

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**June 15, 2021**

**VOTING MEMBERS AND/OR ALTERNATES PRESENT**

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection  
Erin Wachter, alternate for Allison Jones, Secretary, Governor’s Office of Policy and Planning  
Michael Hanna, alternate for Russell Redding, Secretary, Department of Agriculture  
Paul Opiyo, alternate for Dennis Davin, Secretary, Dept. of Community and Economic Development  
Peter Blank, alternate for Alison Beam, Acting Secretary, Department of Health  
Mohona Siddique, alternate for Jennifer Berrier, Acting Secretary, Department of Labor and Industry  
Natasha Fackler, alternate for Yassmin Gramian, Secretary, Department of Transportation  
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission  
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission  
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission  
Gladys Dutrieuille, Chairman, Public Utility Commission  
Nick Troutman, alternate for Senator Gene Yaw, Senate Environmental Resources & Energy Committee  
Emily Eyster, alternate for Senator Carolyn Comitta, Senate Environmental Resources & Energy Committee  
Representative Daryl Metcalfe, House Environmental Resources & Energy Committee  
Representative Greg Vitali, House Environmental Resources and Energy Committee  
Robert Barkanic, Citizens Advisory Council  
Cynthia Carrow, Citizens Advisory Council  
John St. Clair, Citizens Advisory Council  
Jim Welty, Citizens Advisory Council  
John Walliser, Citizens Advisory Council

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Laura Griffin, Regulatory Coordinator  
Jessica Shirley, Policy Director  
Robert “Bo” Reiley, Bureau of Regulatory Counsel

**CALL TO ORDER AND APPROVAL OF MINUTES**

The 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, 2021, EQB meeting minutes.

**Representative Vitali made a motion to adopt the May 19, 2021, EQB meeting minutes. Andrea Lowery seconded the motion, which was unanimously approved by the Board. (19-0)**

**CONSIDERATION OF PROPOSED RULEMAKING: COAL REFUSE DISPOSAL REVISIONS (25 Pa. Code Chapters 88 and 90)**

John Stefanko (Deputy Secretary for Office of Active and Abandoned Mine Operations) provided an overview of the proposed rulemaking. Bill Allen (Director for Bureau of Mining Programs) and Christopher Minott (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department's presentation.

**Representative Vitali made a motion to adopt the proposed rulemaking. Gladys Dutrieuille seconded the motion, which was unanimously approved by the Board. (19-0)**

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

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the final rulemaking. Troy Conrad (Director for Bureau of Environmental Cleanup and Brownfields), Mike Maddigan (Chief for Voluntary Cleanup and Standards Section) and Nikolina Smith (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Representative Metcalfe asked if the Department was aware that the current vanadium level causes many problems with remediation and other construction projects because it is set as low as the background level in the soil, which requires remediation to a point that makes the soil cleaner than it was prior.

Deputy Secretary Ramamurthy said the Department understands and is also concerned with the fact that the current medium-specific concentration (MSC) standard is at the low end of the range of the background concentration. The current MSC is based on EPA's PPRTV (Provisional Peer-Reviewed Toxicity Value) for vanadium and its soluble inorganic compound. The Department followed the hierarchy provided in Chapter 250. Even though the cleanup program provides alternative pathways like site specific risk assessments and background evaluations, the Department is trying to ascertain if it can come up with an alternative toxicity level which is protective of public health and at the same time, legally permissible under the Act. He went on to add that because it was not in the proposed rulemaking, it can't be changed in the final rulemaking. The Department will be undertaking this initiative along with lead in the next rulemaking.

Representative Metcalfe asked if other states were having the same problem with remediation and projects based on EPA's analysis of vanadium levels. Deputy Secretary Ramamurthy responded by saying every state has their own act and regulations under their cleanup program. Vanadium has different levels in regulations for different states and there is no consistency. The Department is re-evaluating to see if an appropriate level can be established as legally permissible under our act and regulations.

