

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
December 12, 2017

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chairman, Secretary, Department of Environmental Protection
Jennifer Rapach, alternate for Gerald Oleksiak, Acting 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
Leda Lipton, 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
John St. Clair, Citizens Advisory Council
Heather Smiles, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
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
James Schmid, 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
Michael Smith, 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
Robert Bo Reiley, 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 (EQB or Board) considered its first item of business – the approval of the October 17, 2017, EQB meeting minutes.

**Michael Smith made a motion to adopt the October 17, 2017, EQB meeting minutes.
Jim Sandoe seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL-OMITTED RULEMAKING: ADMINISTRATION OF THE LAND RECYCLING PROGRAM (25 Pa. Code Chapter 250)

This final-omitted rulemaking is being made under the authority of section 303(a) of the Land Recycling and Environmental Remediation Standards Act, known as “Act 2,” which directs the EQB to promulgate Statewide health standards for regulated substances for each environmental medium and the methods used to calculate the standards. Section 303(c) of Act 2 requires the Department of Environmental Protection (DEP) to develop risk-based Statewide health standards using valid scientific methods, reasonable exposure pathways assumptions and exposure factors for residential and nonresidential land use which are no more stringent than the standard default exposure factors established by U.S. Environmental Protection Agency (EPA). The amendments included in this final-omitted rulemaking correct transcription and input errors for the toxicity values for Aldrin, beryllium, and cadmium in 25 Pa. Code Chapter 250, Appendix A, published at 46 Pa.B. 5655 (August 27, 2016), which resulted in the calculation of incorrect Statewide health standard Medium Specific Concentrations (MSCs). This final-omitted rulemaking does not change the method by which the calculation is made.

George Hartenstein, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final-omitted rulemaking. Troy Conrad, Bureau of Environmental Cleanup and Brownfields, and Keith Salador, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Mr. Fox inquired as to next steps in the process for a final-omitted rulemaking, given the infrequency of the use of the final-omitted process. Deputy Secretary Hartenstein explained that this process omits publishing the rule for public comment. Once adopted by the Board, it will move through the rest of the regulatory review process in the same manner as a final rulemaking.

Denise Brinley made a motion to adopt the final-omitted rulemaking.

Sharon Watkins seconded the motion, which was unanimously approved by the Board.

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

This final-form rulemaking is designed to address the legislative mandate to the Board to promulgate regulations to rescind 25 Pa. Code Chapter 126, Subchapter C (relating to gasoline volatility requirements). The Chapter 126, Subchapter C requirements were promulgated at 27 Pa.B. 5601 on November 1, 1997 for gasoline with a Reid vapor pressure (RVP) of 7.8 pounds per square inch (psi) or less (low RVP gasoline) to be sold or transferred into or within the Pittsburgh-Beaver Valley Area, between May 1 and September 15 of each year for refiners, importers, distributors, resellers, terminal owners and operators and carriers and between June 1 and September 15 of each year for retailers and wholesale purchaser-consumers. These requirements were approved by the EPA on June 8, 1998, as a revision to the Commonwealth’s State Implementation Plan (SIP) effective July 23, 1998, as a Federally-enforceable control measure to help attain and maintain the 1-hour Ozone National Ambient Air Quality Standards (NAAQS) in the Pittsburgh-Beaver Valley Area to protect the public health and welfare. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties. Upon promulgation of this final-form rulemaking and EPA approval of DEP’s Non-Interference Demonstration SIP revision, Chapter 126, Subchapter C will no longer be applicable for the Pittsburgh-Beaver Valley Area.

George Hartenstein, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final rulemaking. Chris Trostle, Bureau of Air Quality, and Kristen Furlan, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Mr. Place inquired if the 20% emissions reduction in this sector by 2025 is based on CAFE (Corporate Average Fuel Economy) standards. Deputy Secretary Hartenstein responded that some of the reduction is based on newer engines (compliant with EPA/CARB emission standards) that produce less emissions. As older inventory usage continues to decline, air quality improves by virtue of advancement in vehicle emissions reduction technology. Mr. Trostle added that, while it is correct that the CAFE standards are in effect, they do not impact Nitrogen Oxide (NO_x) emissions or Volatile Organic Compound (VOC) emissions reductions. NO_x and VOC emission reductions that come from mobile sources due to CAFE standards are mostly from transportation of fuel, as reduced fuel consumption leads to reduced pipeline usage and reduced fuel transport vehicle usage.

Mr. Place inquired if DEP has a timeline for publication of the SIP amendment. Deputy Secretary Hartenstein explained that the draft SIP revision is currently moving through internal review. The goal is to have the non-interference demonstration out for a 30-day public comment period in the beginning of 2018. Mr. Place asked if the SIP will be brought to the Board. Deputy Secretary Hartenstein responded that SIP revisions are not brought to the Board but they do have a separate public comment period. All members of the public can offer comment at that time, including any interested Board member.

