

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
September 15, 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
Bill Capouillez, alternate for Carl Roe, Executive Director, PA Game Commission
Richard Manfredi, Citizens Advisory Council
Timothy Schaeffer, alternate for Dr. Douglas Austen, Executive Director, Pennsylvania Fish and Boat Commission
Dr. Walter Meshaka, alternate for Barbara Franco, PA Historical and 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
Paul Opiyo, alternate for Secretary George Cornelius, Department of Community and Economic Development
Michael Pechart, alternate for Acting Secretary Russell Redding, Department of Agriculture
Dr. James Logue, alternate for Secretary Everette James, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION 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 9:07 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business—the August 18, 2009, EQB meeting minutes.

Prior to the Board's action on the minutes, Chairman Hanger noted to the Board that clarifications were made to the August 18, 2009, meeting minutes at the request of the Public Utilities Commission. A copy of the revised minutes, with the changes highlighted, were provided to each Board member. Chairman Hanger called for a motion to adopt the revised minutes, as presented at the September 15, 2009, Board meeting.

Michael Pechart moved to approve the August 18, 2009, EQB meeting minutes.

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

**CONSIDERATION OF FINAL RULEMAKING: SAFE DRINKING WATER AMENDMENTS
(25 Pa Code, Chapter 109)**

John Hines, Deputy Secretary for Water Management, presented an overview of the final rulemaking. Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, and Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Bernie Hoffnar inquired whether the PA Rural Water Association was involved in the development of the rulemaking. Mr. Hines responded that the Department had consulted the PA Rural Water Association during the development of the rulemaking.

David Strong moved to accept the final rulemaking. Mr. Hoffnar seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF FINAL RULEMAKING: UNDERGROUND STORAGE TANK
OPERATORS TRAINING REQUIREMENTS (25 Pa Code, Chapter 245)**

Kenneth Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, presented an overview of the final rulemaking. Charlie Swokel, Chief, Division of Storage Tanks, and Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

The Board did not have any questions following the Department's presentation.

Wayne Gardner moved to accept the final rulemaking. Richard Fox seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF PROPOSED RULEMAKING: OUTDOOR WOOD-FIRED BOILERS
(25 Pa Code, Chapters 121 and 123)**

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 "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Patrick Henderson inquired if other states are considering implementing a comparable standard for the regulation of outdoor wood-fired boilers. Ms. Epps responded that there are at least eight other Mid-Atlantic states that have either proposed or implemented regulations for outdoor wood-fired boilers. She also noted that there are a number of states outside of the Mid-Atlantic region that have regulations in place. Ms. Epps stated that approximately 19 states comprise the majority of purchasers of outdoor wood-fired boilers in the United States, with Pennsylvania ranking sixth on that list. Included among the 19 states are Michigan, Minnesota, Indiana, Ohio, Kentucky, West Virginia and the New England states. She further noted that according to 2006 assessment reports, approximately 155,000 outdoor wood-fired boilers were purchased nationwide, of which approximately 12,000 were purchased in Pennsylvania.

Mr. Henderson asked whether the proposed rulemaking includes a sell-through provision. Ms. Epps responded that it did not but elaborated that the proposed regulations would not preclude outdoor wood-

