

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
April 17, 2018

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chairman, Secretary, Department of Environmental Protection
Natasha Fackler, 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
Timothy Collins, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Heather Smiles, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
Douglas 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
John St. Clair, 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, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) 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 9:01 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 February 20, 2018, EQB meeting minutes.

**Michael Smith made a motion to adopt the February 20, 2018, EQB meeting minutes.
Adam Pankake seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL RULEMAKING: CONTROL OF VOC EMISSIONS FROM INDUSTRIAL CLEANING SOLVENTS; GENERAL PROVISIONS; AEROSPACE MANUFACTURING AND REWORK; AND ADDITIONAL RACT REQUIREMENTS FOR MAJOR SOURCES OF NO_x AND VOCs (25 Pa. Code Chapters 121 and 129)

This final-form rulemaking addresses the control of volatile organic compound (VOC) emissions from stationary source industrial cleaning solvents that are not regulated elsewhere in Chapter 129 or Chapter 130, by adopting Reasonably Available Control Technology (RACT) requirements and RACT emission limitations. The rulemaking is mandated by the Clean Air Act. The final-form rulemaking adds § 129.63a (relating to control of VOC emissions from industrial cleaning solvents) to address VOC emissions from industrial cleaning solvents and amends §§ 121.1 and 129.51 (relating to definitions; and general) to support the addition of § 129.63a. Minor clarifying amendments are made to § 129.73 (relating to aerospace manufacturing and rework) and specified sections of the recently promulgated additional (RACT) requirements for major sources of nitrogen oxides (NO_x) and VOCs (RACT 2). The final-form rulemaking establishes VOC emission limitations, work practice standards, and monthly recordkeeping and reporting requirements consistent with the RACT recommendations of the U.S. Environmental Protection Agency's (EPA) 2006 Industrial Cleaning Solvents Control Techniques Guidelines (2006 ICS CTG).

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

After the presentation, Richard Fox inquired if the Department is confident that this rulemaking will be able to move through the remainder of the regulatory review process, by September 6th, in time to avoid sanctions. Deputy Secretary Hartenstein responded affirmatively that the final rulemaking can be published and submitted to EPA by the deadline.

Jim Sandoe made a motion to adopt the final rulemaking.

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

CONSIDERATION OF FINAL RULEMAKING: SAFE DRINKING WATER GENERAL UPDATE AND FEES (25 Pa. Code Chapter 109)

This final-form rulemaking amends 25 Pa. Code, Chapter 109 to incorporate the remaining general update provisions that were separated from the proposed Revised Total Coliform Rule (RTCR), including revisions to treatment technique requirements for pathogens, clarifications to permitting requirements, and new requirements for alarms, shutdown capabilities, and auxiliary power; to amend existing permit fees and add new annual fees to supplement state costs and fill the funding gap (\$7.5 million); and to add new provisions to establish the regulatory basis for issuing general permits, clarify that noncommunity water systems (NCWS) require a permit or approval from DEP prior to construction and operation, and address concerns related to gaps in the monitoring, reporting and tracking of back-up sources of supply.

Collectively, these amendments will provide for the increased protection of public health by every public water system (PWS) within the Commonwealth, and ensure that DEP has adequate funding to enforce the applicable drinking water laws, meet state and federal minimum program elements, and retain primacy (primary enforcement authority). 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 PWS 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.

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

Representative Maher commented on a chart that was included in the preamble for the proposed rulemaking package as it was presented to the Board. The chart in the proposed rulemaking compares fees and costs, and Representative Maher stated concern that this specific chart is not included in the final-form rulemaking. He noted that, without the comparison table, it appears that the Board is voting to levy a tax rather than issue fees. He advocated the inclusion of that chart in the final-form rulemaking in order to present all of the appropriate facts related to this rulemaking.

Ms. Daniels responded that the chart was, indeed, included in the preamble for the proposed rulemaking as it was presented to the Board last May. However, following EQB adoption of the proposed rulemaking, as with all regulations, the rulemaking had a few more reviews prior to approval for publication. Before a rulemaking can be published for comment, the Office of Attorney General (OAG) must review for form and legality. During its review, the OAG had questions and comments related to the proposed regulation. Over the course of their review and in discussion, the Department edited the preamble, modifying that table in question in the process. Specifically, the last column of the table was amended. Ms. Daniels further explained that the original table referred to select costs. The OAG's office asked what the select costs included and asked if there were other costs that the Department considered when assessing fees. The Department affirmed that there are several other costs that were not included because they are not easily estimated or they are varied and did not fit into the format of that table. The OAG suggested that the Department include all costs, not just those that could be easily estimated, in the justification in the preamble. The Department therefore amended the table and the corresponding narrative accordingly. The referenced table is included but is now labeled as estimated costs (the costs that could be estimated for all systems). The added narrative explains variable costs. Variable costs include things like the Department's response to water supply emergencies and the higher costs to conduct sanitary surveys on larger systems. As such, the original table presented in the preamble to the EQB last May was modified to remove that last column because it was not properly representing the fees. The published version of the proposed preamble includes the table as it is currently presented in the preamble for the final-form rulemaking.

