

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**August 15, 2017**

**VOTING MEMBERS OR ALTERNATES PRESENT**

Patrick McDonnell, Chairman, Secretary, Department of Environmental Protection  
Nsungwe Shamatutu, alternate for Robert O'Brien, Acting 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  
Richard Fox, alternate for Representative Mike Carroll  
Representative John Maher, Pennsylvania House of Representatives  
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  
Andrew Shiels, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission  
Doug McLearn, alternate for Andrea Lowery, 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  
Jim Sandoe, Citizens Advisory Council  
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and  
Economic Development  
Kelly O'Donnell, alternate for Russell Redding, Secretary, Department of Agriculture  
Sharon Watkins, alternate for Dr. Rachel Levine, Acting 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 Environmental Quality Board (Board) considered its first item of business – the approval of the June 20, 2017, Board meeting minutes.

**William Fink made a motion to adopt the June 20, 2017, Board meeting minutes.  
Jim Sandoe seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: WATER QUALITY STANDARDS – SOBERS RUN ET.AL. STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)**

The regulatory changes included in this final-form rulemaking are the result of stream evaluations conducted by the Department of Environmental Protection (DEP) to determine the appropriate designated use of the candidate waterbodies. The streams in this rulemaking were evaluated in response to four petitions. DEP staff evaluated the physical, chemical, and biological characteristics and other information on these waterbodies to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. The final-form rulemaking includes DEP's recommendations for redesignation of certain stream segments in the Delaware and Susquehanna River basins as Exceptional Value Waters.

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

After the presentation, Mr. Place noted that the petitions serving as the impetus for the development of this rulemaking were submitted as early as 2008. He inquired if this signifies a backlog in evaluating petitions. Director McDonnell responded that while a backlog exists, DEP is working through petitions as fast as possible. The evaluation process should not take as long in the future. However, even without a backlog of petitions to manage, the processing and evaluation time is difficult to predict as it will depend on the size of the waterbody and how much field work and analysis is needed.

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

**Michael DiMatteo seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF NO CHANGE RECOMMENDATIONS: WATER QUALITY STANDARDS – STREAM EVALUATION REPORTS (25 Pa. Code Chapter 93)**

DEP evaluated three streams in response to stream redesignation petitions accepted by the Board and recommended no change in the designated uses of these streams. DEP staff evaluated the physical, chemical, and biological characteristics and other information on these waterbodies to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. These stream evaluation reports include data supporting DEP's recommendations not to redesignate these water bodies.

Lee McDonnell, Director for Bureau of Clean Water, provided an overview of the recommendations. Lisa Daniels, Acting Deputy Secretary for Water Programs, and Michelle Moses, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

No discussion occurred after the presentation.

**William Fink made a motion to approve the recommendations.**

**Representative Maher seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF RULEMAKING PETITION: MAXIMUM CONTAMINANT LEVEL (MCL) FOR PERFLUOROCTANOIC ACID (PFOA) (25 Pa. Code Chapter 109)**

On May 8, 2017, the Delaware Riverkeeper Network submitted a petition for rulemaking to the Board requesting a drinking water maximum contaminant level (MCL) for PFOA not to exceed six parts per trillion (equivalent to 0.006 micrograms per liter ( $\mu\text{g/L}$ ) or 6 nanograms per liter ( $\text{ng/L}$ )). DEP determined that the petition satisfies the conditions for accepting a petition included in the Environmental Quality Board Policy for Processing Petitions. DEP therefore recommended that the Board accept the petition for further evaluation. DEP explained that this recommendation does not infer that a rulemaking to set the requested MCL will result from the evaluation.

Lisa Daniels, Acting Deputy Secretary for Water Programs and Director for Bureau of Safe Drinking Water, provided an overview of the rulemaking petition. Bill Cumings, Assistant Counsel for the Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Ms. Brinley inquired if the Cleanup Standards Scientific Advisory Board (CSSAB) has engaged in evaluating PFOA in its advisory capacity to DEP. Ms. Daniels responded that CSSAB is not yet involved in the process. She explained that part of this process would involve determining who will help DEP evaluate the petition. Expertise is necessary to analyze existing health advisories and risk assessment work. Given that neither DEP, nor the Pennsylvania Department of Health employ a toxicologist, DEP plans to reach out to the CSSAB and others to advise.