fired boiler manufacturers in Pennsylvania from selling non-conforming units to consumers in other states that do not have the same regulatory requirements as Pennsylvania. Mr. Henderson further inquired how the Department envisions enforcing the regulations, since the rulemaking imposes mandates on individual homeowners that may already be utilizing non-conforming outdoor wood-fired boilers. Ms. Epps responded that when the regulations are finalized, the Department's first priority will be to initiate a significant outreach program to educate the public about the regulatory requirements. Included in the target audience for this outreach will not only be consumers who purchase outdoor wood-fired boilers, but those businesses that sell the boilers. Ms. Epps also clarified that the proposed rulemaking does not impose requirements that will compel owners and operators of units to change their existing setback distances, however, those that operate units with non-conformant stack heights will need to increase the stack height to comply with the regulations. Concerning enforcement, Ms. Epps noted that the proposed rulemaking requires sellers and distributors in Pennsylvania to only sell Phase 2 compliant boilers. She further elaborated that in the event that the Department receives a complaint concerning the operation of an outdoor wood-fired boiler, the Department will first investigate to determine whether the stack height of the boiler is in compliance with the regulation. If it is not, Ms. Epps noted that the Department will require the owner or operator of the boiler to increase the stack height of the unit. Mr. Henderson inquired if the Department considered its enforcement responsibilities to include contacting homeowners with non-compliant units to advise them of the regulations and to fine them for the operation of non-conforming units. Chairman Hanger responded that the Department's priority for enforcing the regulation is to first work with individuals to inform them of the regulations and their responsibilities.

Mr. Hoffnar asked how communities and municipalities in Pennsylvania could be proactive in order to avoid the harms associated with the operation of outdoor wood-fired boilers. Ms. Epps replied that there are several municipalities in the state that have already enacted ordinances to regulate the operation of outdoor wood-fired boilers, including setback requirements. She noted that the Bureau of Air Quality developed a model ordinance for reference and use by local municipalities that are looking to implement their own rules concerning the operation of outdoor wood-fired boilers. Ms. Epps clarified to the Board that municipalities are not precluded from adopting ordinances that are more stringent than the provisions included in the proposed rulemaking. In response, Mr. Hoffnar asked what townships can do to be proactive in dealing with the problems associated with outdoor wood-fired boilers. Deputy Secretary Reisinger responded by stating that it is more difficult to rectify the adverse impacts that can result from the operation of outdoor wood-fired boilers than to prevent the problems from occurring in the first place, but he acknowledged that the proposed regulations will require that logical measures be put into place to help reduce emissions of PM_{2.5} from outdoor wood-fired boilers.

Mr. Hoffnar inquired if the Department had examined how the insurance industry could be a driving factor in the proliferation of outdoor wood-fired boilers. Ms. Epps responded that the Department had not specifically examined this issue nor extended any outreach to the insurance industry, but noted that it would be an issue the Department would closely examine as it moves forward with the rulemaking.

David Strong asked the Department to clarify what fuels are acceptable for use in an outdoor wood-fired boiler. Bo Reiley responded that the proposed rulemaking specifies the various fuels that are acceptable, which include for example clean wood and starter fuels such as propane, natural gas or home heating oil. Mr. Reiley further expanded upon his answer by noting that the Department developed the rulemaking and the associated list of approved fuels in order to prevent people from burning tires and garbage in an outdoor wood-fired boiler. In response, Mr. Strong inquired if coal could be used in an outdoor wood-fired boiler, as he knows several people that burn coal because it is cheap and lasts longer than wood. Mr. Reiley replied that coal has not been identified as an approved fuel in the rulemaking and noted that most boilers are designed to burn only certain fuels. Nevertheless, Acting Deputy Secretary Reisinger

responded that the use of coal in outdoor wood-fired boilers is an issue worthy of further discussion and would be examined during the public comment period on the proposed rulemaking.

Richard Manfredi inquired if local municipalities would be involved in the enforcement of regulations if they received complaints about emissions from outdoor wood-fired boilers. Ms. Epps responded that education to municipalities would be a component of the Department's outreach efforts on the rulemaking. She further noted that the Department's practice is to work closely with municipalities to investigate resident complaints and acknowledged that such cooperation would be instrumental to the enforcement of regulations concerning outdoor wood-fired boilers.

