

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 16, 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
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
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, Chair, 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 and Energy Committee
Robert Barkanic, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
Trisha Salvia, Citizens Advisory Council
Jim Welty, Citizens Advisory Council
John Walliser, Citizens Advisory Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Griffin, Regulatory Coordinator
Kate Cole, Acting 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 9:08 a.m. The Board considered its first item of business: approval of the October 19, 2021, EQB meeting minutes.

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

Laura Griffin stated there was a resolution for the revisions to the July 13, 2021 meeting minutes and immediately followed by sharing what the edits were, so all edits would be on the record for this meeting’s minutes.

1. At the top of page 2 where Representative Metcalfe made his motion, the sentence will say, “Representative Metcalfe made a motion to table the regulation and postpone the meeting until the Rachel Carson State Office Building can be open to the public as required by the Sunshine Act.”
2. On page 4, first motion, the sentence will say, “Representative Metcalfe made a motion to table the regulation until the Department can hold in-person meetings in impacted communities as required by the Air Pollution Control Act.”
3. On page 5, second motion, the sentence will say, “Representative Metcalfe made a motion to table the regulation until it can be considered at a meeting that is open to the public, as required by the Sunshine Act.”

Glendon King confirmed the changes were correct and thanked Laura for providing the updated information.

The motion was unanimously approved by the Board. (19-0)

CONSIDERATION OF FINAL RULEMAKING: CONTROL OF VOC EMISSIONS FROM GASOLINE DISPENSING FACILITIES – STAGE I AND STAGE II (25 Pa. Code Chapters 121 and 129)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the final rulemaking. Chris Trostle (Environmental Group Manager for Bureau of Air Quality) and 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 final rulemaking. Andrea Lowery seconded the motion, which was approved by a majority of the Board members. Nick Troutman (alternate for Senator Gene Yaw) and Glendon King (alternate for Representative Daryl Metcalfe) voted in opposition. (17-2)

CONSIDERATION OF PROPOSED RULEMAKING: MUNICIPAL WASTE RURAL TRANSFER FACILITY PERMIT-BY-RULE (25 Pa. Code Chapters 271 and 279)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the proposed rulemaking. Ali Tarquino Morris (Director for Bureau of Waste Management) and Nikolina Smith (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department’s presentation.

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

**CONSIDERATION OF PROPOSED RULEMAKING: SAFE DRINKING WATER
PFAS MCL RULE (25 Pa. Code Chapter 109)**

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the proposed rulemaking. 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, Glendon King asked how recent federal actions related to PFAS, including the passage of the Infrastructure Investment and Jobs Act and EPA's announcement to propose a federal PFAS MCL rule, would impact PFAS issues in Pennsylvania. Lisa Daniels responded that the Department does not know yet if infrastructure funding for drinking water systems will be provided as grants or low interest loans, so the impact is not clear. Aneca Atkinson confirmed that, based on EPA's roadmap, the compliance and effective dates for EPA's PFAS rule would be in late 2026 at the earliest and that the Department has had discussions with EPA regarding the proposed MCLs. Lisa Daniels added that if EPA's final PFAS MCL number is higher than the Department's proposed MCL, Pennsylvania can choose to be more stringent. If the number is lower, then the Department would have to go through the process to amend the regulations to be at least as stringent as EPA. Until EPA promulgates a final PFAS MCL rule, the Department will continue following the science and information provided through public comment; all information would be taken into consideration between the proposed and final stages of the rulemaking process.

Glendon King asked if the Department had any information to share with the Board regarding the amount spent to develop the rulemaking and respond to the petition. Lisa Daniels provided estimated figures for the toxicology contract, sampling plan, and staff costs and added that there would be additional costs to complete the final rulemaking, including extending the contract with Drexel for a second year.

Gladys Dutrieuille asked if the Department talked to any of the water associations. Lisa Daniels answered that the Department received information from the American Water Works Association, as well as PUC-regulated facilities, and encouraged industry associations and regulated facilities to comment on the proposed rulemaking.

Peter Blank, on behalf of Acting Secretary Beam, thanked the Department for the presentation and the in-depth analysis and methodology presented and expressed the Department of Health's strong support for this proposed rulemaking, noting that it is needed to protect public health.

Nick Troutman commented this is an important issue for the Senate Republican Caucus and asked if the public hearings would be virtual or in person. Aneca Atkinson responded that the Department is currently allowing for both in person and virtual options to meet the needs of most of our constituents.