Representative Metcalfe asked if a separate rulemaking to amend the vanadium MSC would be forthcoming in the very near future because this is an issue that is costing us jobs and economic activity. Krishnan answered yes, the intent is for the next rulemaking to address vanadium as well as lead. Representative Metcalfe questioned the timeframe for the next rulemaking.

Policy Director Jessica Shirley responded that the rulemaking Krishnan was referring to will be listed on the next regulatory agenda published by the Governor's Office, which should be published within the next few weeks. Rulemakings tend to take a year and a half to two years depending on process, public comment periods, etc. The Department plans to do it as quickly as possible, given the information that is needed is available.

Representative Metcalfe encouraged DEP to communicate with his office as Chairman of the Environmental Resources & Energy Committee and he would help to address legislatively what was needed in order to expedite this change.

Jim Welty disagreed with the assertion that because there wasn't a recommended change in the proposed rulemaking, changes could not be made in the final rulemaking. He stated that the full table was published which included the vanadium levels. To him, that table was out for public comment because it was an attachment to the proposed rulemaking. He added that in the past there have been provisions added in final rulemakings that were not previously in the proposed rulemaking.

Krishnan responded that the fundamental rationale is to give all interested parties an opportunity to comment on a potential change. He noted that it is the same issue with the lead level and while the Department agreed that the target blood lead level should be lowered, that value change was not included in the proposed rulemaking. A value should not be changed in the final rulemaking without giving an opportunity for other interested parties to comment on it, which is one of the purposes for the Commonwealth Documents Law.

**Representative Vitali made a motion to adopt the final rulemaking. John Walliser seconded the motion, which was approved by a majority of the Board. Representative Daryl Metcalfe, Nick Troutman (alternate for Senator Gene Yaw), and Jim Welty voted in opposition. (16-3)**

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

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the petition. Lisa Daniels (Director for Bureau of Safe Drinking Water) and Leda Lacomba (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Representative Metcalfe stated he was in support of DEP's rejection of petitioner Delaware Riverkeeper's limit, but also feels the Department should not be using its limited resources in an attempt to set its own limit, which it has no experience in doing. Instead, he said Pennsylvania should wait for the federal rulemaking to set a nationwide MCL, which is currently in process, because the U.S. EPA has the scientific expertise necessary to take this action.

Representative Vitali thanked the Delaware Riverkeeper who is always mindful of public health and urged the Department to take swift action on this, as it is a very serious issue that puts public health and the environment at risk.

**Representative Vitali made a motion to accept the Department's recommendation to move forward with a maximum contaminant level for the PFOA petition. Andrea Lowery**

**seconded the motion, which was approved by a majority of the Board. Nick Troutman (alternate for Senator Gene Yaw) voted in opposition. (18-1)**

**OTHER BUSINESS:**

Laura Griffin provided a regulatory update.

- The Independent Regulatory Review Commission approved the Water Quality Management and National Pollutant Discharge Elimination System Permit Application Fees and Annual Fees final rulemaking on May 20, 2021.
- The Water Supply Replacement for Surface Coal Mining final rulemaking will be effective upon publication in the *Pennsylvania Bulletin*, scheduled for June 26, 2021.
- The Water Quality Standards – Class A Stream Redesignations final rulemaking will be effective upon publication in the *Pennsylvania Bulletin*, scheduled for July 10, 2021.

Jim Welty inquired about the status of the cap and trade petition. Policy Director Jessica Shirley responded that the petition is currently under internal review and will not be ready for July or August EQB meetings. The earliest it can be expected is September 2021.

**NEXT MEETING:**

The next meeting of the EQB is scheduled for Tuesday, July 13, 2021.

**ADJOURN:**

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Jim Welty seconded the motion, which was unanimously approved by the Board. The June 15, 2021, meeting of the Board was adjourned at 10:15 a.m.