maher
Kyle Fitzsimmons, alternate for Senator John Yudichak
Nicholas Troutman, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Matthew Hough, Executive Director, Pennsylvania Game Commission
Burt Waite, 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
Marc Farrell, 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
Paul Opiyo, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Greg Hostetter, alternate for Russell Redding, Secretary, Department of Agriculture
Farhad Ahmed, alternate for Karen Murphy, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Jessica Shirley, Acting 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 June 21, 2016, EQB meeting minutes.

**Representative Vitali made a motion to adopt the June 21, 2016, EQB meeting minutes.
William Fink seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: RADIOLOGICAL HEALTH
(25 Pa. Code Chapters 215-221, 223, 225, 227, 228, 230 and 240)**

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

Mr. Place requested additional explanation for the inclusion of non-medical use of radiation in the proposed rulemaking. Mr. Allard responded that this requirement applies to activities such as whole-body security screening. As an example, he explained that, several years ago, the Transportation Security Administration would conduct screenings in airports with back-scatter X-ray units. Since then, technology has developed further and new whole-body transmission X-ray units are being used in prisons and correctional facilities. For these reasons, this proposed rulemaking accounts for the use of x-ray technology for non-medical uses.

Doug McLearen made a motion to adopt the proposed rulemaking. Cynthia Carrow seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF PROPOSED RULEMAKING: REPEAL OF GASOLINE VOLATILITY
REQUIREMENTS (25 Pa. Code Chapters 121 and 126)**

George Hartenstein, Acting Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the proposed rulemaking. Krishnan Ramamurthy, Acting Director of the Bureau of Air Quality, and Kristen Furlan, Assistant Director, Bureau of Regulatory Counsel, assisted with the presentation.

Representative Vitali requested clarification relating to the equivalent emissions reductions offset and the corresponding costs. Mr. Hartenstein explained that there are existing credits that can be applied, including those for an adhesive rule and diesel engines, which assure no backsliding on emissions reductions or an increase in costs.

Representative Vitali further inquired as to whether the repeal of this requirement would result in an increase in VOCs within the Pittsburgh-Beaver Valley area now and in the coming years. Mr. Ramamurthy responded affirmatively that the repeal of the requirements will likely result in only slightly increased VOC emissions for the next few years. However, the VOC emission reductions resulting from requiring low RVP gasoline would steadily decline, decreasing from 1.6 tons per day in 2017 to 1.3 tons per day in 2030. Mr. Ramamurthy also noted that DEP has an obligation to offset these small increases with VOC emission reductions achieved from other control measures.

Representative Vitali stated that if credits were to be applied, there will be no real reduction in admissions and air quality will suffer. Mr. Hartenstein responded that DEP must demonstrate that there will be no backsliding, and DEP is using the credits and modeling to verify that we will not backslide. Mr. Place noted that, even with this demonstration, VOC emissions will still increase and that there will be no additional air quality improvements from this proposal. Mr. Hartenstein affirmed that this is correct but noted that, as vehicle fuel efficiency standards continue to improve, we will see VOC emissions reductions, regardless of this repeal.

Representative Vitali asked if there was any independent information available regarding the cost differential between this type of gasoline and the alternative, and stated that in the rulemaking it appears as though there is no real price reduction for consumers. Mr. Hartenstein responded that DEP staff used purchasing and actual historical pricing data, which came out to potentially five cents per gallon for refiners and approximately nine cents per gallon for consumers. Mr. Hartenstein also noted there may be no price reduction for consumers as DEP has no control over pricing.

Mr. Cohen inquired if DEP's model includes assumptions for increasing market penetration of electric and alternative vehicles. Mr. Ramamurthy responded that the model looks at emissions on the whole. Mobile source emissions include both on-road and nonroad emissions. There are several regulatory and technological developments that will affect the emission reduction impact of this proposal. The first is the EPA's Tier 3 Motor Vehicle Emission and Fuel Standards, which will require compliance with stringent new vehicle emission standards beginning with model year 2017 vehicles. Tier 3 standards will result in near zero exhaust and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and certain heavy-duty vehicles by 2025.

Mr. Walliser asked if the offsets will be required to be obtained in the nonattainment area. Ms. Furlan responded affirmatively, noting that DEP has not taken credit for measures in the Pittsburgh-Beaver Valley area. She explained that, for example, DEP has submitted State Implementation Plans (SIPs) that have taken credit for the existing adhesive rule in areas in Pennsylvania, excluding the Pittsburgh-Beaver Valley area.

Mr. Walliser further inquired as to the timeframe for approval by the EPA. Mr. Hartenstein responded that the EPA has until a year after DEP submits the SIP to approve it. Mr. Ramamurthy added that DEP continues to work closely with the EPA as DEP moves through this process.