Ms. Brinley further inquired if treatment is currently available for this class of contaminants. Ms. Daniels explained that a wide spectrum of chemicals exists within this classification. Granular activated carbon (GAC) is reportedly effective for treating both PFOA and perfluorooctanesulfonic acid (PFOS), which are longer chain chemicals. Treatment to remove shorter chain chemicals is much more difficult. Research indicates that reverse osmosis or nanofiltration may be required to remove shorter chain chemicals. These treatment technologies are more complex and costly to operate.

Mr. Place inquired if we are dealing with shorter or longer chain molecules or a combination of both. Ms. Daniels responded that shorter chain molecules have been detected when longer chain molecules degrade. The current health advisory issued by the U.S. Environmental Protection Agency (EPA) was developed for PFOA and PFOS, the longer chain chemicals. Scientific studies are ongoing for the shorter chain molecules. For a historical perspective, when the longer chain chemicals were found to pose a health risk and started to be phased out, manufacturers began developing new shorter chain chemicals to replace them, and better procedures to produce and apply these chemicals. These shorter chain chemicals were not expected to be released into the environment, but they are now being detected. The science is very much evolving with regard to perfluorochemicals (PFCs).

Mr. Place inquired if it would be possible to remove longer chain molecules to a safe level. Ms. Daniels replied that GAC is very effective in removing the long chain chemicals to levels that cannot be detected. However, that requires properly-sized units and ongoing substantial maintenance and monitoring. Further, only a handful of laboratories can do this testing currently, and the monitoring is costly. Also, labs must have clean testing rooms within the lab devoted to this testing because Teflon and other PFC-containing products can cross-contaminate samples. The turnaround time for this testing ranges from three to five weeks. As more monitoring is added, the issue of capacity will need to be addressed.

Mr. Place stated that while he understands the deep concern regarding PFOA contamination, the testing and monitoring are time-consuming. He shared his concern that this study may be prioritized over other more immediate issues of concern such as lead in water. He asked if this would compete with other high

priority issues for staff time and resources. Ms. Daniels responded that drinking water issues are in the spotlight daily. DEP will need to continue to concentrate on lead issues, which are a large concern in Pennsylvania. For the first time, the Commonwealth has had some of our very large water systems exceed the action level for lead, and so DEP will need to stay on top of all issues concerning the lead and copper rule. Unfortunately, EPA has delayed the promulgation of their long-term revisions that are supposed to help fix this rule. Instead of that coming out in 2017 as originally planned, it is now scheduled for publication in 2018. Until that time, states will need to continue to do the best they can with what is known about lead, and lead continues to be a problem. Additionally, DEP continues to struggle with a lack of resources. To help remedy that for the Safe Drinking Water (SDW) Program, focus will continue to be on the drinking water fee package to enable DEP to resume services that water suppliers and communities need and deserve. Further, the SDW Program is working on another regulatory package related to disinfection requirements that needs staff attention to keep it moving through the regulatory process. With regard to PFCs, specifically, unfortunately, they are not the only unregulated contaminants that DEP needs to manage. However, DEP has a good process in place to manage unregulated contaminants which puts us further ahead than some other states that have no authority to do anything unless the EPA has set a standard. In short, the SDW Program is charged with a great deal of important work and staff do the best they can to manage a heavy workload that includes multiple projects, and projects are prioritized according to the most urgent need.

Ms. Brinley asked if the proposed limit not to exceed six parts per trillion is detectable in a laboratory. Ms. Daniels noted that the laboratory testing limits would need to be considered. Existing research undertaken by the EPA prior to implementing a rule related to contaminant monitoring indicates that the minimum reporting limit is five parts per trillion. This is the limit at which the laboratories have a reasonable level of confidence that the contaminant was actually detected in the water.

Mr. Cohen inquired regarding the contamination discovered at the Harrisburg International Airport and whether the sources of that contamination have been determined. Ms. Daniels responded that the Southcentral Region continues to work on that case, which was a preexisting environmental cleanup site. At the time PFOS and PFOA were detected at the site, cleanup was in a maintenance phase, but the contamination discovery reopened more intense monitoring. Those conducting the cleanup believe that the PFOS/PFOA contamination was caused by fire-fighting foams, another use of these chemicals. Yet to be determined is whether the contamination is also related to aviation operations.

