

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
December 18, 2018**

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection
Andrew Sharp, alternate for Gerald Oleksiak, Secretary, Department of Labor and Industry
Emma Lowe, alternate for Leslie Richards, Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown, Chairman, Public Utility Commission
Richard Fox, alternate for Representative Mike Carroll
Tim Collins, alternate for Senator John Yudichak
Nick Troutman, alternate for Senator Gene Yaw
Don Wandling, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Douglas McLearn, alternate for Andrea Lowery, Executive Director, Pennsylvania Historical and
Museum Commission
Erin Smith Wachter, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning
John St. Clair, Citizens Advisory Council
Bill Fink, Citizens Advisory Council
James Schmid, Citizens Advisory Council
Jim Welty, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Kelly O'Donnell, alternate for Russell Redding, Secretary, Department of Agriculture
Anil Nair, alternate for Dr. Rachel Levine, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Jessica Shirley, Policy Director
Robert "Bo" Reiley, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Environmental Quality Board (EQB or Board) considered its first item of business – the approval of the August 21, 2018, EQB meeting minutes.

**James Schmid made a motion to adopt the August 21, 2018, EQB meeting minutes.
Andrew Place seconded the motion, which was unanimously approved by the Board.**

CONSIDERATION OF FINAL RULEMAKING (AMENDED): NONCOAL MINING PROGRAM FEES (25 Pa. Code Chapter 77)

The EQB initially adopted this final-form rulemaking on August 21, 2018, enabling the rule to continue in the regulatory review process. On September 14, 2018, the rulemaking was submitted to the Independent Regulatory Review Commission (IRRC) for consideration, and it was added to IRRC's October 18, 2018 public meeting agenda. Prior to the scheduled IRRC meeting, the rulemaking was withdrawn to make clarifying amendments to the regulatory language. Specifically, language was added to clarify that the fee adjustment pursuant to the Employment Cost Index for State and Local Government Compensation will not be applied if doing so would result in fees that exceed the Department of Environmental Protection's (DEP) cost of reviewing, administering and enforcing the permit. This added language is highlighted in all corresponding rulemaking documents available online for the December 18, 2018 meeting.

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations, provided an overview of the final rulemaking. Bill Allen, Director for Bureau of Mining Programs, and Joe Iole, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

There was no discussion following the presentation.

Richard Fox made a motion to adopt the final rulemaking as amended. James Schmid seconded the motion, which was approved by a majority of the Board members. Bill Fink voted in opposition to the final rulemaking. Motion passed.

CONSIDERATION OF PROPOSED RULEMAKING: ADDITIONAL REQUIREMENTS FOR CONTROL OF FINE PARTICULATE MATTER IN THE NONATTAINMENT NEW SOURCE REVIEW PROGRAM (25 Pa. Code Chapters 121 and 127)

This proposed rulemaking would amend 25 Pa. Code Chapters 121 and 127 to incorporate the federal requirement to include emissions of volatile organic compounds (VOC) and ammonia as PM_{2.5} precursors. On August 24, 2016, the U.S. Environmental Protection Agency (EPA) published a final rule requiring states with nonattainment areas for PM_{2.5} to amend their nonattainment New Source Review (NNSR) regulations to include emissions of VOC and ammonia as PM_{2.5} precursors. Pennsylvania currently has three areas designated as nonattainment for PM_{2.5}- Delaware, Lebanon, and Allegheny counties.

George Hartenstein, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the proposed rulemaking. John Krueger, Assistant Director for Bureau of Air Quality, and Elizabeth Davis, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Mr. Fox requested confirmation that the two ways to stop the sanction clock include moving forward with this regulation or submitting a State Implementation Plan (SIP) revision. Deputy Secretary Hartenstein verified that is correct. Mr. Fox further inquired if the regulation would need to move through the whole of the regulatory review process, be complete and published, prior to November 7, 2019. Deputy Hartenstein confirmed that the regulation would need to be final and published before it can be submitted to the EPA as part of the full revision to the SIP. However, the EPA only needs to make a determination that the submittal is complete. They do not need to conduct a full review to stop the sanction clock. Further, the Commonwealth is concurrently working on submitting a

SIP revision to the EPA to redesignate the noted nonattainment areas to attainment. Approval of the redesignation request would also halt the sanction clock, providing more time for the rulemaking to make its way through the regulatory review process.

Mr. Fink inquired if the public comment period could be shortened from 60 days to allow for the rulemaking to move through the regulatory review process faster. Deputy Hartenstein responded the public comment period must be 60 days, per requirements included in the Air Pollution Control Act.