Mr. Place asked for comment on the air quality monitors in the Pittsburgh-Beaver Valley area. Deputy Secretary Hartenstein responded that Pennsylvania has a monitoring network approved by the EPA to monitor the ambient air in the Commonwealth. It is worth noting that the EPA has updated its model for calculating vehicle emissions. The new model is showing that newer highway vehicles burn higher Reid vapor pressure (RVP) gasoline more efficiently than low RVP gasoline, resulting in less emissions. This was an interesting finding that unfortunately could not be incorporated into the rulemaking documents as it was too far along in the regulatory review and development process when the model was released. However, the newer model will be used in the SIP revision. Due to the initial results of the newer model, it is expected that air quality will not be negatively impacted by the change made in this rulemaking.

Mr. Place noted additional reductions were previously mentioned. Deputy Secretary Hartenstein explained that VOC emission reductions from our finalized adhesives rulemaking could be included in the non-interference demonstration. These reductions had not been included in any other SIP prior to this. Other emissions reductions can be included as well.

Mr. Place asked about the economic data provided, specifically related to the cost savings per gallon of gasoline. Deputy Secretary Hartenstein explained that the economic data provided was based on a fuel consumption estimate. In the rulemaking, it is stated that refiners, consumers, etc, could save “as much as” a certain amount.

Mr. Fox inquired as to how confident DEP is that the EPA will approve the SIP revision associated with this rulemaking. Deputy Secretary Hartenstein noted that DEP has discussed the approach included in the rulemaking with the EPA and they appear to be comfortable with how this is moving forward. DEP is confident it will be approved.

Mr. Fox asked, once the SIP revision is approved, if DEP will need to present another rulemaking to the Board to delete the section related to gasoline volatility requirements from the *Pennsylvania Code*.

Deputy Secretary Hartenstein responded affirmatively that DEP will bring another rulemaking to the Board to complete the process.

Jim Sandoe made a motion to adopt the final rulemaking.

James Schmid seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: DISINFECTION REQUIREMENTS RULE (25 Pa. Code Chapter 109)

The purpose of this final-form rulemaking is to amend DEP's Safe Drinking Water regulations to strengthen water system requirements relating to microbial protection and disinfection. These amendments will protect public health through a multi-barrier approach designed to guard against microbial contamination by ensuring the adequacy of treatment designed to inactivate microbial pathogens and by ensuring the integrity of drinking water distribution systems. Safe drinking water is vital to maintaining healthy and sustainable communities. Proactively avoiding incidents such as waterborne disease outbreaks can prevent loss of life, reduce the incidence of illness, and reduce health care costs. Proper investment in public water system infrastructure and operations helps ensure a continuous supply of safe drinking water; enables communities to plan and build future capacity for economic growth; and ensures their long-term sustainability for years to come.

Lisa Daniels, Acting Deputy Secretary for Water Programs, provided an overview of the final rulemaking. Bill Cumings, Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Ms. Watkins requested additional explanation regarding compliance and when public notices would be issued. Acting Deputy Secretary Daniels responded that most large public water systems (PWSs) will take one hundred or more samples. To be out of compliance, a PWS would need to have more than five percent of those samples out of compliance for two consecutive months before a violation would be issued. The expectation is that, if a system is out of compliance in one month, action will be taken and changes will be made that will prevent the system from being out of compliance a second consecutive month. This would prevent the issuance of a notice of violation and thereby prevent the need for public notice.

Mr. Place asked if any evidence was found that indicated a correlation between chlorine residuals and lead and copper byproducts. Acting Deputy Secretary Daniels noted that DEP evaluated disinfection byproducts (DBPs) and disinfection residuals and impacts on total coliform compliance rates. An assessment of the lead and copper rule was not done with respect to the work for the revised total coliform rulemaking and this rulemaking as the primary focus was on the impact of increased disinfection residuals on DBP formation. Lead and copper does factor in, however. This is what makes simultaneous compliance a focused issue for DEP's Safe Drinking Water Program. Acting Deputy Secretary Daniels explained further that the disinfection residual can serve as a tracer. As the disinfection residual moves through the distribution system, it provides information concerning water quality throughout the system. If microbial activity is controlled, corrosion control is improved as well.

Mr. Place noted the comparison to other states included in the rulemaking. He noted that different circumstances may apply in Pennsylvania and he asked if Pennsylvania's drinking water would be at risk due to an anomaly that is applicable only to Pennsylvania's PWSs. Acting Deputy Secretary Daniels responded that the existing residual in the *Pennsylvania Code* is not enforceable and needs to be updated

to a number that is protective. Ensuring a protective disinfection residual does not necessarily mean increasing the level of disinfectant in the distribution system. Some PWSs have lowered DBPs and maintained residuals through operational optimization practices such as improving the flow of water through their distribution system; increasing flushing; and maintaining and managing storage tanks with regard to drain and fill cycles.