Mr. Fox asked for additional explanation on what the evaluation of the petition will include. Specifically, he asked for more information as to what resources DEP currently has or may need to conduct such an evaluation. Ms. Daniels responded that the primary goal is to assess if there are other measures DEP needs to take to protect public health. That will be the objective that will guide DEP in its evaluation. Regarding resources to conduct the evaluation, DEP will need to meet with experts/toxicologists to discuss, review, and compare available research and information related to the impact of PFOA contamination. DEP will research potential reasons for differing health advisory levels. For example, the EPA, using available peer-reviewed science, set a health advisory (HA) of 70 ppt, but a New Jersey advisory committee is proposing a limit of 14 ppt. The petition before the Board is proposing a level of six ppt. DEP will need to discuss these proposals with toxicologists to determine the basis for the varying proposed limits. This would require independent work and research and review. DEP would need to be able to cite scientific evidence for a different limit other than the EPA HA in order to defend that number in a court of law. DEP always defaults to the mission of protecting public health so if a more protective limit is proven to improve public health, DEP will determine next steps for implementation. However, DEP is not currently at that stage of the process. For the petition under consideration, approving the petition for further study would allow DEP to prepare a report that would detail the resources DEP would

need to begin to consider setting its first MCL, if that is the proposed best path forward. While DEP has the authority to set an MCL, DEP has not taken that action. The process to set an MCL is resource-intensive and requires following a strict protocol that does not guarantee that the MCL will be accepted by the EPA for implementation. It requires providing clear scientific evidence that existing limits are not sufficiently protective of public health. Federal rules are restrictive in what criteria the EPA can use to determine whether meaningful opportunity exists for public health protection.

In sum, the next step for the petition, if accepted, would be for DEP to provide a report to the Board that explains available research and reasoning behind different numbers; the process and protocol involved in setting an MCL as only briefly described here; and it would provide detail as to what resources DEP would need for successful implementation, if moving in this direction is the recommended path after all research and review is concluded.

Mr. Fox noted that even the work of preparing the report sounds like a considerable task. He asked if DEP is confident that the resources required to complete that report would be available— especially without having toxicologists on staff. Ms. Daniels answered that DEP will be able to prepare a research report and report findings to the Board based on preliminary discussion with the CSSAB and others who may be able to provide services to DEP free of charge. DEP may not have enough funding to contract toxicologists to work on this, so the report to the Board will include preliminary findings as previously noted.

Secretary McDonnell introduced Tracy Carluccio, Deputy Director for the Delaware Riverkeeper Network, who gave a presentation to the Board. After the presentation, Secretary McDonnell thanked and acknowledged the residents from the area who came to support the petition, as well as Ms. Carluccio.

Mr. Fox thanked Ms. Carluccio for the information provided in the petition. He asked if she knew how long the New Jersey Drinking Water Quality Institute spent developing its analysis. Ms. Carluccio responded that the analysis took approximately one year to be developed. The Institute made its recommendation in February of 2017 for an MCL of 14 ppt after studying it in the Spring of 2016. It discovered a high contaminant level in 2007 in one area of New Jersey and issued a health advisory of 40 ppt at that time. At that point, the Institute began conducting tap water sampling and then conducted more thorough testing. After determining that the contaminant was widespread, it began testing across the state and determined that the problem was statewide. Little science was available then to support a specific contaminant limit, so the Institute worked with the EPA to set that health advisory level for that point in time.

Mr. Fox asked if New Jersey had set a proposed MCL yet. Ms. Carluccio responded that New Jersey is considering the issuance of a rulemaking for PFOA. It recently issued its first rulemaking for a PFC (perfluorononanoic acid (PFNA), another perfluorinated compound). The process for that rulemaking began two years ago but now that the PFNA rulemaking is complete, New Jersey plans to follow up quickly with a rulemaking for PFOA.

Mr. Place was also complimentary of the petition and requested that the petitioner provide him with a source to data provided regarding blood concentration levels of PFOA. Ms. Carluccio agreed to provide that information to Mr. Place.

Representative Maher inquired if Ms. Carluccio supports New Jersey's 14-ppt recommended MCL. Ms. Carluccio responded that, while New Jersey's recommended MCL is more protective than the current EPA HA level, the Delaware Riverkeeper Network is advocating for a more protective level of 6 ppt based on independent toxicologist reports that they commissioned from Cambridge Environmental

Associates to ensure that vulnerable populations are protected. Mr. Place added that this is more of a policy question than a science question. It depends on what factors are being assessed when determining public health risk. Ms. Carluccio agreed and noted that more science is under development.

Mr. Cohen noted that there is some ambiguity as to whether these contaminants are found statewide and he asked that the transportation sector be considered while this evaluation is being conducted.