Representative Maher commented that, in discussion about the rulemaking prior to the full Board meeting, he felt that he was provided with incorrect information about the inclusion of the table in the final-form rulemaking. He noted his concern that the OAG's feedback on the rulemaking is indicative of illegally raising fees. Chairman McDonnell offered his apologies for any miscommunication that occurred regarding the table. He also offered explanation that the OAG feedback was not telling the Department that the fees are illegal but requesting further justification of the fees to show that they are reasonable in relation to costs. The Department provided sufficient additional justification and the OAG approved the rulemaking for publication as proposed.

Representative Maher inquired if there is written documentation related to the OAG's concerns that could be provided to the Board. Mr. Reiley responded that the Department would look into that and get back to the Board.

Mr. Place asked why the Department chose to use supplier IDs to assess annual fees rather than population. He commented that he believes this is the correct method but wished for further explanation regarding the rationale. Ms. Daniels explained that the Department received comments regarding the larger private water companies having multiple water systems. For example, while Pennsylvania American is one water system, it owns 66 public water systems. This requires the Department to conduct 66 inspections. When the larger water companies added up their individual fees, they were comparing that cost to, for example, the fee for the City of Philadelphia. The City of Philadelphia is Pennsylvania's largest single water system, serving 1.4 million people. While it may serve the largest number of people, it is still only one system and requires only one inspection. The Department, therefore, evaluated the workload associated with each privately-owned groups of water systems and assessed the fee based on the level of service required. Ms. Daniels noted that additional information related to this topic can be found on page 14 of the comment and response document for this rulemaking.

Ms. Watkins asked the Department to comment on the timeline for addressing the turbidity provisions that were included in the proposed rulemaking but removed from the final-form rulemaking. Ms. Daniels explained that the provisions related to the frequency of monitoring turbidity were retained from the proposed rulemaking and thus included in the final-form rulemaking, but provisions to strengthen turbidity standards (by adding zeros) were removed. The regulated community put forward concern that adding another significant digit to the standard would make Pennsylvania more stringent than the EPA. The Department learned, in the middle of this rulemaking process, that the EPA would soon begin its next six-year review of regulations and that review would include evaluating various surface water treatment rules. Thus, the Department decided to wait for the EPA to conclude its evaluation before revising turbidity standards in Pennsylvania's regulations.

Mr. Fox inquired regarding the auxiliary power provisions. Specifically, he asked if it is the Department's experience that most systems might already have this in place or if none of them do. He asked if there is an idea as to the universe of systems that may already have auxiliary power. Ms. Daniels responded that resiliency requirements are more than only auxiliary power. Other provisions exist that systems could have that could keep the water flowing. Interconnections with water systems, additional storage and the like would allow for backup water supply. Ms. Daniels further responded that approximately 30% of smaller systems (those serving fewer than 3,300 people) and approximately 20% of larger systems will need to take some action to comply with these requirements. Cost estimates also took these anticipated expenses into consideration.

Mr. Place inquired as to lead and other emerging contaminant issues and how this rulemaking will impact the ability to respond to such issues. Ms. Daniels responded that increasing staff levels will allow the Department to better respond to those situations as they occur. She further commented that, ideally, it would be in the best interest of all stakeholders, including the regulated community, if the Department could have enough staffing resources to be more proactive instead of always having to be reactive when concerns and issues arise. Ms. Daniels noted that, while the provisions included in this rulemaking are not specific to emerging contaminants, the overall improvement in staffing resources will help the Department better prepare for future issues.

Andrew Place made a motion to adopt the final rulemaking.

Jim Sandoe seconded the motion, which was approved by a majority of the Board.

Representative Maher requested to be recorded as an abstention.

**PRESENTATION OF 3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS
REPORT: OIL AND GAS WELL PERMIT FEES (25 Pa. Code Chapters 78 and 78a)**

Pursuant to 25 Pa. Code §§ 78.19(e) (conventional oil and gas wells) and 78a.19(b) (unconventional gas wells), at least every three years, the Department will provide the EQB with an evaluation of the well permit fees received. The Department last submitted a well permit fee report to the EQB at its January 21, 2014 meeting. In accordance with regulatory requirements, the Department has conducted a comprehensive review of its resource needs to administer the oil and gas oversight program along with projected revenues. This 3-Year Regulatory Fee and Program Cost Analysis Report summarizes that review and analysis. In short, the Department's inspection and program administration responsibilities have increased; however, the number of well permits submitted to the Department does not generate sufficient revenue to cover the costs of administering the Department's oil and gas program. Current fiscal trends will result in a deficit in the first quarter of FY 2019-20.

