

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
March 15, 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, Dept. of Community & Economic Development
Peter Blank, alternate for Keara Klinepeter, 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
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
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 & 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
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 February 15, 2022, EQB meeting minutes.

Representative Vitali made a motion to adopt the February 15, 2022, EQB meeting minutes. Erin Wachter seconded the motion, which was unanimously approved by the Board. (18-0)

Before moving onto the next item on the agenda, Secretary McDonnell addressed the letter sent by Representative Metcalfe to the Board, regarding the lawsuit filed in response to the Legislative Reference Bureau's refusal to publish the CO₂ Budget Trading Program final-form rulemaking in the *Pennsylvania*

Bulletin, stating the Department cannot comment on ongoing litigation but would look into the specific request about expenses.

CONSIDERATION OF FINAL RULEMAKING: CONTROL OF VOC EMISSIONS FROM 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 (Director for Division of Permits) and Jennie Demjanick (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Glendon King asked the Department to identify where it went beyond the requirements of the federal control techniques guidelines (CTG) and why the Department chose to go beyond those requirements.

Deputy Secretary Ramamurthy explained that EPA published the CTG for oil and natural gas industry sources in 2016, and the CTG has not been updated to reflect the current technology and information. The Federal Clean Air Act and its implementing regulations require the Department to do a state-specific assessment to determine what is reasonably available control technology (RACT) for the sources identified in the CTG. In response to comments received on the proposed rulemaking, the Department performed a reanalysis to look at the more state specific information, in addition to the information in the CTG, which is what prompted the changes. Ramamurthy stated that there is a lower threshold for storage vessels in the final rulemaking, based upon the Department's experience implementing Exemption 38, which has only applied to sources constructed after a certain date. These newer sources have been able to meet the lower threshold without needing plan approvals or site-specific assessments, which clearly demonstrated that the threshold was cost-effective for those sources. As a result, the Department determined that the lower threshold was cost-effective for all sources regardless of construction date.

Ramamurthy explained that in addition to clarifications to the rulemaking, the leak detection and repair (LDAR) requirement for fugitive emissions was adjusted based on the emission potential of the source. The Department had more robust data available for unconventional well sites because conventional well sites are exempt from plan approval requirements and inventory data is difficult to obtain. The Department gathered additional data to assess the cost-effectiveness for LDAR at conventional well sites and as a result changed the applicability from 15 barrels of oil equivalent per day on a well site to 5, in some instances, which was found to be cost effective. Ramamurthy concluded by noting that many comments were submitted asking DEP to reassess based on methane emissions. As this rulemaking is being promulgated to regulate VOC emissions, any reductions in methane emissions are a co-benefit.

King asked if the Department anticipated new forms or technical guidance documents will be necessary to implement the rule. Ramamurthy responded that there was no significant need for guidance documents, adding that owners and operators covered by the rule are well aware of their obligations. The CTG already identified the methodology for determining applicability. EPA has now proposed new source performance standards (NSPS) for oil and natural gas sources as well as emission guidelines with a lot of specific information. Viren Trivedi agreed with Deputy Secretary Ramamurthy and reiterated that no new forms or technical guidance documents are needed because most of the requirements are already being implemented from the 2011 NSPS and then the revised 2015 NSPS.

King mentioned it was 2019 when the Department issued General Permit 5a (GP-5a) and the revised permit for midstream sites (GP-5) and asked if the standards that were applicable in 2019 would be consistent with the new regulations and if not, asked what the differences were.

Ramamurthy provided a broad assessment to explain the differences – Exemption 38 and GP5a are for new sources and therefore require the implementation of best available technology (BAT). Typically, existing sources are required to meet RACT and new sources are required to meet BAT. However, that does not necessarily mean that BAT will always be more stringent than RACT. It can vary due to the cost of the emission threshold. So that is why the requirements of Exemption 38 and GP-5a are not necessarily imposed on existing sources. The 2.7 tons per year VOC emission threshold for storage vessels is one example where it is both BAT for new sources and RACT for existing sources. GP-5a is also not a regulation; it is a general permit containing general requirements for the source category and owners or operators are always able to request an independent assessment through an individual plan approval. General permits involve predetermined requirements and if the source meets those requirements within 30 days, it will be issued an authorization to use that general permit.

King asked for an explanation why the language in Act 52 would not apply to this rulemaking. Act 52 requires separate rulemakings for conventional and unconventional wells. Jennie Demjanick answered that Act 52, the Pennsylvania Grade Crude Development Act, does not apply to this rulemaking because it is being promulgated under the authority of the Air Pollution Control Act, which is under Title 35. The language in Act 52, relating to “any rulemaking concerning conventional oil and gas wells,” only applies to regulations that are promulgated under Title 58, the Oil and Gas statutory provisions. Act 52 does not apply to air quality regulations as they are specific to air contamination sources.