Erin Wachter made a motion to adopt the proposed rulemaking. Representative Vitali seconded the motion, which was approved by a majority of the Board members. Nick Troutman (alternate for Senator Gene Yaw) and Glendon King (alternate for Representative Daryl Metcalfe) voted in opposition. (17-2)

CONSIDERATION OF RULEMAKING PETITION:
CONVENTIONAL OIL AND GAS WELL BONDING (25 Pa. Code § 78.302)

Scott Perry (Deputy Secretary for Office of Oil and Gas Management) provided an overview of the rulemaking petition. Kurt Klapkowski (Director for Bureau of Oil and Gas Planning and Program Management) and Elizabeth Davis (Assistant Director for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Glendon King asked if the Board can not accept a petition that the Board feels would violate state law or requests an action that EQB cannot take. Bo Reiley answered yes, those are the minimum requirements the Department reviews when vetting the proposed petition.

King asked the Department to identify the EQB's statutory authority to change bonding amounts for conventional wells. Elizabeth Davis, Assistant Director, stated the Department begins its evaluation with the authorizing statute containing the Board's rulemaking authority. Section 3274 of the Oil and Gas Act grants the Board rulemaking authority to implement the Oil and Gas Act. The specific statutory authority in 58 Pa.C.S. § 3225(a) allows the Board to adopt regulations for bonding. The Department then confirmed that no other provisions in the authorizing statute or another statute conflict with that broad grant of authority and that specific grant of authority. Davis said the Department's position is that Act 87 of 2012 does not conflict with that grant of rulemaking authority and the Department disagrees with the Marcellus Shale Coalition's interpretation.

Representative Vitali asked if it was accurate to state there is up to 200,000 orphaned and abandoned wells in Pennsylvania and no source of funding, other than the Commonwealth, to plug them. Kurt Klapkowski answered there was no modern environmental statute that allowed for registrations of wells until 1955, so it's unclear exactly what that number is. A 2015 study by the University of Pittsburgh and DCNR estimated 390,000 wells have been drilled in the Commonwealth. The Department can account for around 190,000 wells that have been plugged, listed as active and permitted or registered, and wells that are on the orphaned and abandoned list, which leaves around 200,000 wells.

Representative Vitali asked about the cost to plug an oil and gas well in Pennsylvania, the current bond amount for a conventional well, how many wells the Department has plugged recently, and how many wells the petition would apply to. Scott Perry responded that the average cost is \$33,000 per conventional well based on the Department's records, adding that oil wells are cheaper to plug and gas wells are more expensive. However, because the Department doesn't have the financial resources to plug wells, only about 20 have been plugged over the past two years to address emergency situations or wells that present a risk of harm. He confirmed that the bond amount for a single well is \$2,500, with a blanket bond of \$25,000, and there are 100,508 active permits for conventional wells.

Representative Vitali commented that he fully supports the Sierra Club's two petitions, noting that the Commonwealth already has 200,000 orphaned and abandoned wells. He concluded that the public should not be responsible for cleaning up more wells and, therefore, bonding requirements need to be raised to cover the cost to plug a well.

Gladys Dutrieuille asked the Department to confirm if the Board accepted the petition for further study, that study would take into consideration whether the bonding amounts proposed are appropriate. Scott Perry agreed and said the Department is making no judgment on the substance of the petition and has not

evaluated the appropriateness of the requested bonding amounts, just that the petition meets the three minimum criteria established by the petition policy.

Glendon King asked for an initial estimate of staff time or resources it may take to appropriately analyze these two petitions and come up with a report to the Board. Scott Perry replied that the Department had not undertaken that type of analysis yet because the Board had not accepted the petitions for review.

Jim Welty commented that the Department's review looks at three determinations: is the petition complete; does it request an action that can be taken; and does the requested action conflict with federal law. Welty explained that the Board may refuse to accept the petition if it determines that one or more of the following exists: 1) the EQB has within the previous 2 years considered the issue; 2) the action that has been requested by the petitioner includes a matter that is currently in litigation; 3) the requested action is not appropriate for rulemaking by the EQB due to policy or regulatory considerations; or 4) the petition involves an issue previously considered by the EQB. The Board reviews each of those criteria to determine whether to refuse or accept the petition. Welty noted that the Department's determination is separate from the EQB's role in the process, concluding that he disagreed with the Department and its interpretation.

