

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
June 14, 2022**

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
Greg Hostetter, alternate for Russell Redding, Secretary, Department of Agriculture
Adam Walters, alternate for Neil Weaver, Acting Secretary, Department of Community and Economic Development
Peter Blank, alternate for Dr. Denise Johnson, Acting Secretary, Department of Health
Kristen Gardner, 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
Mike DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Joseph Lauver, alternate for Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Regi Sam, alternate for Gladys Dutrieuille, Chair, Public Utility Commission
Nick Troutman, alternate for Senator Gene Yaw, Senate Environmental Resources and Energy Committee
Senator Carolyn Comitta, Senate Environmental Resources and Energy Committee
Glendon King, alternate for Representative Daryl Metcalfe, House Environmental Resources and Energy Committee
Representative Greg Vitali, House Environmental Resources and Energy Committee
Bob Barkanic, Citizens Advisory Council
Trisha Salvia, Citizens Advisory Council
John St. Clair, Citizens Advisory Council
John Walliser, Citizens Advisory Council
Jim Welty, Citizens Advisory Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Griffin, Regulatory Coordinator
Brian Chalfant, 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 9:01 a.m. The Board considered its first item of business: approval of the May 18, 2022, EQB meeting minutes.

Representative Vitali made a motion to adopt the May 18, 2022, EQB meeting minutes. Erin Wachter seconded the motion, which was unanimously approved by the Board. John Walliser and Kristin Gardner abstained from the vote. (17-0-2)

CONSIDERATION OF PROPOSED RULEMAKING: RADIOLOGICAL HEALTH FEES (25 Pa. Code Chapter 218)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the proposed rulemaking. David Allard (Director for Bureau of Radiation Protection) 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. Erin Wachter seconded the motion, which was approved by a majority of the Board members. Nick Troutman and Glendon King voted in opposition. (17-2)

After the vote, David Allard added that he is retiring after 23 years with the Department and thanked the Board and the Department program staff, deputy secretaries, and executive staff for their support of the Radiation Protection Program over the years. Secretary McDonnell thanked Allard for his years with the Department, including the times he served as acting deputy secretary and for his extensive expertise in all things radiological.

CONSIDERATION OF FINAL RULEMAKING: CONTROL OF VOC EMISSIONS FROM UNCONVENTIONAL OIL AND NATURAL GAS SOURCES (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. Viren Trivedi (Division Chief for Bureau of Air Quality Permit Division) and Jennie Demjanick (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

At the beginning of the presentation, Deputy Secretary Ramamurthy read the following statement:

“At the March 15, 2022 meeting, the Board adopted the “Control of VOC Emissions from Oil and Natural Gas Sources” final rulemaking, which contained regulations applicable to both conventional and unconventional oil and natural gas sources of VOC emissions. After the final rulemaking was submitted to the Independent Regulatory Review Commission (IRRC) for final consideration, the House Environmental Resources and Energy Committee voted to send a letter to IRRC disapproving the regulation and requesting IRRC’s disapproval as well. The Committee’s primary concern with the regulation centered on language in Act 52 of 2016. The letter stated that Act 52 requires DEP to submit two rulemaking packages – one that applies only to conventional oil and natural gas sources and the other which would cover all other sources in the rulemaking.

The Committee’s letter to IRRC initiates the concurrent regulatory review resolution process. This is a process established in the Regulatory Review Act that allows the General Assembly to adopt a resolution that disapproves and permanently bars a final regulation from taking effect. Once the Committee reports the resolution, the General Assembly has 30 calendar days or 10 legislative days, whichever is longer, to vote on the resolution. If the resolution is adopted, the Governor then has the opportunity to veto, and the General Assembly would again

have 30 calendar days or 10 legislative days, whichever is longer, to override the veto. Because the session day calendar is subject to change, it is uncertain when the resolution process may conclude. The process could extend into next year, which would prevent the Department from submitting the final rulemaking to the [United States Environmental Protection Agency] EPA before the federal highway sanctions deadline on December 16.

While the Department disagrees with the Committee's interpretation of Act 52, to address the Committee's concerns and avoid the delay that a resolution would cause, the Department will develop and present to EQB a separate rulemaking for sources of VOC emissions installed at conventional oil and natural gas well sites. The revised rulemaking for the Board's consideration today encompasses the VOC regulations applicable only to unconventional oil and natural gas sources. A separate rulemaking for conventional sources of VOC emissions is forthcoming."

After the presentation, Representative Vitali asked when the EQB can expect to see regulations with regards to conventional sources. Brian Chalfant noted that the Department was working as expeditiously as possible to bring that rulemaking to the Board. Representative Vitali asked if understaffing in the Department's air quality program was a reason a rulemaking for VOC emissions from conventional oil and natural gas sources was not before the Board at this meeting. Deputy Secretary Ramamurthy noted that understaffing was part of the reason and that preparing a separate rulemaking requires dedication of significant Department resources and time.

Glendon King inquired whether the Department intended to bring the rulemaking for conventional sources back to the Board as a proposed rulemaking. Chalfant noted that the Department was still evaluating the appropriate form for the conventional rulemaking. Ramamurthy added that the Department aims to avoid the federal highway sanctions while following all relevant federal and state laws, and that the Department is exploring all options to that end. King indicated that a rulemaking for conventional sources moving from proposed to final by December would be difficult. Chalfant responded that moving a rulemaking from proposed to final in six months would be a very fast timeline.