Mr. Place noted that the deadline was missed for this SIP revision and asked how that happened. Deputy Hartenstein responded that an abundant workload with too few staff to accomplish work that needed to be done prevented the submittal from happening on time. Chairman McDonnell commented that the budget for this fiscal year included new positions to help manage the modeling and review work in the Bureau of Air Quality, one of the areas that suffered the most with budget cuts over time.

Mr. Place inquired regarding the redesignation process, requesting confirmation that it is expected that attainment will be achieved in all three counties mentioned in the rulemaking. Deputy Hartenstein responded affirmatively noting that DEP will need to show that there will be no backsliding. This is included in the redesignation request. Mr. Place asked about Allegheny County submitting their own redesignation request. Deputy Hartenstein responded that DEP is confident that plan will be approved as well.

Mr. Place inquired as to what is causing the improvement in the air quality that is moving these areas from nonattainment to attainment. He asked if it could be related to vehicle emissions standards. Deputy Hartenstein responded that a factor for the PM_{2.5} emissions decrease is changes in the energy generating sector. Specifically, the addition of pollution controls and cross-air pollution requirements implemented on major sources of NO_x as well as several other changes and requirements combined greatly improve air quality.

Mr. Place inquired if there are transport issues between attainment and nonattainment areas. Deputy Hartenstein responded that DEP does not foresee this being a concern going forward.

Andrew Place made a motion to adopt the proposed rulemaking.

Bill Fink seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: AIR QUALITY FEE SCHEDULE AMENDMENTS (25 Pa. Code Chapters 121 and 127)

As required by section 502(b) of the Clean Air Act (CAA) and section 6.3 of the Air Pollution Control Act (APCA), the proposed rulemaking would amend existing requirements and fee schedules codified in Chapter 127, Subchapter I to ensure that fees are sufficient to cover the costs of administering the Air Quality Program. The proposed new and increased fees are needed to cover DEP's costs related to performing the air quality program activities required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants, including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide, and sulfur dioxide, as well as other requirements of the CAA, APCA, and regulations promulgated thereunder. Establishing the proposed fee structure would provide financial support for continuation of the Air Quality Program and ensure continued protection of the public health and welfare of Pennsylvanians and the environment.

George Hartenstein, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the proposed rulemaking. John Krueger, Bureau of Air Quality, and Elizabeth Davis, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Mr. Welty inquired if DEP has the statutory authority to charge a maintenance fee. Deputy Hartenstein responded affirmatively and added that DEP also included an operating administrative fee in this proposal, which is the same, conceptually, as the maintenance fee. The name of the fee is adjusted as it applies to different facilities to avoid confusion.

Mr. Fox noted that DEP lost 100 positions from 2000 to 2018 and that, with this fee increase, 17 positions can be restored. He inquired if there is a particular program area that will receive these positions, or if they will they be spread throughout the Bureau of Air Quality. Deputy Hartenstein responded that DEP will evaluate the need for staffing on an ongoing basis and will fill positions in areas where they are most needed. He mentioned that the monitoring, planning, and permitting sections currently have the greatest need.

Mr. Fox inquired if DEP believes that the decreasing emissions trend will continue. Deputy Hartenstein confirmed that DEP believes that the trend will continue and that was accounted for in the rulemaking by proposing maintenance fees.

Mr. Fink commended DEP in its comprehensive evaluation of how best to adjust fees to sustain the program. He commented that he understands the necessity of adequate funding for DEP to carry out its obligations. However, he is concerned about the implementation of a payment for service model, commenting that may disincentivize economic growth in the Commonwealth. Further, he stated concern that DEP staff are spending time developing fee increase rulemaking packages rather than attending to the important work DEP is charged with carrying out, the protection of public health and safety.

Mr. Place asked about the rationale for not increasing the Title V emission fees. Deputy Hartenstein replied that if those fees are raised, it exacerbates the problem of relying on emission fees from large sources for revenue. By implementing a maintenance fee instead, program costs are spread evenly among all Title V permittees, rather than relying on only specific large emitters. This proposal provides a more sustainable, balanced fee structure.

Mr. Place followed up asking if not raising fees on emissions will slow the decrease in emissions. Deputy Hartenstein responded that DEP needs a fee to support the work of the program. At this point, DEP must assess the needs of the program to function properly and find the most sustainable fee structure to support that work. Emissions will continue to decrease as existing regulations are enforced. It could potentially be more detrimental to the protection of public health and safety if DEP does not have the funding to adequately staff the program to monitor and enforce regulations to ensure that emissions continue the decreasing trend. Mr. Krueger added that the Title V was created to put more burden on higher emitters to reduce emissions. However, having fees based on the level of emissions, when the emissions are significantly reduced, the revenue stream is also significantly and unsustainably reduced.