Ankit Jain, associate attorney for Sierra Club, and Kelsey Krepps provided an overview of the rulemaking petition. Nick Troutman asked if the author of the petitioners' report ever visited a conventional well site or discussed this bonding requirement with the conventional industry. Jain stated that the report relied upon plugging data available from the Department's website to look at what the plugging cost would be. Troutman recommended consultation with the conventional industry moving forward.

Representative Vitali made a motion to adopt the rulemaking petition for further study by the Department. Patrick McKenna seconded the motion.

Discussion on the motion continued with Glendon King expressing concern that adopting the requested bonding amounts would completely devastate the conventional industry and stating that the statutory language is clear that the Board does not have the authority to accept this petition. King argued the language in 72 P.S. § 1606-E on conventional oil and gas well bonding prevents the Board from changing the bonding limits for conventional wells and concluded that the Board did not have the authority to accept this petition and urged a no vote.

Jim Welty echoed King's comments and urged a "no" vote.

The motion was approved by a majority of the Board members. Nick Troutman (alternate for Senator Gene Yaw), Glendon King (alternate for Representative Daryl Metcalfe), and Jim Welty voted in opposition. (16-3)

CONSIDERATION OF RULEMAKING PETITION:
UNCONVENTIONAL OIL AND GAS WELL BONDING (25 Pa. Code § 78a.302)

Scott Perry (Deputy Secretary for Office of Oil and Gas Management) provided an overview of the rulemaking petition. Kurt Klapkowski (Director for Bureau of Oil and Gas Planning and Program Management) and Elizabeth Davis (Assistant Director for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Ankit Jain, associate attorney for Sierra Club, and Kelsey Krepps provided an overview of the rulemaking petition. Jim Welty asked the petitioners if they knew how many unconventional wells have been abandoned in Pennsylvania. Jain responded that he thought the number was somewhere between 50 and 100, but noted that eventually unconventional wells will stop producing. The petitioners' concern is that a large number would then become abandoned, as has happened with conventional wells. Welty responded that the Department's website shows no orphaned or abandoned unconventional wells. Jain apologized and said he might have been thinking about the number of abandoned unconventional wells that have not produced any oil and gas, even when listed as active.

Representative Vitali made a motion to adopt the rulemaking petition for further study by the Department. Emily Eyster seconded the motion.

Discussion on the motion continued with Jim Welty expressing concern that the petition asks the Board to eliminate the tiered bonding approach established in statute and questioning if the EQB could accept a petition that would effectively change the law, which is not the role of the EQB or the Department. Welty stated that the conventional and unconventional industries are separate and emphasized that in Pennsylvania there are over 100 plugged unconventional wells and no abandoned wells, so the bonding amounts in Pennsylvania are working. Welty noted that the unconventional industry has helped to identify and plug abandoned wells, and then concluded that the Board did not have the authority to alter the statutory bonding requirements and urged a no vote.

Andrea Lowery asked Counsel to explain if the issue related to the tiered bonding system versus going to a flat fee is a substantive question to be analyzed later in the process during the Department's further study of the petition or whether it raises a concern about the Board's statutory authority to consider the petition at all. Bo Reiley responded that when the Board looks at the petition there are four criteria to review, as Jim Welty stated in the discussion of the unconventional well bonding petition. When the Department makes its initial determination, all it is doing is looking to see if it has this broad, statutory authority, generally, to make the regulatory change requested by a petition and therefore it is an action the Department may actually consider through further in-depth review. Based on this initial review, the Department makes a recommendation.

The motion was approved by a majority of the Board members. Nick Troutman (alternate for Senator Gene Yaw), Glendon King (alternate for Representative Daryl Metcalfe), and Jim Welty 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 published in the *Pennsylvania Bulletin* on November 20, 2021 and will be effective upon publication.
- As a follow up to some EQB members' inquiries during previous meetings:
 - The Control of VOC Emissions from Oil and Natural Gas Sources draft final regulation will be presented to the Air Quality Technical Advisory Committee at its meeting on December 9, 2021.
 - The Water Quality Standards for Manganese and Implementation draft final regulation will be presented to the Water Resources Advisory Committee at its meeting on November 18, 2021.

NEXT MEETING:

The Board will not meet in December 2021, as that meeting has been cancelled. The next meeting of the EQB is tentatively scheduled for Tuesday, January 18, 2022.

ADJOURN:

With no further business before the Board, Jim Welty moved to adjourn the meeting. Patrick McKenna seconded the motion, which was unanimously approved by the Board.

The November 16, 2021, meeting of the Board was adjourned at 11:25 a.m.