King disagreed, recited specific language in Act 52, and stated that there is nothing in that language that says it would only apply to Title 58 and not any regulations that the EQB promulgates. Demjanick agreed that the language “concerning conventional oil and gas wells” is somewhat vague and ambiguous. Demjanick explained that when language in a statute is ambiguous, you have to look at the entirety of the statute and all the other sections of Act 52 are very specific to regulations promulgated under Title 58. Otherwise, you could have this very broad reading of that language where it was intended to be specific to that statute.

King responded that the language alone is very clear that this requirement applies to any regulation that the EQB will promulgate and not just things in Title 58. He then asked if the Department considered running two parallel regulations at the same time and asked if this would have been possible.

Krishnan Ramamurthy explained that the control technology requirements are based on the emissions threshold and identifying the cost effective and technically feasible requirements, regardless of whether the source is at a conventional or unconventional well site. The emission threshold that EPA determined is set at a level that effectively exempts low production wells, which means that most conventional well sites fall below the applicability threshold. The Department’s Pennsylvania-specific assessment on the cost effectiveness found that few conventional well sites will be affected by this rulemaking, which is why the distinction between conventional and unconventional sources is really not significant enough to warrant two separate rulemakings.

Jim Welty asked for clarification about the Department not thinking there would be a need for technical guidance documents for this rulemaking because the regulated community has direction under Exemption 38 and GP-5 and 5a. Deputy Secretary Ramamurthy responded that because information is out there and

the LDAR requirements have been prescribed, new documents would not be needed, adding that the Department could reassess if it found additional guidance was needed for any of the affected parties. Jim Welty cautioned that the regulated community looking to other guidance documents for permitting may create confusion.

Jim Welty noted the comment and response document did not have a key to identify comments by the person who submitted them and asked if there was a reason why the Department did not provide it as was done in the past. Jessica Shirley replied this was a change that was made with the development of the eComment system and added that all comments and commenters are available online. Mr. Welty asked if the Department would reconsider and see if there was a way to review the eComment system to develop an easy-to-follow key for the public and the Board to follow. Policy Director Shirley said the Department can reevaluate.

Jim Welty commented that the reanalysis was discussed multiple times in the Preamble, RAF and comment and response document and asked why it was not included as part of the package for review. Viren Trivedi responded that a summary of all the reanalysis was provided. Welty understood that there is reference to the data used and where the data was received but commented that it would be helpful for the Department to include a copy of the full analysis in the future.

Glendon King commented that he believes Act 52 was violated through the single-rulemaking process. King understood the legal argument that was made, that this only applies to Title 58 regulations, but felt it was contradicted by the clear text of the statute and explained he would be a “no” vote for this reason.

Representative Vitali made a motion to adopt the final rulemaking. Emily Eyster 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)

OTHER BUSINESS:

Laura Griffin provided the following regulatory updates.

- The Control of VOC Emissions from Gasoline Dispensing Facilities final rulemaking is scheduled to be published in the *Pennsylvania Bulletin* on March 26, 2022 and will be effective upon publication.
- Adopted by the Board on November 16, 2021, the Safe Drinking Water PFAS MCL proposed rulemaking was published on February 26, 2022, for a 60-day public comment period that will close on April 27, 2022. Five public hearings are scheduled for March 21-25, 2022.
- The Exclusion for Identification and Listing Hazardous Waste at MAX Environmental Technologies Bulger and Yukon Facilities proposed rulemaking comment period closed on February 22. Thirteen comments were received. IRRC’s comments are due March 24, 2022.
- The National Pollutant Discharge Elimination System (or NPDES) Schedules of Compliance proposed rulemaking comment period closed on March 1. Four comments were received. IRRC’s comments are due March 31, 2022.

Laura Griffin also provided an update on the Conventional Oil and Gas Well Bonding and Unconventional Gas Well Bonding petitions, stating the Department continues to evaluate both petitions.

Jessica Shirley added that the Department is still reviewing the cap and trade petition response report.

NEXT MEETING:

The next meeting of the EQB is tentatively scheduled for Wednesday, May 18, 2022. (The meeting was moved to Wednesday due to the Pennsylvania primary elections on May 17). The April 19, 2022 meeting is cancelled.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Nick Troutman seconded the motion, which was unanimously approved by the Board. The March 15, 2022, meeting of the Board was adjourned at 9:52 a.m.