

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
June 16, 2020

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection
Joe Lee, alternate for Gerald Oleksiak, Secretary, Department of Labor and Industry
Natasha Fackler, alternate for Yassmin Gramian, Secretary, Department of Transportation
Gladys Brown Dutrieuille, Chairman, Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Glendon King, alternate for Representative Daryl Metcalfe, Pennsylvania House of Representatives
Senator Steven Santarsiero, Senate of Pennsylvania
Nick Troutman, alternate for Senator Gene Yaw, Senate of Pennsylvania
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
John St. Clair, Citizens Advisory Council
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Erin Wachter, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning
Cynthia Carrow, Citizens Advisory Council
Duane Mowery, Citizens Advisory Council
Mark Caskey, Citizens Advisory Council
Jim Welty, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Mike Hanna, alternate for Russell Redding, Secretary, Department of Agriculture
Peter Blank, alternate for Dr. Rachel Levine, 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 second virtual meeting of the Environmental Quality Board (EQB or Board) was called to order by Chairperson McDonnell at 9:03 a.m. via WebEx. The Board considered its first item of business; approval of the May 19, 2020, EQB meeting minutes.

**Senator Santarsiero made a motion to adopt the May 19, 2020, EQB meeting minutes.
Denise Brinley seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF RECOMMENDATION: HAZARDOUS WASTE DELISTING
RULEMAKING PETITIONS – MAX ENVIRONMENTAL BULGER AND YUKON FACILITIES**

On May 2, 2019, the Pennsylvania Department of Environmental Protection (DEP or Department) received two rulemaking petitions submitted by Key Environmental, Inc. on behalf of MAX Environmental Technologies, Inc. These petitions request that the Board amend an existing regulatory exclusion from hazardous waste listing for wastewater sludge generated from the treatment disposal impoundment and landfill leachate and contact stormwater at the MAX Bulger (first petition) and the MAX Yukon facilities (second petition).

A delisting petition is a request to exclude waste from a particular facility from the list of hazardous wastes under the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C.A. §§ 6901-6986) and Solid Waste Management Act (35 P.S. §§ 1608.101 et seq.) and their implementing regulations. Effective November 27, 2000, the Department received approval from the U.S. Environmental Protection Agency (EPA), under RCRA, to administer the Commonwealth's hazardous waste management program. As part of that program approval and delegation, the Department is authorized to review and make recommendations on delisting petitions to the EQB. The EQB is also authorized to review and approve petitions for the delisting of hazardous waste.

At the June 18, 2019, EQB meeting, the Department recommended the acceptance of both petitions for further evaluation and the Board voted unanimously to accept this recommendation.

The Department reviewed four sampling events at the Bulger Facility and six sampling events at the Yukon Facility that were performed over a one-year period to reflect potential variations in constituent concentrations under various seasonal conditions. Sampling and analysis indicated that the wastewater sludge at both the Bulger and Yukon facilities no longer meets the criteria for listing as an F039 hazardous waste as set forth in 40 CFR 261.31. The samples that were collected at both facilities revealed that the concentrations of constituents of interest did not exceed the Universal Treatment Standards (UTS) promulgated at 40 CFR 268.48. In fact, they are one or more orders of magnitude below the chemical specific UTS.

The analyses also revealed that the sludges do not exhibit the characteristics of hazardous waste. The pH of the additional sludge samples show that the materials are not corrosive and the nature of the material together with generator knowledge demonstrates that the sludges are also non-reactive and non-ignitable. The analytical data confirmed that none of the target pesticides, herbicides, or polychlorinated biphenyls (PCBs) were detected. Additionally, the potential human health or ecological risks modeling showed that the sludges were non-carcinogenic for human health effects and ecological receptors because they are significantly lower than acceptable concentration limits.

Given that the sludge from the Bulger and Yukon facilities does not exhibit the characteristics of hazardous waste and concentrations of the constituents of interest are below levels that are protective of human health and the environment, the Department recommended that the EQB approve these petitions. The recommendation to approve the petitions for future rulemaking does not automatically infer the promulgation of a rulemaking. Rather, with the approval of the petitions, regulatory amendments will be proposed in a future rulemaking that, once promulgated, will codify the delisting of F039 as a hazardous waste from the MAX Environmental Technologies, Inc. – Bulger and Yukon Facilities.

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the rulemaking petitions. Tom Mellott (Bureau of Waste Management) and Nikolina Smith (Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, there were no questions.

Senator Santarsiero made a motion to accept the petitions to move forward for rulemaking. Representative Vitali seconded the motion, which was unanimously approved by the Board. (19-0)

OTHER BUSINESS:

Laura Edinger provided a regulatory update.