To ensure the solvency of the Oil and Gas Well Plugging Account and the resources necessary for the continued proper management of the Department's Oil and Gas Program, the Department recommends that the EQB revise the permit fees for all unconventional wells and charge a flat fee of \$12,500. The Department also recommends that the fees for conventional wells, which are typically vertical wells, remain unchanged. A proposed rulemaking to amend unconventional oil and gas well fees is currently in development.

Scott Perry, Deputy Secretary for Office of Oil and Gas Management, provided an overview of the report. Elizabeth Davis, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Representative Maher noted that the report shows \$24.5 million in the Well Plugging Restricted Revenue Account. He asked if that account is properly labeled. Specifically, he asked if the fund is actually for well plugging. Deputy Secretary Perry responded that the fund is not for well plugging. This is a term that is used in the 2012 Oil and Gas Act. The Department has three funds. The Well Plugging Restricted Revenue Account is the fund where all permitting fees go as well as penalties, and that funds the operations of the program. Well plugging is actually done under the Department's Orphan Well Plugging Fund and the Abandoned Well Plugging Fund.

Representative Maher stated for clarification that, although the fund is labeled Well Plugging Restricted Revenue Account, the account really is not used for well plugging. Chairman McDonnell explained that when the Oil and Gas Act was signed in 1984, it was assumed at that time that activity going forward would be plugging only. In order to implement the Act, the funds were required for permitting and other vital program activities.

Representative Maher inquired how many wells were plugged last year. Deputy Secretary Perry responded that four wells were plugged last year. Further, the Department only has enough money currently to plug wells that pose an imminent threat to public safety. There are two funds. The Abandoned Well Fund receives \$50 for every oil and gas permit received. At the end of this fiscal year, the Department projects having \$732,000 in that fund. The Orphan Well Fund receives \$100 for every oil well and \$200 for every gas well. The Department anticipates a balance of \$769,000 in that fund. As an example, one of the wells that the Department plugged, cost \$180,000. Further there was a well in Glen Osborne Borough that was on a landslide prone hill and the hill was threatening to slide across the township's emergency access road. So, in addition to plugging the well, the Department also needed to

stabilize the hillside. That project cost over \$800,000. With just these two examples, it is easy to see how one or two bad wells can bankrupt these programs. The Department needs to maintain a funding balance to appropriately offer protection to the public when situations like those occur. For example, if Pennsylvania residents cannot live in their home because of a gas presence in their home, the Department needs to ensure those situations can be addressed. In using funds to ensure protection in other more dire situations, the Department was able to plug only four wells this year.

Representative Maher inquired as to an estimate of the number of abandoned and orphan wells. Deputy Secretary Perry explained that an orphan well is basically any well that was abandoned before 1979 and abandoned wells includes those wells and others. Representative Maher noted that the Department's website lists 6,800 orphan wells. Deputy Secretary Perry stated that the actual number is closer to 8,300 and that even that number is only those wells of which the Department is aware. Representative Maher commented that in 1979, if Pennsylvania residents had an abandoned well on their property, they could enroll it with the State rendering the State responsible for the well from that point forward. At that time, approximately 30,000 wells were adopted by the State. Approximately 1,000 were plugged since that time. He noted that there could be far more wells than are currently known throughout the State. Deputy Secretary Perry noted that historical research indicates approximately 200,000.

Representative Maher asked, with the anticipated proposed rulemaking, if the Department intends to devote additional resources to well plugging. He further referenced the Governor's primary environmental concern regarding the greenhouse gas, methane. Having potentially upwards of 200,000 unplugged abandoned wells in the Commonwealth leaking methane into the atmosphere is a serious issue that should be addressed promptly.

Representative Maher also commented on delays in permitting in the southwestern area of the State causing some companies to drill in surrounding states prior to choosing to drill in Pennsylvania. He commented that the relatively low number of permit applications could be attributed to delay in permit review. He further asked if the Department could provide updated data on turnaround time for permitting. Deputy Secretary responded that review timeframes for permits in the southwestern part of the State had been problematic but has turned around. The last well permits issued took 45 days and erosion permits are taking an average of 90 days now. Further, there is no longer a backlog for well permitting in Pittsburgh, so the permit review timeframe is approximately 25 days. An issue that can increase permit review time significantly is the quality of the initial permit application. If significant technical difficulties are present in an application, that permit is going to take longer to process. Further, and of note for the anticipated rulemaking package, the Department has moved inspector positions and policy development position to permit review positions. With limited resources, the Department could not add positions so in an effort to improve permit review times, positions were moved around. Having moved positions around like this is detrimental to the Department's ability to carry out statutory responsibilities to ensure public health and safety with regard to drilling.

