

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**October 16, 2007**

**VOTING MEMBERS OR ALTERNATES PRESENT**

Kathleen A. McGinty, Chairperson, Secretary, Department of Environmental Protection  
Kenneth Graham, alternate for Secretary Stephen M. Schmerin, Department of Labor and Industry  
Eric Madden, alternate for Secretary Allen D. Biehler, Department of Transportation  
William Hall, alternate for Chairman Wendell F. Holland, Public Utility Commission  
Erik Anderson, alternate for Representative Camille George  
Joseph Deklinski, alternate for Representative Scott E. Hutchinson  
Richard Fox, alternate for Senator Raphael J. Musto  
Patrick Henderson, alternate for Senator Mary Jo White  
Gary Camus, alternate for Carl Roe, Executive Director, Pennsylvania Game Commission  
Richard Manfredi, Citizens Advisory Council  
John Arway, alternate for Dr. Douglas J. Austen, Executive Director, Pennsylvania Fish and Boat Commission  
Dr. Walter Meshaka, alternate for Executive Director Barbara Franco, Pennsylvania Historical and Museum Commission  
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning  
Jolene Chinchilli, Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
David Strong, Citizens Advisory Council  
Paul Opiyo, alternate for Secretary Dennis Yablonsky, Department of Community and Economic Development  
Michael Pechart, alternate for Secretary Dennis C. Wolff, Department of Agriculture  
Dr. James Logue, alternate for Secretary Calvin B. Johnson, Department of Health

**DEPARTMENT STAFF PRESENT**

Richard P. Mather, Sr., Deputy Chief Counsel  
Kelly J. Heffner, Policy Office Director  
Michele Tate, Regulatory Coordinator

**CALL TO ORDER AND APPROVAL OF MINUTES**

Chairperson McGinty called the meeting to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The members introduced themselves and the Board considered its first item of business - the June 19, 2007, EQB meeting minutes.

With no corrections or additions, Chairperson McGinty called for a motion to adopt the minutes of the June 19, 2007, EQB meeting.

**Michael Pechart moved to adopt the June 19, 2007, EQB meeting minutes. Walter Heine seconded the motion, which was unanimously approved by the Board.**

## **PETITION TO REDESIGNATE SWIFTWATER CREEK BASIN (MONROE COUNTY):**

Dana K. Aunkst, Director, Bureau of Water Standards and Facility Regulation, presented an overview of the petition, including the Department's recommendation to the Board to approve the petition as administratively complete, under Section 23.2 of the EQB's Petition Policy. Rick Shertzer, Chief, Water Quality Standards Division, and Michelle Moses, Assistant Counsel, provided assistance with the presentation.

Following the Department's presentation, one of the co-petitioners, Theresa Merli, President of the Brodhead Watershed Association, addressed the Board. Ms. Merli stressed to the Board the merits of the petition, including the exceptional water quality of the petitioned waterbody, evidenced by the results of scientific studies provided in the petition.

Upon conclusion of Ms. Merli's remarks, Richard Manfredi asked Ms. Merli several questions, prefacing those questions first by stating that he recognized the stage of the petition process the Board is currently at and that the Board would only be voting today to authorize further study of the petition. Mr. Manfredi first asked if Pocono Township supported the petition. Ms. Merli replied no. Chairperson McGinty asked Ms. Merli to clarify if the Township opposed the petition. Ms. Merli replied that the Planning Commission is evaluating and studying the issues relevant to the petition, but has not taken an official position on the petition. Mr. Manfredi further asked if the Township of Tobyhanna supported the petition. Ms. Merli responded that the Township had tabled consideration of the petition. Given the petitioner's references in the petition application to land use development patterns in the petitioned area and the implications of development pressures, Mr. Manfredi voiced concern that the integrity of the stream redesignation process be maintained and that the process be driven by science. He further stated that the redesignation process should not be used as a land use tool and recommended that through the Department's review process of the petition, it be afforded the opportunity to request and review any formal letters of support or opposition to the petition. Chairperson McGinty responded to Mr. Manfredi's comments by adding that while it may be of interest to the Board as to who supports or opposes the petition, those sentiments will not be relevant to the Department's decision concerning the recommendation it brings forth to the Board concerning the requested redesignation. She stated further that the Department's decision will be based solely on science – the chemistry and biology of the stream – and will not be influenced by the support or lack thereof of the petition, with regard to land use issues affecting the petitioned area.

