

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
July 21, 2009

VOTING MEMBERS OR ALTERNATES PRESENT

John Hanger, Chairman, Secretary, Department of Environmental Protection
Kenneth Graham, alternate for 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
Edward Yim, 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
Dr. Douglas Austen, Executive Director, Pennsylvania Fish and Boat 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
Paul Opiyo, alternate for Secretary George Cornelius, Department of Community and Economic Development
Jean Lonie, alternate for Secretary Dennis C. Wolff, Department of Agriculture
Dr. James Logue, alternate for Secretary Everette James, 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

Chairman Hanger called the meeting to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the June 16, 2009, EQB meeting minutes.

With no corrections or amendments, Chairman Hanger called for a motion to adopt the minutes of the June 16, 2009, EQB meeting.

Richard Manfredi moved to approve the June 16, 2009, EQB meeting minutes.
Dr. Douglas Austen seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: REDESIGNATION OF DWARFSKILL CREEK (PIKE COUNTY) (25 Pa Code, Chapter 93)

Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, presented an overview of the rulemaking petition. Michelle Moses, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Chairman Hanger noted to the Board that the petitioner – the Dwarfskill Watershed Association – was not present at the meeting to address the Board; however, he noted that the petitioner submitted a written statement to the Board, which was provided at each Board member’s chair.

At the conclusion of Chairman Hanger’s remarks, Bernie Hoffnar inquired whether officials from Dingman Township support the rulemaking petition. Mr. Aunkst responded that he is not specifically aware of the township’s position on the petition; however, he noted that if the petition is accepted for further review by the Board, the Department would contact the municipality per its standard petition review protocol. Mr. Hoffnar also asked whether a study recently completed by the Pike County Conservation District on the Dwarfskill Creek was included in the petition. Ms. Moses stated that she would verify that information and promptly respond back to Mr. Hoffnar.

Mr. Hoffnar made a motion to accept the rulemaking petition for further review by the Department. Walter Heine seconded the motion, which was approved by a majority of the Board members. Joseph Deklinski voted in opposition to the motion.

CONSIDERATION OF FINAL RULEMAKING: OIL AND GAS WELL PERMIT FEES (25 Pa Code, Chapter 78)

Ron Gilius, Director, Bureau of Oil and Gas Management, presented a summary of the final rulemaking to the Board. Douglas Brennan, Bureau of Regulatory Counsel, assisted with the presentation.

Patrick Henderson asked the Department of the approximately 3,472 permit applications it received this year, how many paid the higher permit application fee in response to the Board’s final Oil and Gas Permit Fee rulemaking. Mr. Gilius responded that approximately half of the permit applicants paid the higher permit application fees. Mr. Henderson further questioned the Department whether it stood behind its permit application revenue estimations. Mr. Gilius responded that economic considerations may impact the Department’s permit application estimations and revenue projections; but nonetheless, the numbers supplied are the Department’s best estimations.

Mr. Henderson noted to the Board Senator White’s appreciation for the changes made to the final regulation and expressed her initial inclination to support the final rulemaking; however, given the Department’s position on Senate Bill 297, he stated that Senator White could not support the final rulemaking.

Joanne Denworth made a motion to approve the final rulemaking. Wayne Gardner seconded the motion, which was passed by a majority of Board members. Mr. Deklinski and Mr. Henderson voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: BENEFICIAL USE OF COAL ASH (25 Pa Code, Chapters 287 and 290)