Representative Maher commented that getting the permitting process corrected could help increase the number of applications coming in and less business would be lost to Ohio or West Virginia. Deputy Secretary Perry responded that he is hopeful that would be the case but predicting permit application volumes is difficult. Improving permitting processing times is very likely to help, however, there are other issues outside the control of the Department that drillers encounter that could have a dampening effect on the number of permits received. For example, one well drilled today is the equivalent of three drilled in 2010. As of today, the Department is prepared to receive fewer than 1,700 unconventional permit applications this year.

Representative Maher still noted that having the permitting process run more smoothly will help. He also concurred that the industry is not growing as fast for a variety of reasons. He asked if, when the rulemaking is brought to the Board, if a chart could be provided that distinguishes between inspections for new wells and inspections of existing wells, as a new well would require more attention than an existing well.

Representative Maher further commented that it would be useful to have a chart that includes inspection results. If most wells are typically in compliance with the regulations, perhaps the Department could consider conducting annual inspections or every other year. Deputy Secretary Perry responded that the goal is to inspect unconventional wells every other year and to inspect conventional wells once every 10 years.

Representative Maher also commented that, depending on statutory authority, if possible it would be good to consider spreading out the costs industry-wide so that the last company entering the industry does not get stuck paying more than existing entities. If there are ongoing inspections, perhaps the cost can be spread more evenly. Chairman McDonnell responded that the Department is open to conversation as to how to make the fees the most fair within existing statutory limitations.

Mr. Place commented that clearly the existing fees are not adequate. He asked why the Department is not considering increasing fees for conventional wells in addition to unconventional wells. Deputy Secretary Perry responded that, with the very small number of permits the Department receives from the conventional industry (averaging 200 permits per year), a fee increase on conventional wells would not be justified. Further, he noted that over the course of the next three-year period evaluating fees, the Program plans to engage stakeholders to discern different ways of running the Program.

Mr. Fox inquired regarding the impact fee money and if the Department is restricted in how that money can be used. Deputy Secretary Perry responded that the six million dollars received by the Department can be used to fund the Oil and Gas, Clean Water, and Air programs. This money gets spent according to necessity. Thus, the oil and gas program has always received all \$6 million. The impact fee has never been enough to pay for the Program. Deputy Secretary Perry further spoke to cost drivers. He noted that a Department employee typically costs approximately \$100,000 - \$120,000 per year including salary, healthcare, and pension. Healthcare and pension costs increase approximately 2.5% each year, which in turn increases Department and Program costs.

No formal action needed.

OTHER BUSINESS:

Regulatory Update:

Laura Edinger provided the following updates:

- On February 3, 2018, the proposed Noncoal Mining Program Fees rulemaking was published in the *Pennsylvania Bulletin*, opening a 30-day public comment period. The comment period closed on March 5, 2018. One public comment was received. IRRC comments were received on April 4 and drafting of the final rulemaking has begun.

- On February 24, 2018, the proposed Administration of the Storage Tanks and Spill Prevention Program rulemaking was published in the *Pennsylvania Bulletin*, opening a 30-day public comment period. The comment period closed on March 26, 2018. Nineteen comments were received. IRRC comments are due April 25.
- On February 22, 2018, three rulemakings were approved by IRRC at its public meeting: final-omitted Administration of the Land Recycling Program; final Disinfection Requirements; final Gasoline Volatility Requirements. These three rulemakings were adopted by this Board on December 12, 2017.
- On March 17, 2018, the final-omitted Administration of the Land Recycling Program was published in the *Pennsylvania Bulletin*. On April 7, 2018, the final-form Gasoline Volatility Requirements rulemaking was published. Both rulemakings were effective upon publication. The Disinfection Requirements final rulemaking is scheduled for publication on April 28, 2018, making that rule effective as well.
- On Thursday, April 19, 2018, IRRC will consider the Handling and Use of Explosives final rulemaking. The Board adopted the final rule at its February 20, 2018 meeting.

OSM Form 23 – Statement of Employment and Financial Interest:

Each board member was given a copy of OSM Form 23 today. An email will also be sent (with OSM Form attached) for those alternates and members not in attendance at today’s meeting. Each Board member and alternate is required to complete the form and submit it to Laura Edinger by June 1, 2018.

Next Meeting:

The next meeting of the EQB is tentatively planned for Wednesday, May 16, 2018, in order to avoid conflict with primary election day on Tuesday.

Other Business:

Andrew Place requested that page numbers be added to presentation slides in the future.

ADJOURN:

With no further business before the Board, Cynthia Carrow moved to adjourn the meeting. Michael Smith seconded the motion, which was unanimously approved by the Board. The April 17, 2018, meeting of the Board was adjourned at 10:18 a.m.