

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
September 21, 2021

VOTING MEMBERS AND/OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection (DEP or Department)
Katy Spehar, alternate for Allison Jones, Secretary, Governor's Office of Policy and Planning
Michael Hanna, alternate for Russell Redding, Secretary, Department of Agriculture
Adam Walters, alternate for Dennis Davin, Secretary, Department of Community & Economic Development
Peter Blank, alternate for Alison Beam, Acting Secretary, Department of Health
Patrick McKenna, alternate for Jennifer Berrier, Secretary, Department of Labor and Industry
Emily Watts, alternate for Yassmin Gramian, Secretary, Department of Transportation
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Jeff Painter, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Regi Sam, alternate for 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
Glendon King, alternate for Rep. Daryl Metcalfe, House Environmental Resources & Energy Committee
Representative Greg Vitali, House Environmental Resources & Energy Committee
Robert Barkanic, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
John St. Clair, Citizens Advisory Council
James Schmid, alternate for 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 hybrid meeting of the Environmental Quality Board (EQB or Board) was called to order by Chairperson McDonnell at 9:00 a.m. The Board considered its first item of business: approval of the July 13, 2021, EQB meeting minutes.

**Representative Vitali made a motion to adopt the July 13, 2021, EQB meeting minutes.
Andrea Lowery seconded the motion.**

Glendon King asked for additions to the meeting minutes to clarify some of the motions made by Representative Metcalfe.

- a. On Page 2, in the motion made by Representative Metcalfe, to add: *which he opined would be violating the Sunshine Act itself and asked to table the regulation and postpone the meeting to be compliant with the law.*
- b. On Page 4, in the first bolded motion made by Representative Metcalfe, to add: *which he opined is required by the Air Pollution Control Act.*
- c. On Page 5, in the last bolded motion made by Representative Metcalfe, to add: *which he opined is required by the Sunshine Act and asked to table the regulation until a meeting can be held that is compliant with the law.*

Secretary McDonnell added that the Department would agree with the changes as long as the minutes reflected that these statements are Representative Metcalfe's opinions on the Sunshine Act and Air Pollution Control Act, as opposed to a statement of facts.

After the Secretary confirmed both Representative Vitali and Andrea Lowery agree with the amended minutes that were just discussed. No other discussion was held. The amended July 13, 2021, EQB minutes were unanimously approved by the Board. (19-0)

CONSIDERATION OF PETITION FOR RULEMAKING: ANGELICA CREEK (25 Pa. Code § 93.9f)

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the petition. Manyi Liu (Director for Bureau of Clean Water), Josh Lookenbill (Monitoring Section Chief for Bureau of Clean Water) and Michelle Moses (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

No discussion followed the Department's presentation. Next, Stanley Kemp and Bethany Ayers Fisher provided a presentation on behalf of the petitioners. No discussion followed the petitioners' presentation.

Representative Vitali made a motion to accept the petition for further evaluation by the Department. James Schmid seconded the motion, which was approved by a majority of the Board. Glendon King (alternate for Representative Metcalfe) and Nick Troutman (alternate for Senator Yaw) voted in opposition. (17-2)

CONSIDERATION OF PROPOSED RULEMAKING: VOC RACT REQUIREMENTS FOR SHIPBUILDING AND SHIP REPAIR SURFACE COATING OPERATIONS, SOCMI PROCESSES, AND LARGE PETROLEUM DRY CLEANERS FOR THE 2015 OZONE (25 Pa. Code Chapters 121 and 129)

Mark Hammond (Director for Bureau of Air Quality) provided an overview of the proposed rulemaking. Jesse Walker (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. James Schmid seconded the motion, which was unanimously approved by the Board. (19-0)

CONSIDERATION OF PROPOSED RULEMAKING: EXCLUSION FOR IDENTIFICATION AND LISTING HAZARDOUS WASTE AT MAX ENVIRONMENTAL TECHNOLOGIES, INC. BULGER AND YUKON FACILITIES (25 Pa. Code Chapter 261a)

Ali Tarquino Morris (Director for Bureau of Waste Management) provided an overview of the proposed rulemaking. Tom Mellott (Chief for Hazardous Waste Management Division) and Nikolina Smith (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Andrea Lowery questioned DEP's process for auditing the self-monitoring reports submitted by MAX Environmental Technologies, Inc. (MAX). Director Tarquino Morris responded that information will be submitted to the Southwest Regional Office and a DEP chemist will review and confirm the submitted information meets the delisting conditions. A reporting frequency was not included in the proposed rulemaking but is being considered for the final rulemaking.

James Schmid asked whether MAX or the Department decides that a specific batch of filter cake is nonhazardous, also inquiring if the Department confirms the quality of the waste before it is disposed in the landfill. Director Tarquino Morris explained that the required conditions are identified in the proposed rulemaking and the MAX facility would be responsible to confirm that the testing meets the delisting conditions before disposal occurred. The Department would not approve that confirmation prior to disposal, but if the conditions are not met then the facility would be risking unlawful disposal of hazardous waste. Ms. Tarquino Morris added that when the results for a specific batch of waste are submitted to the Department, it would review and confirm that the waste was disposed as the condition of the delisting.

James Schmid then commended the Department for establishing a webpage with information on the two MAX facilities. He noted that over the past twelve years the facilities have had compliance issues, including NPDES permit violations, consent orders and \$750,000 in fines. Considering that compliance record, he was concerned that the Department would not be inspecting the facilities to observe the sludge cake testing and would not review the results of the testing until sometime in the future. He suggested that the Department ask for split samples to confirm the testing results periodically or check the testing results before those samples are declared as nonhazardous waste.