John Arway commended the petitioner for a complete and thorough petition that included a compilation of both existing and new information that was independently collected by the petitioner.

Richard Fox asked Ms. Merli if certain facilities identified as being potentially impacted by the petition – including Pocono Manor Investors, Sanofi Pasteur, and the Pocono Mountain School District – had been contacted regarding the petition. Ms. Merli responded that she was unsure how the potential redesignation could affect Sanofi Pasteur and the Pocono Mountain School District as both are located downstream of the petitioned waterbody. Mr. Fox further asked if the petition had generated local controversy, with particular regard to an editorial that appeared in the Pocono Record which called for the resignation of two members of the Monroe County Conservation District because they didn't vote to support the petition. Ms. Merli responded that the petitioners had contacted a number of county entities to familiarize them with their petition and to ask for letters of support. Among those contacted were the Monroe County Planning Commission and the Monroe County Conservation District. While staff of these organizations reviewed the petition and agreed that it was something their respective offices' could support, only the Monroe County Planning Commission provided a letter of support for the petition. Mr.

Fox inquired the reason behind the lack of support for the petition, and Ms. Merli responded that the concern with the petition and the requested redesignation is that it will stop development. Ms. Merli contradicted that concern by stating that the petition is not intended to stop development, but to encourage development in a sensitive manner.

Patrick Henderson concluded the discussion by agreeing with Chairperson McGinty's earlier comments that the Department's decision concerning the redesignation request in the petition will be guided by the science, and will not be impacted by non-relevant factors such as the support or opposition garnered for the petition. He concluded his comments by stating that he would be respectfully declining to support the petition, as he wished to have a better understanding of the issues faced by the communities impacted by the petition and their respective positions on the petition.

**Mr. Arway moved to accept the petition for further study. Joanne Denworth seconded the motion. The motion was approved by a majority of Board members, with Mr. Henderson voting to deny acceptance of the petition.**

### **PROPOSED RULEMAKING – TRIENNIAL REVIEW OF WATER QUALITY STANDARDS:**

Dana K. Aunkst provided a presentation to the Board on the Department's proposed Triennial Review of Water Quality Standards rulemaking, as well as the Department's proposed changes to Chapter 16 – Statement of Policy. Mr. Shertzer and Ms. Moses assisted with the presentation.

Following Mr. Aunkst's presentation, Mr. Henderson inquired about the ramifications the Department may incur if it didn't meet the Summer 2008 deadline to submit the finalized Water Quality Standards update to EPA Region III. Mr. Shertzer replied that the Department has worked with EPA previously to extend deadlines when unforeseen circumstances arose and that he expected the same level of flexibility with EPA for the current rulemaking. Mr. Shertzer stressed that staff would prefer to keep this effort on schedule but critical factors, such as state funding, have not in the past been tied to the Department's timely submittal of the updated standards to EPA.

Mr. Arway inquired about several issues associated with the rulemaking and noted that a more detailed assessment of the proposed rulemaking would be included in the Fish and Boat Commission's comments on the proposal. First, concerning the proposed expansion of the definition for “irrigation”, Mr. Arway cautioned that the proposed change should not be in direct conflict with River Basin Policy, which currently regulates water withdrawals from various entities. Second, Mr. Arway inquired whether existing use streams that currently do not have a designated use are now being included with a proposed designation in this rulemaking. Last, Mr. Arway cautioned the Department to be cognizant of the PCB criterion in Chapter 93, as there is a cancer risk component to the number for water exposure which is different than the neurotoxic endpoint used for fish consumption. He concluded by stating that it would be important for DEP, the Fish and Boat Commission, and the Department of Health to reconcile the endpoints for PCBs, even though the Department takes separate action on both and lists screens for both the water number and the fish consumption number.

Ms. Denworth asked the Department for its rationale for relocating the criterion in Chapter 16 to Chapter 93, in particular, whether the move was in response to an EPA requirement. Mr. Aunkst responded that the proposed move was not in response to an EPA directive. He elaborated further by stating that the Department initially placed the water quality criterion in Chapter 16 in order to amend the criteria more expeditiously to keep pace with the rapidly evolving science and procedures. After 15 years of experience, however, the Department has learned that the majority of these criteria are not changing and

that it would be more appropriate to place them in regulation under Chapter 93, than in a Statement of Policy, in Chapter 16.