Walter Heine noted that a lot of outdoor wood-fired boilers are installed on farmlands and believes that the stack height requirements for Phase 2 boilers, including the requirement that the stack height be at least two feet above the highest peak of the highest residence located within 150 feet of the boiler, may not be suitable or appropriate for all areas of the Commonwealth, in particular rural areas. Mr. Heine further noted that the township he lives in has received a number of complaints concerning the year-round use of outdoor wood-fired boilers, as these boilers are not only used for heating homes, but to heat water as well. He asked if any provisions that limit the use of boilers to only winter months were included in the rulemaking. Ms. Epps responded that the proposed rulemaking does not include a seasonal prohibition, but noted that in the Preamble a request is included for public comments on whether a seasonal prohibition to operate outdoor wood-fired boilers between the dates of May 1 through September 30 should be included in the final rulemaking. Ms. Epps noted that the Department will closely evaluate any comments received concerning a seasonal prohibition. In conclusion, Ms. Epps also stated that some municipalities in Pennsylvania have enacted ordinances that only allow the operation of outdoor wood-fired boilers during the months of October through May, and explicitly exclude operation of these units in summer months.

Joanne Denworth moved to approve the proposed rulemaking with a 60-day public comment period and four public hearings. 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 PROPOSED RULEMAKING: FLAT WOOD PANELING SURFACE COATING PROCESSES (25 Pa Code, Chapters 121 and 129)

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 Kristen Furlan, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, the Board did not pose any questions or offer comments on the proposed rulemaking.

Edward 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 unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: PAPER, FILM AND FOIL SURFACE COATING PROCESSES (25 Pa Code, Chapters 121 and 129)

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 Kristen Furlan, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

The Board did not pose any questions or offer comments following the conclusion of the Department's presentation.

Mr. Yim moved to approve the proposed rulemaking with a 60-day public comment period and three public hearings. Paul Opiyo seconded the motion, which was unanimously approved by the Board.

PRESENTATION OF PROPOSED AMENDMENTS: PROTOCOL FOR THE PRESENTATION OF REGULATIONS UNDER THE REGULATORY REVIEW ACT

Rick Mather, Counsel to the Board, provided an overview of the amendments to the Board's "Protocol for the Presentation of Regulations under the Regulatory Review Act".

Following the presentation, Mr. Manfredi asked for clarification concerning Sections (b)3, (b)4 and (b)5 of the protocol which describe the ways in which the Chairperson of the EQB shall notify the Board when a rulemaking is disapproved by IRRC, the Standing Committees, or when an interceding action affects the need for and promulgation of a rulemaking. The policy was revised to state that the Board Chairperson would notify the Board "by email or another appropriate electronic method." Mr. Manfredi asked if the policy should remain as written, since it appears it would preclude notification to the Board by other non-electronic means. Mr. Mather replied that it was not the Department's intention to limit the means of communication, but to select electronic methods as they are the most expedient. Chairman Hanger acknowledged Mr. Manfredi's comments and stated that the Department would consider his recommendations.

Mr. Henderson inquired about the wording under Section (b)3, which outlines what the Department and Board may do if IRRC rejects a regulation. Mr. Henderson asked whether there is a mechanism in the protocol that would allow the Board to contemplate and act upon the Department's recommended course of action, in particular when the Department chooses not to revise a regulation in response to an IRRC disapproval order. In response, Mr. Mather noted that under the Regulatory Review Act, the Department is required to respond to an IRRC disapproval within specific timeframes, which may not be conducive to Board review, as meetings of the EQB are not convened every month. Nevertheless, Mr. Mather noted that there may be an opportunity to revise the protocol in such a manner to address Mr. Henderson's concerns, while still enabling the Department to meet its obligations under the Regulatory Review Act. Mr. Mather noted that any such revisions will have to be carefully crafted in order that the Department can meet its response deadlines under the Regulatory Review Act. In conclusion, Mr. Gardner asked that the questions relevant to the discussion be codified and distributed to the Board members. Chairman Hanger acknowledged Mr. Gardner's request.

ADJOURN:

With no further business before the Board, Mr. Pechart moved to adjourn the meeting. Mr. Heine seconded the motion, which was unanimously approved by the Board. The September 15, 2009, meeting of the Board was adjourned at 10:28 a.m.