**Andrew Place made a motion to accept the petition for further evaluation by DEP.  
Jim Sandoe seconded the motion.**

After the motion, Representative Maher made a couple of observations. He noted that there is great concern across the board regarding water quality and contamination. He stated that this is a problem that is in need of a resolution. He raised a concern, however, that the petition requests the setting of a specific MCL of 6 ppt rather than requesting the development of an MCL appropriate for Pennsylvania. The flexibility would be preferable to having only the choice to examine whether the 6 ppt is an acceptable limit to protect public health, especially in light of the work that New Jersey has done in accepting an MCL of 14 ppt. However, Representative Maher reaffirmed that the public health risks presented by PFCs are real and of great concern and any study done to look further into this is welcome. He restated his concern that the choice presented by the petition is either vote to accept for further study the 6 ppt MCL or vote against the petition.

Secretary McDonnell asked Ms. Childe, counsel to the Board, to provide clarification regarding the choice given to the Board by voting on this petition. Ms. Childe explained that in order for a petition to be considered by the Board, the Board's petition policy requires petitioners to provide suggested regulatory language, if the petition requests that the Board adopt or amend regulations. If a petition is too vague, or does not provide specific regulatory language, DEP may find it to be incomplete and it would thus not be presented to the Board for consideration. The petitioner provided suggested regulatory language as a starting point for consideration. That regulatory language could change depending on what is discovered during the evaluation.

Mr. Place added that he understood the petition to be requesting that DEP research and review and study PFOA contamination and not that the 6 ppt is binding. DEP could come back with a different, higher number in its recommendation. Secretary McDonnell confirmed that if the petition is accepted by the Board for further evaluation, any and all answers in terms of what an MCL should be would be reported.

Mr. Fox noted that he is also willing to consider supporting the petition's acceptance for further study. However, he remains concerned that DEP may not have adequate resources to conduct the evaluation of the petition and continue to sustain the heavy workload with which the SDW Program is already charged. He shared concern that working on this project may take staff away from working on other important public safety matters such as lead in the water. He continued that some stream petitions have taken 10 or more years to complete the evaluation. Mr. Fox wants to make sure that DEP has the time necessary to manage its many critically important public health and safety projects.

Ms. Brinley noted that laboratory capabilities for detecting lower limits will need to be considered through the evaluation process and she reaffirmed that the CSSAB has expertise and would be a good group with which to consult.

Secretary McDonnell acknowledged all concerns and shared that DEP's mission and purpose is to protect public health and safety of the citizens of the Commonwealth. As was stated previously, DEP has never in

its history set an MCL so, if this is a recommendation after the initial assessment of the petition is completed, this will be venturing into new territory. If the science is clear that, as Acting Deputy Daniels noted earlier, additional measures should be taken, DEP will pursue options to best protect public health.

**Andrew Place made a motion to accept the petition for further evaluation by DEP.  
Jim Sandoe seconded the motion, which was unanimously approved by the Board.**

### **OTHER BUSINESS:**

#### *Regulatory Update*

Currently, one proposed rulemaking is open for public comment. The proposed Industrial Cleaning Solvents rulemaking that the Board adopted on March 21, 2017, was published on June 17, 2017, opening a 64-day public comment period that closes Monday, August 21, 2017. Three public hearings were held in July. One commentator provided testimony and two written comments have been received to date. To view comments, access DEP's eComment tool.

The proposed Safe Drinking Water General Update and Fees rulemaking adopted by the Board on May 17, 2017, is scheduled for publication on August 26, 2017, opening the 30-day public comment period. The public comment period will close on September 25, 2017. Some revisions were made to the preamble and the regulatory analysis form to address comments received from the Office of Attorney General during its form and legality review to improve clarity. No substantive changes were made to the proposed regulatory language in the annex approved by the Board.

The final Environmental Laboratory Accreditation rulemaking the Board adopted on April 18, 2017, was approved by the Independent Regulatory Review Commission on June 15, 2017, and was subsequently published as final and effective on July 29, 2017.

IRRC will consider two Board final rulemakings at its August 24 meeting, both of which the Board adopted at its June 20, 2017 meeting. The Class A Stream Redesignation final rule and the Radiation Protection Program Fees final rule will be considered. If IRRC approves both rulemakings, they will then be submitted to the Office of Attorney General for a 30-day form and legality review prior to publication as final and effective.

#### *Next Meeting*

The next meeting of the Board is tentatively planned for Tuesday, September 19, 2017.

### **ADJOURN:**

With no further business before the Board, Nsungwe Shamatutu moved to adjourn the meeting. Sharon Watkins seconded the motion, which was unanimously approved by the Board. The August 15, 2017, meeting of the Board was adjourned at 10:25 a.m.