- This Board adopted two proposed rulemakings on December 17, 2019. The Control of VOC Emissions from Oil and Natural Gas Sources is currently open for public comment through Monday, July 27, 2020. Three virtual public hearings are scheduled for June 23, 24 and 25. Details on how to access the hearings is available on the EQB webpage. The Water Quality Standards for Manganese and Implementation is anticipated for publication in the *Pennsylvania Bulletin* later this summer.
- On January 21, 2020, the EQB adopted three rulemakings – final-omitted Hazardous Waste Generator Improvement Rule, final-form Unconventional Well Permit Application Fees, and final-form Revision of the Maximum Allowable Sulfur Content Limit No.2 and Lighter Commercial Fuel Oil. All three are scheduled to be considered at the Independent Regulatory Review Commission's next meeting scheduled for Thursday, June 18, 2020.

Jessica Shirley provided an update to the Cap and Trade petition.

- The contractor, ICF, is currently working on the transportation sector modeling, using multiple transportation models. One of them is modeling the vehicle miles traveled and travel demand strategies, called the travel efficiency assessment method and the trip reduction impacts of mobility management strategies model – TRIMMS model. After the transportation sector is complete, the team will begin developing the manufacturing and energy production sections.

Mr. Caskey inquired when the EQB might vote on RGGI (the CO₂ Budget Trading Program Proposed Rulemaking also referred to as the Regional Greenhouse Gas Initiative (RGGI)). Ms. Shirley responded that timelines are currently being reevaluated. Although the Governor's Executive Order includes an EQB consideration deadline of July 31, 2020, given the feedback from members of advisory committees and general public comment, the Department plans to continue conversations and outreach efforts among the environmental justice community, affected communities and general public throughout the summer.

Representative Vitali asked if the RGGI proposed rulemaking would be considered at the July EQB meeting. Ms. Shirley answered that the Department is currently reviewing the timeline. Evaluation is ongoing, assessing what additional outreach may be needed prior to the presentation of the rulemaking to the Board for consideration. Representative Vitali inquired regarding the deadline included in the Executive Order. Ms. Shirley responded that also is currently being evaluated.

Senator Santarsiero stated for the record that he is strongly in favor of moving forward with the proposed rulemaking at the July EQB meeting. Chairperson McDonnell thanked the Senator for his statement.

Mr. Welty suggested that there are ongoing discussions regarding a “RGGI 2.0” within the administration and asked for any insight from the Department or anyone on the EQB. Ms. Shirley replied that, to her knowledge currently, there is only one rulemaking in development that aims to reduce CO₂ emissions from the electricity generation sector. Chairperson McDonnell also noted that he was unaware of a RGGI 2.0.

Mr. Caskey commented that both the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) voted against the Department’s recommendation to move the RGGI proposed rulemaking forward to the EQB for consideration. He claimed this was due to the lack of economic modeling. He inquired if the RGGI proposed rulemaking was to be postponed for consideration in the Fall, what would be done to update economic modeling. Ms. Shirley responded that when the REMI (Regional Economic Modeling, Inc.) modeling has been completed, the Department will provide updates to AQTAC, the CAC, environmental entities, other community organizations, and to the general public. This is included in the evaluation of outreach discussed earlier.

Mr. King asked if the next meeting in July would be virtual or in-person. Ms. Shirley responded that while a July meeting is anticipated, and even though Dauphin County will be in the green phase, the EQB meeting will be held virtually because most people will still be working from home and the Rachel Carson State Office Building will not be open to the public.

Representative Vitali noted to the Board that Richard Fox, the Executive Director of the House Democratic Environmental Resources and Energy Committee, and long-serving alternate on this Board, is retiring at the end of June. Representative Vitali expressed his desire to publicly acknowledge and thank Richard for all his hard work. Representative Vitali and Mr. Fox both worked on the Joint Conservation Committee 28 years ago. Richard served twice as Representative Vitali’s Executive Director and also served as Executive Director of both the House Environmental Committee and the Senate Environmental Committee. He has done a consistently outstanding job, and the institutional knowledge he carries with him will certainly be missed. Chairperson McDonnell commented that everyone will miss Richard and he also thanked him for all his years of service. Senator Santarsiero added his thanks and wished him the best for the future.

NEXT MEETING:

The next meeting of the EQB is scheduled for Tuesday, July 21, 2020. The July meeting will be a virtual meeting held via WebEx.

ADJOURN:

With no further business before the Board, Andrea Lowery moved to adjourn the meeting. Senator Santarsiero seconded the motion, which was unanimously approved by the Board.

The June 16, 2020, meeting of the Board was adjourned at 9:42 a.m.