Kenneth Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, presented an overview of the proposed rulemaking. Scott Walters, Bureau of Waste Management; Keith Brady, Bureau of Mining and Reclamation; and Susan Seighman and Richard Morrison, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Richard Fox asked for further details concerning the 20 million tons of coal ash that is generated annually in Pennsylvania, of which 11 million tons is beneficially used. Specifically he asked if the remaining 9 million tons of coal ash generated annually were being disposed of in landfills. Acting Deputy Secretary Reisinger responded yes, with Mr. Walters clarifying that disposal predominantly takes place at captive residual waste landfills. Mr. Fox further inquired whether the \$4 per ton disposal fee is applicable for such disposal of coal ash. Ms. Seighman clarified that the disposal fees are paid only by municipal waste landfill operators. In light of EPA's interest in promulgating a coal ash rulemaking, Mr. Fox questioned how a state rulemaking on coal ash may be impacted by eventual federal regulations. Mr. Reisinger responded that he is aware that EPA is considering many options for the regulation of coal ash, including its beneficial use. Mr. Reisinger acknowledged the national attention that has been drawn on coal ash due to the rupture of a coal ash holding dam in Tennessee, and stated that Pennsylvania, with its years of experience in managing coal ash, would rather set the agenda for the regulation of coal ash nationally than to react to any prospective national proposal.

Mr. Hoffnar asked whether there are any examples in Pennsylvania of negative environmental impacts caused by the beneficial use of coal ash. Mr. Brady responded that he was not aware of any such cases where coal ash was used for mine reclamation. Acting Deputy Secretary Reisinger added that there were some legacy issues concerning the construction and operation of coal ash impoundments in the 1970's and 1980's, for which the Department is currently monitoring; however, he noted that there has not been any indication thus far that these coal ash impoundments are negatively impacting groundwater. Mr. Hoffnar further asked whether considerable testing had been completed at Bark Camp, a Department-initiated demonstration project on the beneficial use of coal ash. Acting Deputy Secretary Reisinger said that yes, there has been both surface and ground water monitoring testing completed at Bark Camp. In conclusion, Mr. Hoffnar asked whether the regulatory proposal would provide a "quid pro quo" or savings to the industrial community. Chairman Hanger responded that the regulations were prepared to provide overall improvement to the coal ash beneficial use program and to instill regulatory parameters that would withstand litigation. In conclusion, Mr. Hoffnar and David Strong noted to the Board their involvement on the Department's Mining and Reclamation Advisory Committee and of the Committee's strong support of the proposed rulemaking.

Edward Yim asked whether the 45-day public comment period recommended by the Department for the proposal was adequate. Acting Deputy Secretary Reisinger responded that it is the Board's discretion whether the length of the comment period should be extended, but that the Department would like to proceed with the rulemaking expeditiously as possible and believes a 45-day public comment period is adequate. Acting Deputy Secretary Reisinger also noted the extensive outreach the Department undertook with stakeholders on the rulemaking, thereby further justifying the 45-day public comment period. Mr. Yim further asked whether the rulemaking is expected to negatively impact waste coal operations in the state. Acting Deputy Secretary Reisinger responded that he believes the rulemaking will help to sustain coal operations and the beneficial reuse of coal in the Commonwealth and will provide critical information to support the further beneficial use of coal ash.

Mr. Heine asked for clarification on the \$4 tipping fee. Richard Mather explained that this is a fee that funds the Growing Greener program. This fee only applies to municipal waste landfills and is not applied to residual waste. He further clarified that coal ash is considered to be residual waste, unless it is beneficially used.

Mr. Gardner moved to approve the proposed rulemaking, with a 45-day public comment period and three public hearings. Mr. Hoffnar seconded the motion, which was approved by a majority of members. Mr. Deklinski and Mr. Fox voted in opposition to the motion.

CONSIDERATION OF PROPOSED RULEMAKING: AIR QUALITY FEE SCHEDULES (25 Pa Code, Chapters 121, 127 and 139)

Kenneth Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, presented an overview of the proposed rulemaking. Joyce Epps, Director, Bureau of Air Quality and Robert Reiley, Bureau of Regulatory Counsel, assisted with the presentation.

Following Acting Deputy Secretary Reisinger's presentation, there were no questions or comments posed by the Board members.

Mr. Yim moved to approve the proposed rulemaking, with a 60-day public comment period and three public hearings. Ms. Denworth 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 Tuesday, August 18, 2009, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA.

ADJOURN:

With no further business before the Board, Mr. Hoffnar moved to adjourn the meeting. Mr. Yim seconded the motion, which was unanimously approved by the Board. The July 21, 2009, meeting of the Board was adjourned at 9:52 a.m.