Mr. Place referenced DEP's response to question 12 of the Regulatory Analysis Form which indicates that other states do not have an RVP standard. He argued that other states do have an RVP standard, but they are lower than Pennsylvania's. Further, he argued that most of the east coast has lower RVP requirements and questioned if this may impact Pennsylvania's ability to compete with other states. He expressed concern that other states are using more expensive gasoline, which would effectively balance the cost to continue the use of low RVP gasoline in Pennsylvania. Ms. Furlan responded that the more expensive fuel Mr. Place is referencing is reformulated gasoline, which is different than low RVP gasoline and has its own distribution channels. Mr. Hartenstein added that DEP limited its scope to only low RVP gasoline and did not extend the analysis to reformulated gasoline. Ms. Furlan further noted that, regardless of the cost of any gasoline in surrounding states, the repeal of this chapter in DEP's regulations is mandated through Pennsylvania state legislation passed in 2014 and necessitates the proposed rulemaking moving forward.

Mr. Place expressed concern regarding the potential public health impacts of the proposed rule. Mr. Ramamurthy indicated that air quality in the Pittsburgh-Beaver Valley area is currently in good shape. Mr. Place countered that there will be harmful impacts to public health with even a slight increase in emissions, and he noted the substantial population residing in that area. Mr. Place additionally stated concern regarding the adequacy of the modeling used to determine emissions impacts. Mr. Hartenstein reaffirmed that this rulemaking is proposed to comply with the 2014 statute which requires the repeal of gasoline volatility requirements.

Andrew Place made a motion to table the rulemaking until modeling is completed. Representative Vitali seconded the motion.

Mr. Cohen inquired what the impact on the timeline will be with regard to compliance with the legislation and SIP review and approval by the EPA if the proposal is tabled. Mr. Hartenstein responded that DEP does not have to model for ozone and that said modeling would thus be unnecessarily cost-prohibitive and time-consuming. Further, DEP believes that it can continue to comply with the 2008 ozone standard and that it will meet the 2015 ozone standard. DEP will not need to employ a full modeling exercise in order to submit amendments to the SIP. Ms. Furlan added that this rulemaking is currently at the proposed stage and so public comments will be received. As the rulemaking progresses through the process, DEP will develop the proposed revision to the SIP in order to prove to the EPA that there will be no backsliding and that necessary emissions reductions have been achieved. The proposed SIP revision will also be issued for public comment. She continued that much of the conversation today applies more aptly to the SIP revision than to the proposed rulemaking. Essentially, the goal is to have both the proposed rulemaking and the proposed SIP revision out for public comment before either is finalized so that DEP has the benefit of public comment to aid in the finalization of both proposals.

Mr. Place acknowledged his understanding that this proposed rulemaking is required by statute, but he stated that he believes more emphasis should be placed on the costs of the repeal. He stated that there could be additional costs associated with additional measures needed to offset the increased emissions caused by this repeal. Ms. Furlan responded that it is not necessary to develop new measures to offset increased emissions as there are other, previously unclaimed, emissions reduction credits available. These credits will be lawfully applied to demonstrate that there will be no backsliding and to illustrate to the EPA that the air quality in the Pittsburgh-Beaver Valley area is good now and continues to improve as increasing emissions reductions are recorded. Further, the increased emissions from this rule are temporary and will decline over time. Mr. Hartenstein reasserted that DEP will prove to the EPA that not only will there be no backsliding, but that Pennsylvania will continue to be meet ozone National Ambient Air Quality Standards, even with this repeal.

Motion failed by a vote of 15-4. Andrew Place, Representative Vitali, Cynthia Carrow, and John Walliser voted in support of the motion.

Acting Chairperson Heffner confirmed that the motion failed.

William Fink made a motion to adopt the proposed rulemaking. Nicholas Troutman seconded the motion, which was approved by a majority of the Board members. Andrew Place, Representative Vitali, Cynthia Carrow and John Walliser voted in opposition.

CONSIDERATION OF RULEMAKING PETITION: UNNAMED TRIBUTARY TO WHETSTONE RUN; DELAWARE COUNTY (25 Pa. Code § 93.9g)

Dana Aunkst, Deputy Secretary for Water Programs, provided an overview of the rulemaking petition. Rodney Kime, Division of Water Quality Standards, and Michelle Moses, Bureau of Regulatory Counsel, assisted with the presentation.

Mr. Lutz expressed concern with this petition. Particularly, he noted that the timing of the petition appears to indicate an effort to involve DEP in global land use considerations and not just water quality issues. Mr. Aunkst responded that, at this stage, petition review is conducted in accordance with existing protocol

and with available science. If a stream meets the criteria for an upgraded designation, then DEP would recommend it for redesignation. Mr. Aunkst emphasized that DEP bases stream redesignation evaluations on existing science and does not evaluate land use.

Mr. Lutz notes that the petition requests that petitioners describe the types of persons, businesses, and organizations that would be impacted by the redesignation. Mr. Aunkst noted that those criteria are, indeed, included in the petition. However, those criteria would be addressed in a rulemaking package, if the study of the stream results in a proposed rulemaking package to codify the redesignating of the stream(s) in question. Specifically, this evaluation would be included in the corresponding regulatory analysis form for the proposed rule. He continued that, today, the Board is deciding whether DEP's recommendation should be approved that the petition be studied further.

