

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
April 21, 2009

VOTING MEMBERS OR ALTERNATES PRESENT

John Hanger, Chairman, Acting Secretary, Department of Environmental Protection
Kenneth Graham, alternate for Acting Secretary Sandi Vito, Department of Labor and Industry
Danielle Spila, alternate for Secretary Allen D. Biehler, Department of Transportation
Wayne Gardner, alternate for Chairman James H. Cawley, Public Utility Commission
Tom Kuhn, 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
Michael DiMatteo, alternate for Carl Roe, Executive Director, PA Game Commission
Richard Manfredi, Citizens Advisory Council
David Day, alternate for Dr. Douglas J. Austen, Executive Director, Pennsylvania Fish and Boat Commission
Dr. Walter Meshaka, alternate for Barbara Franco, Executive Director, PA Museum Commission
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Bernie Hoffnar, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Michael Pechart, alternate for Secretary Dennis C. Wolff, Department of Agriculture

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

Chairman Hanger called the meeting to order at 9:00 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business - the January 20, 2009, EQB meeting minutes.

With no corrections or amendments, Chairman Hanger called for a motion to adopt the minutes of the January 20, 2009, EQB meeting.

**Michael Pechart moved to approve the January 20, 2009, EQB meeting minutes.
Richard Manfredi seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF PROPOSED RULEMAKING: ENVIRONMENTAL LABORATORY ACCREDITATION AMENDMENTS (25 Pa Code, Chapter 252)

Michael Sherman, Deputy Secretary for Filed Operations, provided an overview of the proposed rulemaking to the Board. Martina McGarvey, Director, Bureau of Laboratories, and Aaren Shaffer Alger, Technical Support Services Division, assisted with the presentation.

Following Deputy Secretary Sherman's presentation, Bernie Hoffnar questioned whether the fee increases included in the proposed rulemaking could deter or impact the ability of volunteer groups to obtain stream monitoring results from the Department's environmental laboratory, which often provides such sampling results in gratis. Deputy Secretary Sherman responded that the answer is complicated, but that it would depend specifically on the Departmental program a volunteer group is working with. He stressed that the Department makes itself available to volunteer groups as best as it can and is sometimes able to find funding sources within individual programs to assist volunteer groups with their costs. In conclusion, Mr. Hoffnar inquired whether the Department had received any requests from the public to conduct public meetings on the regulatory proposal. Ms. Alger responded that the Department had not received any such requests.

Richard Fox inquired whether the Department would hire additional staff as a result of the fee increases included in the proposed rulemaking. Deputy Secretary Sherman responded that additional staff would not be hired as a result of the fee increases included in the rulemaking. Under the current fee structure, Patrick Henderson also questioned why revenue for the program is expected to almost double from \$880,000 in FY 07 to \$1.26 million in FY 08. Ms. Alger responded that when the regulations were initially promulgated in 2006, the Department was required to conduct on-site assessments of the laboratories before they were required to pay the certification renewal fee. On-site assessments were not completed until 2008, which Ms. Alger noted explains the difference in revenue the Department received in FY 07 and FY 08.

David Strong moved to approve the proposed rulemaking with a 30-day public comment period. Mr. Hoffnar seconded the motion, which was approved by a majority of the Board members. Joseph Deklinski voted in opposition to the motion.

CONSIDERATION OF RULEMAKING PETITION: DISPOSAL OF WASTEWATER TREATMENT SLUDGE FILTER CAKE

Thomas Fidler, Deputy Secretary for Waste, Air and Radiation Management provided an overview of the rulemaking petition submitted to the EQB by Manko, Gold, Katcher and Fox, LLP, which requests the amendment of 25 Pa Code, Chapter 261a in order to increase the annual volume of filter cake that it may dispose of in a Subtitle D landfill. Ken Reisinger, Director, Bureau of Waste Management, and Kurt Klappkowski, Assistant Counsel, assisted with the presentation.