Mr. Place asked if DEP is comfortable with the existing science that supports this level of disinfection residual, including the science provided by the U.S. EPA. Acting Deputy Secretary Daniels explained that DEP has been sampling extensively and collecting data since the early 2000s. Data has shown that there are several effective strategies for reducing DBPs and for ensuring the safety of water throughout the distribution system. She noted that DEP offers a free and voluntary distribution system optimization program. Paying attention to the water quality throughout the distribution system helps improve residuals and reduce the likelihood of corrosion. This rulemaking is not expected to have an adverse impact on drinking water or PWSs throughout Pennsylvania.

Mr. Schmid asked if DEP has evaluated the effects of the discharge of the chlorinated water under the new standard into the streams of the Commonwealth. He particularly shared concern pertaining to water main breaks. Acting Deputy Secretary Daniels responded that this rulemaking would not change how water main breaks are managed. Further, most PWSs are already meeting the standard included in this rulemaking. DEP does not anticipate PWSs having to increase their disinfectant residual levels substantially. Systems not already in compliance are more likely to work to improve operational practices rather than increase residual levels. For these reasons, this rule should not create a net gain of disinfectant residuals. The rule simply ensures that the water in the distribution system is more equitable in quality so that consumers closer and further away from treatment facilities have very similar drinking water quality.

Mr. Welsh counseled vigilance in compliance with the lead and copper rule. Of particular concern are areas where there are lead service lines so that the changes in disinfection and the treatment designed to reduce pathogens do not strip the biofilm resulting in the leaching of lead. Acting Deputy Secretary Daniels affirmed that as a concern that DEP carefully monitors. DEP monitors three factors: microbial protection, disinfection byproducts, and lead and copper. As an example, if a permittee requests to change treatment or requests to add a new supply source, they are subject to a simultaneous compliance determination to assure that one change designed to improve one factor does not adversely affect something else. DEP monitors new data and will keep apprised of the latest science to ensure that water is protected from microbial pathogens and corrosion.

Ms. Watkins noted that an area of concern for the Department of Health is protecting vulnerable populations, such as patients in hospitals. She asked, in evaluating the data related to disinfection residuals, if DEP learned how hospital systems may handle an increase in disinfection residuals and how that may also affect lead. Acting Deputy Secretary Daniels explained that at levels of 0.2 mg/L, DEP anticipates improvement to the water quality entering all buildings and coursing through the buildings (premise plumbing), and adequate protection from microbial pathogens will be better ensured. At a 0.2 mg/L residual it means better protection from regrowth issues. DEP understands that hospitals must manage legionella bacteria and mycobacteria and various organisms within the hospital setting. This rulemaking allows for better water quality in every area of the hospital.

Sharon Watkins made a motion to adopt the final rulemaking.

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

OTHER BUSINESS:

Secretary McDonnell noted Tim Schaeffer would be joining DEP as Deputy Secretary for Water Programs on Monday, December 18.

Regulatory Update – Laura Edinger provided a regulatory update to the Board. The proposed Triennial Review of Water Quality Standards was published on Saturday, October 21, 2017, which opened the public comment period. The comment period was originally scheduled to close on December 29 and three public hearings were included as part of this publication – in Wilkes Barre (December 6), Harrisburg (December 8), and Pittsburgh (December 14). A request has been made, through the public comment process, to add one more hearing in the southeast, near Philadelphia, and to extend the public comment period. To honor that request, one additional hearing will be scheduled in January to be held in DEP's Southeast Regional Office and the public comment period will be extended to two weeks past the date of that last hearing, to comply with statutory requirements. This will add at least 30 days to the public comment period. As this request was very recently received, the dates are not established at this time. Ms. Edinger noted that she will send notification to all Board members once the new public hearing date and public comment period end dates are set. A notice will also be published in the *Pennsylvania Bulletin*. Ms. Edinger thanked Board alternates, PUC Vice Chairman Place and Executive Director of the Senate Democratic ERE Committee, Joanne Manganello, who generously volunteered their time to chair the two hearings that were held on December 6th and 8th. Ms. Edinger further noted that she would be recruiting a volunteer to chair the additional hearing once it is scheduled.

On November 16, IRRC approved the Sobers Run et.al. Stream Redesignations final rulemaking. This Board adopted the final rule at its August 15, 2017 meeting.

Act 40 of 2017 included a provision directing the EQB to promulgate proposed regulations related to manganese within 90 days from the time of the Act being signed into law on October 30. Significant research and evaluation of data will need to be completed prior to bringing such a rulemaking in front of this Board. To begin the work on this rulemaking within 90 days, DEP will be publishing an Advance Notice of Proposed Rulemaking (ANPR) in January of 2018. The ANPR process offers opportunity to those in the regulated community, those in the scientific community, and those in the public health community to provide data related to manganese levels. Once this data has been collected, DEP will begin working on the rulemaking package.

Next Meeting – The next meeting of the EQB is tentatively planned for Tuesday, January 16, 2018.

ADJOURN:

With no further business before the Board, Don Welsh moved to adjourn the meeting. James Schmid seconded the motion, which was unanimously approved by the Board. The December 12, 2017, meeting of the Board was adjourned at 10:10 a.m.