Mr. Lutz, referring to the part of the petition that requests inclusion of technical data, inquired if the petitioner has submitted any stream sampling data. Mr. Kime reported that the petitioner submitted macroinvertebrate surveys on the stream.

Mr. Lutz further stated that it seems as though, since the stream is owned by a private party who is not supportive of the petition, that perhaps the sampling was completed by trespassing on private property. He expressed concern and stated that the Board should not condone any type of trespassing. Ms. Moses responded that DEP does not know how the petitioner's data was obtained and that is not part of the review. She continued that, at this stage, per the EQB's Petition Policy, DEP's role is to review whether or not the petition is complete. DEP reviewed the petition and all accompanying data provided by the petitioner and determined that the petition is complete. The next step in the process is for the Board to decide if the petition should move forward for further study.

Mr. Lutz mentioned a statement included in the petition that notes letters of support for the petition would be submitted under separate cover. He asked if DEP had received any letters at this time. Mr. Aunkst responded that he does not believe we have received any letters at this time. Ms. Moses noted that it is not uncommon for supporting letters to be submitted over time. If said letters are submitted, they will be included with any further proceeding related to this petition.

Mr. Cohen inquired as to how the requested stream redesignation may impact roadways, particularly tributaries that cross a right-of way. Mr. Cohen asked if DEP knows if these are box culverts or bridges. Mr. Aunkst responded that this is information that would be obtained through conducting the river study. All of that information would need to be verified.

Mr. Cohen additionally inquired as to notification procedures. Specifically, he asked how those who are responsible for maintaining impacted crossings would be notified. Ms. Moses responded that DEP provides notification to local planning agencies and to local governments. A notice is also placed on DEP's website when a stream assessment is underway to keep all interested parties informed. DEP conducts substantial outreach efforts with regard to notification that an evaluation is underway.

Representative Vitali acknowledged that he has personal knowledge of this stream, having grown up within a mile of the area. He noted its unique qualities and remarked on its importance to the surrounding area. He expressed his support of the petition.

Petitioner, Mr. Derron LaBrake, presented on the petition.

Mr. Cohen inquired of Mr. LaBrake regarding roadway intersections. Mr. LaBrake responded that the stream begins in a wetland area and so there is not much drainage in that area.

Mr. Cohen recommended having the evaluation take into consideration any roadway that could be impacted by this stream redesignation.

Representative Greg Vitali made a motion to accept the rulemaking petition for further study. Andrew Place seconded the motion, which was approved by a majority of the Board members. Jonathan Lutz voted in opposition.

OTHER BUSINESS:

Postponement of Triennial Review

Ms. Shirley provided an update on the proposed triennial review of water quality standards. She noted that consideration of the proposed rulemaking was delayed last month. She explained that, as DEP prepared its presentation for the September Board meeting, staff noted that there was a potential error in the way that the chloride criterion was calculated. After further review, DEP determined that additional research was needed for the chloride criterion before the Board considers the proposal. More information will be provided at a later time.

Chapter 78a Litigation

Nels Tabor, an attorney with the Office of General Counsel (OGC) who serves as Regional Counsel for the DEP Southcentral Office, provided a brief overview of a recently filed lawsuit challenging certain provisions in the new Chapter 78a regulations, which were published in the *Pennsylvania Bulletin* as final on October 8, 2016. He noted that the final regulations did not include any provisions relating to conventional oil and gas wells, which had been removed prior to publication at the direction of the Office of Attorney General (OAG) to comply with Act 52 of 2016. He also advised that DEP held webinars and training sessions for the regulated community in advance of publication of the final regulations and would continue to work with the industry to ensure a smooth transition to full implementation of the Chapter 78a regulations.

Mr. Taber advised that the Marcellus Shale Coalition (MSC) filed a petition for review with the Commonwealth Court on October 13, 2016, seeking to enjoin implementation of certain sections of the Chapter 78a final regulations, which MSC alleges are invalid. He noted that MSC also filed an application for expedited special relief seeking an immediate stay/preliminary injunction of these sections pending the Court's ruling on the petition. Mr. Taber advised that the Court had ordered DEP and the EQB to file responses to the application for expedited special relief by 4:00 p.m. on October 21, 2016, and that a two-day hearing on the application was scheduled to begin on October 25, 2016 at 10:00 a.m. in Courtroom 3001 of the Pennsylvania Judicial Center. He explained that OGC had requested delegation from OAG to represent DEP and the EQB in this matter and was awaiting OAG's decision. He also advised that, in the meantime, OGC was preparing a response to the MSC application for expedited special relief.

Mr. Tabor explained that he was providing the EQB members with this update in his capacity as the lead litigator on the OGC team representing DEP and the EQB. He offered to answer general questions from the EQB members about the pending litigation, but advised he could not comment in public session on matters that would be confidential. No questions or comments were offered.

Next Meeting of the EQB

The next meeting of the EQB is tentatively planned for Tuesday, November 15, 2016.

ADJOURN:

With no further business before the Board, William Fink moved to adjourn the meeting. Representative Vitali seconded the motion, which was unanimously approved by the Board. The October 18, 2016, meeting of the Board was adjourned at 10:13 a.m.