Chairman McDonnell commented that the Public Utility Commission, in particular, is familiar with the tension between charging fees versus the funding needed to run a program. If emissions for the highest emitters are cut in half, the oversight responsibilities remain. DEP is not proposing to replace or reduce emission fees, rather the goal is to spread the costs to appropriately fund the program. DEP endeavors to ensure adequate resources are available to carry out the necessary programmatic responsibilities. DEP

remains agnostic as to how that funding arrives and is always open to new ideas for revenue streams. The proposal in front of us today happens to be the most stable source of funding available at this time.

Bill Fink made a motion to adopt the proposed rulemaking.

James Schmid seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY STANDARDS – CLASS A STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)

Section 303(c)(1) of the federal Clean Water Act requires states to periodically review and revise water quality standards as necessary. Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits, and best management practices) on individual sources of pollution. Water quality standards include designated uses, numeric and narrative criteria, and antidegradation requirements for surface waters. Examples of designated water uses in Pennsylvania include: Cold Water Fishes (CWF), Warm Water Fishes (WWF), High Quality (HQ), and Exceptional Value (EV).

This proposed rulemaking will update designated uses for streams that qualify as HQ-CWF waters, based species-specific biomass standards for Class A Wild Trout set by the Pennsylvania Fish and Boat Commission (PFBC). DEP staff conducted an independent review of trout biomass data in PFBC fisheries management reports for the relevant streams to ensure that the HQ conditions were met.

Aneca Atkinson, Acting Deputy Secretary for Water Programs and Director for Office of Program Integration, provided an overview of the proposed rulemaking. Lee McDonnell, Director for Bureau of Clean Water, and Michelle Moses, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Mr. Fink noted that stream redesignations such as those included in this rulemaking are cause for celebration from a water quality standpoint. Acting Deputy Atkinson concurred.

Mr. Schmid noted that the National Hydrographic Database (NHD) was mentioned as the fundamental tool identifying streams to which the water quality classification is applied. He stated that, in his experience, there are many omissions from the NHD. Of concern are omissions of perennial streams. He inquired if DEP is planning to add streams not currently included in the NHD. Mr. McDonnell responded that the NHD flowline alone is not used to make determinations but is used as the baseline database for the reservoir. Further, DEP actively makes corrections that are included in all rulemaking packages similar to this one. Beginning in 2000, DEP switched from using DEP stream files to using the NHD flowline as the baseline.

Mr. St. Clair inquired if the PFBC is the only entity that regulates what biomass is acceptable for wild trout streams. Ms. Moses responded that these criteria are set by PFBC regulations.

Bill Fink made a motion to adopt the proposed rulemaking.

Kelly O'Donnell seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY MANAGEMENT (WQM) AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT APPLICATION FEES AND ANNUAL FEES (25 Pa. Code Chapters 91 and 92a)

This rulemaking proposes to increase fees for Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) permits. The proposed permit fee increases will improve capabilities in carrying out DEP's core responsibilities for ensuring protection of public health and the environment, and in meeting DEP's commitments and requirements under federal agreements and regulations.

Pennsylvania's water resources are among the most abundant in the nation and require significant DEP resources to protect the quality of these waters through the NPDES and WQM programs (collectively, "Clean Water Program"). Pennsylvania ranks in the top five nationally for number of NPDES-permitted facilities and in the top ten for surface water miles in the nation. Pennsylvania has more municipal separate storm sewer system (MS4) permits and more combined sewer overflows (CSOs) than any other state. DEP receives over 2,600 applications and Notices of Intent (NOIs) for NPDES and WQM permits annually for: discharges of sewage, industrial waste, industrial stormwater, and municipal stormwater; operation of concentrated animal feeding operations (CAFOs); utilization of pesticides; land application of sewage and industrial wastes; and construction of sewage and industrial waste pollution control facilities.

Chairman McDonnell noted suggestions that were made prior to this meeting related to this rulemaking. Specifically, he identified that DEP was asked if the initial recommended 30-day comment period could be extended to 45 days along with the addition of at least one public hearing. DEP honored that request. Further, a request was made to have fee comparison table available. A handout was provided to each EQB member and this handout will be made available online with the presentation at the conclusion of this meeting.