Following Deputy Secretary Fidler's presentation, Walter Heine asked for clarification whether the impetus of the petition was for Waste Management Disposal Services to be able to manage additional leachate created by the increase in concentration of hazardous materials or if it was to manage additional leachate due to the increase of flow at the petitioner's facility in Morrisville, PA. Deputy Secretary Fidler responded that the increase in the petitioner's filter cake production is both attributable to an increase in volume of leachate treated at the plant, as well as increases in the concentration of certain constituents that are present in the leachate before treatment. Mr. Reisinger noted that the Department is working separately with the petitioner to reduce the volume of filter cake generated at their facility by separating the leachate derived from the hazardous and non-hazardous waste streams.

Mr. Hoffnar inquired whether the municipality of Morrisville was notified about the petition and if so, if they supported it. Kurt Klappkowski responded that the petition currently before the board's consideration doesn't include an assessment of whether the wastewater treatment sludge filter cake contains hazardous constituents at levels of regulatory or public concern, as EPA in 1991 already determined that the leachate in question was acceptable for disposal in a non-hazardous waste landfill. Mr. Klappkowski clarified that the petition before the Board's consideration only addresses the volume of waste that may be disposed. To provide further details concerning the petition, Chairman Hanger introduced Bruce Katcher, with Manko, Gold, Katcher and Fox, LLP. Mr. Katcher is legal counsel to Waste Management Disposal Services of PA and submitted the petition to the EQB on his client's behalf. Mr. Katcher clarified to the Board that the municipality of Falls Township was notified of his client's petition; however, support for the petition was not specifically solicited. Mr. Katcher further noted that if the Board votes to accept the petition for further Departmental review, officials from Falls Township will be further advised of their ability to comment on the action requested in the petition.

Mr. Pechart moved to accept the petition for further review. Mr. Heine seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF RULEMAKING PETITION: SOBERS RUN REDESIGNATION
(BUSHKILL TOWNSHIP, NORTHAMPTON COUNTY)**

John Hines, Acting Director, Bureau of Watershed Management, presented an overview of the rulemaking petition, which requests the redesignation of Sobers Run (main stem, east and west branch) from High Quality – Cold Water fishes (HQ-CWF) to Exceptional Value (EV). Richard Shertzer, Manager, Water Quality Standards Division, and Michelle Moses, Assisted Counsel, assisted with the presentation.

Following Mr. Hines' presentation, the petitioner, including Sherry Acevedo, Resource Conservation Specialist with the Delaware and Lehigh National Heritage Corridor and Jason Smith, Bushkill Township Supervisor, addressed the board and emphasized the importance the petition could have in protecting the pristine nature of the entire Sobers Run watershed. Ms. Acevedo further commented that Bushkill Township is encountering both residential and industrial development demands and that the petition was not initiated to stop development, but to foster it in a balanced way that protects the community's natural resources. She stated that she has support for the petition not only from the Bushkill Township Board of Supervisors, but from adjacent municipalities.

Richard Manfredi asked Ms. Acevedo to expand upon her comments concerning the development pressures Bushkill Township is facing. Ms. Acevedo responded that Bushkill Township has seen increases in development over the past 5 years. She mentioned that the goal of the petition is in line with other targeted land conservation efforts in the area, including the efforts of the Lehigh Valley Greenways Initiative. Mr. Manfredi inquired if there is any specific path of development that is being emphasized in her area. Ms. Acevedo responded that Bushkill Township and adjacent municipalities are experiencing development demand due to the pristine farmland and woodlands that exist in the area. Mr. Manfredi noted that any redesignation of the petitioned waterbody would be based on scientific results that are obtained during the petition review process. Ms. Acevedo responded that she believes the watershed is appropriate for redesignation based on the coordination of land use regulations, water quality measures throughout the watershed and real estate interests.

Mr. Henderson asked the petitioner if there are any pending land use permit applications that would be affected by the redesignation requested in the petition. Mr. Smith responded that currently there are no pending permit applications being considered by Bushkill Township. In conclusion, Mr. Hoffnar stated

his appreciation of Bushkill Township's efforts in submitting the petition to the EQB and encouraged other groups in Pennsylvania to initiate similar efforts.

Mr. Hoffnar moved to accept the petition for further review by the Department. David Day seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: WATER AND WASTEWATER SYSTEMS OPERATOR CERTIFICATION PROGRAM

John Hines, Acting Director, Bureau of Watershed Management, presented a summary of the proposed rulemaking. Nicki Kasi, Manager, Technical and Financial Assistance Division, and Marc Roda, Assistant Counsel, assisted with the presentation.