In conclusion, Chairperson McGinty asked whether the molybdenum parameters the Department examined in its triennial review were cross-connected with abandoned mine discharge activities, as in some instances the Department has often experienced some dichotomy with EPA discharge numbers for molybdenum and instream water quality numbers. In particular, she asked whether the limits proposed for molybdenum were based upon EPA recommended numbers. Mr. Shertzer replied that the numbers were developed by Department staff who used EPA methods. In response, Chairperson McGinty inquired if the Department's number for molybdenum is an instream number, and how it compared with EPA's discharge limits for molybdenum. Mr. Shertzer responded that the number proposed for molybdenum is an instream number based on human health concerns.

**Mr. Manfredi moved to adopt the proposed rulemaking, with a 45-day public comment period, and one public hearing. Jolene Chinchilli seconded the motion, which was unanimously approved by the Board.**

### **PROPOSED RULEMAKING – DIESEL VEHICLE IDLING AND AUXILIARY POWER SYSTEMS:**

Deputy Secretary Thomas Fidler presented a summary of the proposed rulemaking. Joyce Epps, Director, Bureau of Air Quality, Arleen Shulman, Chief, Mobile Sources Section, and Kristen Campfield, Assistant Counsel, assisted.

Following the Department's presentation, Joseph Deklinski asked if it would be possible for a local government to adopt a more stringent idling ordinance in comparison to the Department's proposal. Deputy Secretary Fidler responded in the affirmative, and clarified that a local government could not adopt an idling ordinance for air quality purposes that was less stringent than the Department's proposal.

Mr. Henderson noted that when the Board accepted the petition for study earlier this year, a representative from the trucking industry stressed to the Board the benefits of having a statewide idling restriction regulation than a patchwork of local ordinances. Based upon that thought, Mr. Henderson asked for the Department to comment on its position concerning the grandfathering of existing idling restriction programs, and whether the Department thought it was advisable to prohibit the establishment of new municipal idling restriction programs after the effective date of the statewide regulation. Deputy Secretary Fidler responded that the Department carefully examined municipal programs currently in place – including those in Allegheny County and Philadelphia – and attempted to incorporate key provisions of those programs into the Department's statewide regulation in order to have the least amount of impact on these municipal programs. Kristen Campfield further noted that Section 12 of the Air Pollution Control Act does not provide the Department with explicit authority to grandfather local ordinances or laws that are less stringent than those required by the Act or by state regulation; therefore, without this authority, the Department could not provide grandfather provisions within the proposed regulation. Rick Mather reiterated Ms. Campfield's comments by stating that local governments under their own authority can adopt or promulgate ordinances and other requirements that are more stringent than state law and there is no state preemption of the action, either by the Department or through an EQB rulemaking.

Ms. Denworth questioned the authority for addressing nuisances associated with idling that are beyond the scope of air quality. Chairperson McGinty responded by clarifying that the Department does have the authority under the Commonwealth's Administrative Code to take action against public nuisances, such as

those related to noise. In those instances, the Department would work cooperatively with the local government to verify if there is a specific noise limit provided in local law or ordinance, and if violation of that law occurred, the appropriate action that could be undertaken by the Department. If no such local law or ordinance existed, the Department would rely on specific experts – such as an acoustical engineer – to affirm or deny the existence of a nuisance.

Mr. Henderson commended the Department for its effort in developing the proposed rulemaking. He further suggested to the Department that consideration be given concerning the permissible duration of idling when the vehicle is using alternative fuels. Mr. Henderson also inquired about the status of a penalty matrix the Department is to develop as a compliance tool for the regulation. Ms. Epps responded that while the proposed rulemaking is out for public comment, the Department will focus on developing the penalty matrix specific to the rulemaking. She further commented that the Department has a statutory framework for its civil penalty procedures and will use that framework to develop the penalty matrix.

Deputy Secretary Fidler added that the Department expended great effort in examining the current penalty structures associated with idling restriction programs in Allegheny County, Philadelphia, and in adjacent Mid-Atlantic states, and the EPA model rule. Collectively, most programs assessed fines between \$50 and \$500 for the first offense, with escalating fines for subsequent offenses. He concluded by stating that the Department would develop a similar penalty structure consistent with other programs that were examined.