Director Tarquino Morris explained that the Department inspects the facilities regularly and additional testing is required prior to waste disposal. MAX would need to submit a physical and chemical waste characterization that DEP must approve before that waste was shipped to the receiving facility under the residual waste regulation. This requirement would apply to the sludge filter cake even if it is disposed of at MAX's own landfill. The characterization is reviewed and approved by a DEP chemist prior to the waste being transported to the disposal site.

James Schmid said, as he understood it, the purpose of this delisting is to save the facilities money that is currently spent to send this waste out of state to a hazardous landfill facility. He asked if the Department needed to consider the remaining capacity in the Yukon landfill 6, since that is where MAX proposes to put the delisted waste that has been declared nonhazardous. Ms. Tarquino Morris responded that the purpose of the delisting is to appropriately classify the waste, but some of the economic benefits are discussed in regulatory documents that accompany this proposed rulemaking. She added that if the delisting rulemaking goes forward, the waste could be disposed of at any Subtitle D facility (a residual waste facility as opposed to hazardous).

James Schmid then asked why per- and polyfluoroalkyl substances (PFAS) and technologically enhanced normally occurring radioactive substances (TENORM) are not included in the list of chemicals to be tested. He was concerned that TENORM is generally concentrated in filter cake and the prime materials being accepted at both the Yukon and Bulger facilities are wastes from the oil and gas industry that contain radioactivity. Ms. Tarquino Morris responded that the substances to be tested come directly from the federal hazardous waste regulations, which define what a hazardous waste is and that definition is limited to specifically listed compounds that identify a waste as characteristically hazardous. There are many other compounds that are of concern to DEP both from an environmental and a public health standpoint and those chemicals are addressed in the residual waste regulations. TENORM would be evaluated for these loads of waste even if the delisting rulemaking moves forward. All wastes in Pennsylvania are monitored for radioactivity under DEP's Solid Waste Radiation Monitoring guidance document and the TENORM disposal protocol, which limits the amount of radioactivity that can go into both municipal and residual waste landfills. DEP is actively working on evaluating disposal outlets for PFAS-containing waste and identifying how much PFAS is in a myriad of different waste streams to ensure that disposal facilities can adequately retain those chemicals within the facility. James Schmid thanked Ms. Tarquino Morris for the additional information.

Andrea Lowery commented she has significant concerns about MAX's ability to self-monitor without significant oversight from the Department, noting that the report on EPA's website shows they are currently in violation at the Yukon facility and have had five significant violations in the last five years.

Katy Spehar made a motion to adopt the proposed rulemaking. Robert Barkanic seconded the motion, which was approved by a majority of the Board. Representative Greg Vitali, Andrea Lowery and CAC member James Schmid voted in opposition. (16-3)

OTHER BUSINESS:

Laura Griffin provided a regulatory update.

- The Administration of the Land Recycling Program final rulemaking is scheduled to be considered at the Independent Regulatory Review Commission's (IRRC) public meeting on Thursday, September 23, 2021.
- On July 31, 2021, the Water Quality Standards – Dunbar Creek et al. Stream Redesignations proposed rulemaking was published in the *Pennsylvania Bulletin*, opening a 45-day public comment period. The comment period closed Tuesday, September 14, 2021. Three people provided testimony at the August 30 public hearing and 228 comments were received. IRRC's comments are due October 14, 2021.
- On August 14, 2021, the Radiation Safety Requirements for Non-Heating Arts Radiation Generating Devices proposed rulemaking was published in the *Pennsylvania Bulletin*, opening a 30-day public comment period. The comment period closed Monday, September 13, 2021. One comment was received. IRRC's comments are due October 13, 2021.
- On August 28, 2021, the Water Quality Management and National Pollutant Discharge Elimination System Permit Application Fees and Annual Fees final rulemaking was published in the *Pennsylvania Bulletin*, making it effective.
- On September 1, 2021, IRRC approved the CO₂ Budget Trading Program final rulemaking. Last week, the House Environmental Resources and Energy Committee reported a concurrent regulatory

review resolution to the General Assembly to disapprove the rulemaking. The House and Senate have 30 calendar days or 10 legislative days, whichever is longer, to adopt the resolution.

OTHER BUSINESS:

Jessica Shirley updated Representative Vitali on the VOC emissions rulemaking for oil and natural gas sources. She said the Bureau of Air Quality staff are still reviewing data and comments and the Department hopes to have a final rulemaking ready for the Air Quality Technical Advisory Committee (AQTAC) at some point this year, but cannot set a date yet as staff are continuing to work through some of the technical aspects of the rulemaking. Representative Vitali expressed his frustration that the rulemaking was not done and asked for an explanation of the technical issues under review. Secretary McDonnell responded that some of the technical issues run into legal issues and the Department is in the process of working through this.

Andrea Lowery inquired when the Board might consider the final-form rulemaking for water quality standards for manganese and implementation. Laura Griffin responded that the Department is finishing drafting the rulemaking documents, explaining that it took some time to work through all the comments. She added that the draft final-form rulemaking will be presented to the pertinent advisory committees before it is submitted to the Board.

NEXT MEETING:

The next meeting of the EQB is scheduled for Tuesday, October 19, 2021.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Andrea Lowery seconded the motion, which was unanimously approved by the Board. The September 21, 2021, meeting of the Board was adjourned at 10:15 a.m.