Aneca Atkinson, Acting Deputy Secretary for Water Programs and Director for Office of Program Integration, provided an overview of the proposed rulemaking. Lee McDonnell, Director for Bureau of Clean Water, and Meg Murphy, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Mr. Troutman noted that several EQB members received correspondence from the Pennsylvania Farm Bureau with concerns regarding the increase of CAFO fees. He inquired when the last adjustment to these fees occurred. Mr. McDonnell responded that there was no prior charge for a CAFO general permit. Permit fees and annual fees included in Chapter 92a were last adjusted in 2010.

Mr. Place inquired if fees serve as a disincentive if they are placed on manure storage facilities that are ultimately helpful for stream protection and management. Mr. McDonnell noted that permit applications for manure storage facilities require DEP staff review time. The fees are meant to cover the cost of that review. Acting Deputy Atkinson added that there is a regulatory requirement that facilities manage manure. They have flexibility in what management practices they choose. DEP is seeing more manure storage facilities, which then requires review. The fees included in this rulemaking are intended to cover the cost of staff time to review.

Ms. Brinley noted that it is difficult to successfully implement programs when funding does not cover the cost of said implementation. She requested of fee rulemakings in the future that they discuss how the regulation has improved the business climate in Pennsylvania and how the fee adjustment will help DEP review permits faster. Speaking on behalf of DCED, she noted that it is helpful to explain that proper funding of programs makes Pennsylvania a more competitive place to do business and having data available will allow DEP and DCED to highlight that reality to the business community.

Bill Fink made a motion to adopt the proposed rulemaking.

John St. Clair seconded the motion, approved by a majority of the Board members.

Bill Fink and John St. Clair voted in opposition. Motion passed.

OTHER BUSINESS:

Regulatory Update:

Laura Edinger provided the following updates:

- On Saturday, September 15, 2018, the U.S. Nuclear Regulatory Commission Consistency final-omitted rule was published. The rule was adopted by this Board on June 19, 2018 and approved by IRRC on August 16, 2018.
- On Thursday, October 18, 2018, IRRC approved two rulemakings: Administration of Storage Tanks and Spill Prevention final rulemaking and Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications final-omitted rulemaking. Both rulemakings were adopted by this Board on August 21, 2018. The final-omitted rulemaking was subsequently published on November 10, 2018. The Storage Tanks final rule is planned for publication in December 2018.
- On Saturday, October 27, 2018, the Radiological Health rule was published as final. The final rule was also adopted by this Board on June 19, 2018 and approved by IRRC on August 16, 2018.
- Also on Saturday, October 27, 2018, the proposed Federal Office of Surface Mining Program Consistency Rule was published, opening a 30-day public comment period. The public comment period closed on November 26, 2018. Three comments were received. IRRC comments are due December 26, 2018.

Ms. Edinger also added that in the last year, there was a total of four proposed, nine final and three final-omitted rulemakings published.

Receipt of Petition:

Chairman McDonnell provided an update regarding a petition that was received on Tuesday, November 27, 2018. Clean Air Council, Widener University Commonwealth Law School Environmental Law and Sustainability Center, and other Petitioners rulemaking petition to establish a program that would limit greenhouse gas emissions. Per the EQB Policy for Processing Petitions, 25 Pa. Code Chapter 23, DEP staff is currently reviewing the petition to determine if it meets the conditions in Section 23.2 of the Policy. If it is determined that the conditions are met, the petition will be submitted to the Board for consideration if it should be accepted for further study.

Mr. Fox inquired if the petition is currently undergoing review. Chairman McDonnell responded affirmatively. Mr. Fox further inquired if there is dialogue between the petitioner and DEP. Specifically,

if the petitioner is missing a section, is there dialogue between the petitioner and DEP. Mr. Reiley responded that the petition is in the very beginning stages of any review process and staff are currently reviewing to ensure that it meets the criteria established in the EQB Petition Policy for it to be considered by the Board for further study. Chairman McDonnell offered additional clarification that this is essentially a review for completeness of the petition.

Mr. Welty inquired if DEP has determined if the EQB has the statutory authority to promulgate. Secretary McDonnell responded that is part of the completeness review currently being conducted.

Secretary McDonnell recognized Don Welsh (not present), former member of EQB and former chair of the Citizens Advisory Council for having taken a position as the Executive Director for Environmental Council of the States. Chairman McDonnell thanked him for all his years of service.

Secretary McDonnell recognized the Policy Office, Counsel and all programs for their hard work throughout 2018.

Next Meeting:

The next meeting of the EQB is tentatively planned for Tuesday, February 19, 2019. No January meeting is scheduled.

ADJOURN:

With no further business before the Board, Nick Troutman moved to adjourn the meeting. James Schmid seconded the motion, which was unanimously approved by the Board. The December 18, 2018, meeting of the Board was adjourned at 10:33 a.m.