At the conclusion of Mr. Hines' presentation, Mr. Hoffnar inquired about the comments submitted on the proposed regulations by the Pennsylvania Rural Water Association and why those comments and suggestions were not regarded by the Department. Ms. Kasi clarified to the Board that the comments submitted by the Pennsylvania Rural Water Association were carefully examined by the Department; however, their comments were narrow in scope and were not conducive to other small training providers. Through continued outreach, Ms. Kasi explained that she was able to negotiate with the association concerning their recommendations on a proposed fee structure and now the association agrees with the Department's current proposal. Mr. Hoffnar also inquired about the Pennsylvania Rural Water Association's comments on the nominal fee of \$18 that would be charged yearly for an operator to receive certification. Ms. Kasi responded that she was unsure where the \$18 figure was obtained, as the current regulatory proposal requires that an operator pay \$150 for a new license, and \$60 every three years thereafter to renew the license. Ms. Kasi acknowledged that the association's comments may be more relative to the fees the Department currently charges, which include a \$20 examination fee per session and a \$15 certification renewal fee every three years.

Joanne Denworth moved to approve the proposed rulemaking with a 30-day public comment period. Wayne Gardner seconded the motion, which was approved by a majority of Board members. Mr. Deklinski voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: STREAM REDESIGNATIONS (BLUE EYE RUN, ET AL):

John Hines, Acting Director, Bureau of Watershed Management, presented a summary of the proposed rulemaking to the Board. Richard Shertzer, Manager, Water Quality Standards Division, and Michelle Moses, Assistant Counsel, assisted with the presentation.

Following Mr. Hines' presentation, Mr. Henderson asked for the Department to clarify if all of the amendments in the proposed rulemaking included changes to redesignate the streams to Exceptional Value (EV) designation. Mr. Shertzer acknowledged that all proposed stream redesignations in the rulemaking included changes to EV designated use. Mr. Henderson further asked if the Department could explain how an EV stream redesignation, in comparison to a High Quality (HQ) or Cold Water Fishes (CWF) designation, may impact potential surface water withdrawals for Marcellus Shale drilling activities. Mr. Shertzer explained that 4 of the 7 streams that are included in the proposed rulemaking are currently designated at an HQ level of protection. In terms of water withdrawal, he further explained that the differences between an EV, HQ or CWF designated stream are negligible as the Department tries to ensure any water withdrawal will not disturb the existing quality of the stream. For example, Mr.

Shertzer explained that the Department looks at two important factors when assessing water withdrawals, including whether the withdrawal will impact the protection of current stream biota and whether the withdrawal will impact the availability of water in a stream to dilute potential discharges.

In response, Mr. Henderson inquired if Mr. Shertzer was aware of any Marcellus Shale-related water withdrawal requests that have been approved by the Department for an EV stream. Mr. Shertzer replied that he is not aware that any such requests have been submitted to the Department. In conclusion, Mr. Henderson asked if it would be feasible to withdraw water from an EV designated stream for the hydraulic fracturing of a Marcellus Shale gas well. Mr. Shertzer responded that such withdrawals would need to be carefully coordinated and added that he believes in the future drilling companies will extract smaller volumes of water in a series of withdrawals and store the water on site until such a time the water is needed for fracturing purposes.

Mr. Strong moved to approve accept the proposed rulemaking with a 45-day public comment period. Mr. Hoffnar seconded the motion, which was approved by a majority of Board members. Mr. Deklinski voted in opposition to the motion.

OTHER BUSINESS:

Chairman Hanger announced that the next scheduled meeting of the EQB would occur on Wednesday, May 20, 2009, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA. If there are an insufficient number of agenda items, Chairman Hanger noted that the meeting would be cancelled and that Board members would be accordingly notified the first week of May 2009.

ADJOURN:

With no further business before the Board, Mr. Hoffnar moved to adjourn the meeting. Mr. Fox seconded the motion, which was unanimously approved by the Board. The April 21, 2009, meeting of the Board was adjourned at 10:08 a.m.