Jim Welty noted that one reason why the Department and Board are in the current situation is because of the threat of a disapproval resolution from the House Environmental Resources and Energy Committee (Committee). Welty inquired if there was an understanding that the committee would not report a disapproval resolution now that the rulemakings for unconventional and conventional sources have been separated. Chalfant noted that the Department cannot control the Committee's actions, but that the Department is doing everything it can to ensure that the necessary regulations are in place in time for the Commonwealth to submit an approvable State Implementation Plan (SIP) to EPA to avoid the federal highway sanctions. Welty expressed concern that the committee could still report a disapproval resolution for either rulemaking (i.e., for unconventional or conventional sources), which would put the Department back in the same position as the rulemaking that included both unconventional and conventional sources. Chalfant acknowledged Welty's concern, and noted that the primary concern the Committee expressed about the rulemaking including both unconventional and conventional sources was the Committee's view that Act 52 of 2016 required a separate rulemaking for conventional sources. Chalfant noted that the Department did not agree with the Committee's view on that point, but that the Department intended to address the Committee's concern regarding Act 52 of 2016 by developing a separate rulemaking for conventional sources.

Welty sought confirmation that the rulemaking before the Board does not cover about 76% of the VOC emission reductions and about 80% of the methane emissions reductions compared with the rulemaking that included both unconventional and conventional sources. Ramamurthy confirmed Welty's figures and added that the difference is mainly attributable to the fact that emissions from unconventional sources are largely already controlled when compared with emissions from conventional sources. Welty expressed concern that this difference in the volume of emissions was a substantial enough change to merit restarting the rulemaking process. Ramamurthy responded that none of the analysis regarding reasonably available control technology (RACT) had changed and that the only difference from the rulemaking that included both conventional and unconventional sources was that the rulemaking before the Board today only applies to unconventional sources. Jennie Demjanick added that, compared with the rulemaking that included unconventional and conventional sources, the rulemaking before the Board today does not change the purpose or expand the scope of the rulemaking, and thus does not require restarting the rulemaking process.

Welty asked if the Department expected EPA to accept the rulemaking before the Board today as an approvable SIP. Ramamurthy noted that EPA does not distinguish between conventional and unconventional sources and that, to be approvable by EPA, Pennsylvania's SIP submission would have to cover unconventional and conventional sources. The rulemaking before the Board today is intended to constitute part of Pennsylvania's SIP submission, but another rulemaking covering conventional sources would also need to be included in the SIP submission to be approvable by EPA.

Welty asked if Pennsylvania could just adopt EPA's control techniques guidelines (CTGs) to meet federal requirements. Ramamurthy explained that CTGs are guidelines and that regulations based on an analysis of RACT are necessary to implement the CTGs.

Welty expressed concern that some of the numbers and analyses in the Regulatory Analysis Form (RAF), particularly the response to question 19 in the RAF, did not appear substantially different from the numbers and analysis in the RAF for the rulemaking that included unconventional and conventional sources.

King asked if the Department was considering bringing the forthcoming rulemaking for conventional sources to the Board as a final-form rulemaking based on the proposed rulemaking that included unconventional and conventional sources, and what the Department's legal authority would be for that. Chalfant and Bo Reiley reiterated that the Department was still evaluating the appropriate form for the rulemaking for conventional sources. King expressed concern if the Department would be presenting the Board with two final-form rulemakings (i.e., one for unconventional sources and one for conventional sources) based on one proposed rulemaking (i.e., for both unconventional and conventional sources). Chalfant reiterated that the Department was requesting a vote from the Board today on the rulemaking covering unconventional sources and that the Department is still evaluating the best path forward for a rulemaking covering conventional sources that follows all relevant state and federal laws with the goal of getting the necessary regulations in place to submit an approvable SIP to EPA in time to avoid the federal highway sanctions.

King expressed appreciation that the Department separated unconventional and conventional sources into separate rulemakings, and that doing so addressed concerns raised by the House Environmental Resources and Energy Committee on the rulemaking covering unconventional and conventional sources. However, King noted concerns about the revised approach, including that the rulemaking goes above and beyond federal requirements and procedural concerns if the Department were to have one proposed rulemaking

(i.e., for both conventional and unconventional sources) serve as the basis for two final-form rulemakings (i.e., one for unconventional sources and one for conventional sources).

Chairperson McDonnell asked if there was a motion to adopt the final-form rulemaking.

Welty expressed his belief that the RAF should be redone for the unconventional rulemaking and for the conventional rulemaking, his opposition to the process by which the rulemaking came before the Board today, and – for reasons expressed during the meeting – his intent to abstain from voting on the rulemaking.

Representative Vitali advised that Board members should not lose sight of the big picture that the planet is facing an existential crisis with regard to climate and that methane is a very important greenhouse gas.

Representative Vitali made a motion to adopt the final rulemaking. Senator Comitta seconded the motion, which was approved by a majority of the Board members. Nick Troutman, Glendon King, and John St. Clair voted in opposition. Jim Welty abstained from the vote. (15-3-1)

OTHER BUSINESS:

Laura Griffin provided a regulatory update on the Coal Refuse Disposal Revisions final rulemaking, which the Board adopted on May 18, 2022 and which will be delivered later in the week to IRRC and the standing committees for consideration at IRRC's July 21, 2022 public meeting.

Griffin also provided status updates on petitions, stating that the Department is continuing to develop the reports on the Conventional Oil and Gas Well Bonding and Unconventional Gas Well Bonding petitions and the greenhouse gas petition is still under internal review.

NEXT MEETING:

The next meeting of the EQB is scheduled for Tuesday, July 12, 2022.

Before calling for a motion to adjourn the meeting, Secretary McDonnell noted that this was his last Board meeting as he was retiring. He thanked the Board members for their commitment to public service by serving on the Board and the spirit in which members participated in the regulatory process by taking time to attend the Board meetings and review documents presented to the Board.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Senator Comitta seconded the motion, which was unanimously approved by the Board. The June 14, 2022, meeting of the Board was adjourned at 10:14 a.m.