**Walter Heine moved to adopt the proposed rulemaking with a 60-day public comment period and three public hearings. Paul Opiyo seconded the motion, which was approved by a majority of Board members. Mr. Deklinski voted in opposition of the proposed rulemaking.**

#### **FINAL RULEMAKING – NOTIFICATION OF PROXIMITY TO AIRPORTS:**

Deputy Secretary Thomas Fidler presented an overview of the final rulemaking to the Board. Ken Reisinger, Director, Bureau of Waste Management, Steve Socash, Chief, Division of Municipal and Residual Waste, and Susan Seighman, Assistant Counsel, assisted with the presentation.

The Board did not have any questions or comments on the final rulemaking following the conclusion of Deputy Secretary Fidler's presentation.

**Mr. Pechart moved to adopt the final rulemaking. Eric Madden seconded the motion, which was unanimously approved by the Board.**

#### **OTHER BUSINESS:**

Under Other Business, Chairperson McGinty called upon Deputy Secretary Thomas Fidler to provide the Board with an overview of a report, prepared by the Department pursuant to 25 Pa Code, § 126.451 (3), concerning the feasibility of modifying the Pennsylvania Vehicle Emissions Inspection Program. Deputy Secretary Fidler was assisted by Joyce Epps, Arleen Shulman, and Kristen Campfield.

After the conclusion of Deputy Secretary Fidler's remarks, Mr. Henderson asked if during the course of its evaluation, the Department examined cost benefit data of the IM inspection program, including the average cost of an IM inspection and the number of vehicles that are failing the tests. Ms. Shulman replied that the Department only conducted an air quality emissions analysis and did not specifically examine the costs/benefits of the program. Although program failure rates exist, Ms. Shulman mentioned

that the model the Department used to analyze the program for this requirement does not provide insight into how or why cars are failing, and the additional level of emissions attributable to those failures.

Mr. Henderson further inquired about the data assumptions used in the Department's modeling, in particular the assumptions made concerning the emissions that are probable without IM testing, in comparison to the emissions reduced or captured through the IM programs. He further commented that it is his opinion that there should be solid data about the program to determine if the program is meeting its desired effect. Ms. Shulman replied that the EPA model used by the Department doesn't necessarily allow for the input of those specific data elements or categories, yet the Department is "held hostage" to the EPA model, as it is the model the Department must use to prove to EPA that Pennsylvania is meeting its performance standards.

Chairperson McGinty asked the program if we know specific program details concerning the failure rates of vehicles and the pollution reduction results for catching those vehicles and requiring appropriate tune up. Ms. Shulman deferred the question to Kurt Myers, Deputy Secretary for Safety Administration, Pennsylvania Department of Transportation. Deputy Secretary Myers responded that the program has an approximately 6.8% failure rate, but that that rate depends upon the model year of the vehicle. He further commented that on average, inspections cost between \$35 and \$37, per inspection; however, those rates vary upon region and the type of tests being conducted on the vehicle. He concluded by stating that he has seen prices as low as \$20 per inspection or as high as \$45 per inspection. Concerning questions on pollution reduction benefits, Ms. Shulman directed the audience to a slide used in Deputy Secretary Fidler's presentation that showed emission rates by pollutant in Pennsylvania with and without an IM program.

Mr. Fox asked Deputy Secretary Myers how many IM tests are done in the Commonwealth each year. Deputy Secretary Myers replied that initially approximately 6.6 million tests were completed. Last year that number rose to 7.2 million tests.

Chairperson McGinty inquired whether EPA is in the early stages of considering potential revisions to the IM program. Ms. Shulman replied that there is a federal advisory committee that is concluding deliberations on the IM program, but that the committee mainly focused on technology issues, such as remote on-board diagnostics, kiosks, etc. Ms. Shulman commented that these technologies may not be as cost effective in Pennsylvania in comparison to other states were IM inspections can run as high as \$60. If the federal advisory committee proposes changes, Chairperson McGinty asked Ms. Shulman the process that would ensue. Ms. Shulman replied that any ensuing federal changes to the program may not necessarily be incorporated into Pennsylvania's IM program as the guiding assumption is the performance standard. If Pennsylvania has an alternative program that meets the performance standard and provides enforcement assurance, program changes may not be warranted.

### **ADJOURN:**

Chairperson McGinty announced that the next meeting of the EQB will occur on Tuesday, December 18, 2007, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

With no other business before the board, Mr. Pechart moved to adjourn the meeting. The motion was seconded by Ms. Chinchilli. The meeting was adjourned at 10:26 a.m.