

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**November 17, 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  
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  
William Sisson, alternate for Barbara Franco, PA Historical and Museum Commission  
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning  
Pat Lupo, Citizens Advisory Council  
Cynthia Carrow, 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**

Doug Brennan, Director, Bureau of Regulatory 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 September 15, 2009, EQB meeting minutes.

**David Strong moved to approve the September 15, 2009, EQB meeting minutes.  
Walter Heine seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: CONTROL OF VOC EMISSIONS FROM LARGE APPLIANCE AND METAL FURNITURE SURFACE COATING OPERATIONS (25 Pa Code, Chapter 129)**

Ken 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 following the Department's presentation.

**Richard Manfredi moved to accept the proposed rulemaking, with a 60-day public comment period and three public hearings. Mr. Strong seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: NEW SOURCE REVIEW (25 Pa Code, Chapters 121 and 127)**

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

Following the Department's presentation, Wayne Gardner inquired whether the proposed rulemaking exceeded federal requirements. Ms. Epps responded no and elaborated that the federal New Source Review rule, which was promulgated in May 2008, directly drove the implementation of the Commonwealth's proposed rulemaking and that the proposed rulemaking is no more stringent than federal requirements.

**Mr. Strong moved to accept the proposed rulemaking, with a 60-day public comment period and three public hearings. Joanne Denworth seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY STANDARDS IMPLEMENTATION (25 Pa Code, Chapter 96)**

John Hines, Deputy Secretary for Water Management, presented an overview of the proposed rulemaking. Andrew Zemba, Manger, Water Planning Office, assisted with the presentation.

Following the Department's presentation, Patrick Henderson asked the Department to elaborate on how the rulemaking as well as other Department initiatives will improve the level of certainty with the nutrient trading program not only with the availability of credits, but with the verification and value of those credits as well. Deputy Secretary Hines responded in three-fold.

First he stated that the regulation itself sets forth a process that elevates the comfort level of the state's point sources because the Department was previously making determinations based on policy. He further noted that the regulated community had concerns with respect to the application of real and viable credits towards an NPDES permit. He noted that the rulemaking codifies the methodology the Department will use concerning the availability of credits, thus heightening the comfort level point sources should have with the application of credits to their NPDES permits.

Second, Deputy Secretary Hines noted that PennVEST has moved forward to become an exchange where they will infuse money into the market to produce non-point source credits and thus become an exchange for point sources to purchase credits.

Third, with respect to the verification of credits, Deputy Secretary Hines noted that the proposed rulemaking provides a platform in which technologies can be reviewed by the Department in an expedient manner to ensure they produce improvements in water quality. He further noted that there has been continuous debate on the amount of credits these new technologies will generate, but noted that the

Department is encouraging its federal partners to invest in experimental types of technologies that will result in nutrient reductions, such as enhanced biodigesters. Lastly, Deputy Secretary Hines noted that in terms of future steps with the nutrient trading program, the Department is interested in creating a type of technology review board where the Department can work collectively with its partners from PennVEST, the point source field, the environmental field and others to review technologies upfront, thereby providing a form of “blue ribbon seal” to raise the level of assurance the number of credits that can be generated from the technology.

Mr. Strong asked how the Department plans to quickly review the certification applications with such limited staff. Deputy Secretary Hines replied that the key will be for the Department to work with its partners including the Conservation Districts and others to complete the review of the certification applications, but emphasized that without moving forward with market-based options, such as the nutrient trading program, the Department would be faced with more significant resource demands.

Mr. Heine asked whether inter-basin trading may be permissible under the current program, for example, if credits generated in the Delaware River region could be sold to a point-source within the Chesapeake Bay region. Deputy Secretary Hines responded that under the current policy, inter-basin trading is not permitted as currently the nutrient trading program is solely driven by reducing pollution in the river basins that feed into the Chesapeake Bay, namely the Potomac and Susquehanna River Basins. However, Deputy Secretary Hines noted that the proposed rulemaking includes flexibility that would allow trading to take place outside of the Chesapeake Bay region, but that trading would need to be related to specific requirements within a watershed.

Edward Yim asked for clarification concerning the intent of Section 96.8(h) regarding water quality and TMDLs. Deputy Secretary Hines explained that the intent of the section is to clarify that the nutrient trading program cannot be used to create “hot spots” of localized impairment. He further elaborated that Section 96.8(h) was constructed to make clear that if there is a localized impairment, legal baseline requirements must be met first to bring that waterbody into compliance and that trading cannot be used to create an impairment or to avoid meeting legal baseline requirements.

Mr. Henderson inquired whether the rulemaking contains any provisions that explicitly identifies who may own a credit. Deputy Secretary Hines replied no and clarified that the rulemaking does not specifically contain provisions that cover the ownership of a credit. In response, Mr. Henderson commented that the Commonwealth and/or the Department may want to consider retaining part or full ownership of a credit generated by a project financed by state dollars. Deputy Secretary Hines responded that the Department has taken into account the reductions achieved through Commonwealth investments to reach Pennsylvania’s overall compliance objectives for the Chesapeake Bay. Chairman Hanger noted his appreciation of Mr. Henderson’s comments but emphasized that the Department’s intent with the nutrient trading program is to provide incentives or cost effective options to point sources to comply with the law.

**Michael Pechart moved to approve the proposed rulemaking with a 30-day public comment period. Mr. Henderson seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEMS PERMITTING, MONITORING, AND COMPLIANCE (25 Pa Code, Chapter 92a)**

John Hines, Deputy Secretary for Water Management, presented an overview of the proposed rulemaking. Tom Starosta, Environmental Engineering Consultant, Bureau of Water Standards and Facility Regulation, and Bill Cumings, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

At the conclusion of the Department's presentation, Mr. Henderson asked if the Department would create a separate fund or account within the Clean Water Fund to deposit the fees collected under the rulemaking. Deputy Secretary Hines responded that a separate account would be established to manage the fees collected under the rulemaking and that the account would provide a transparent means to ensure that the fees are being used for program services and administration.

Richard Fox inquired about the applicability of the provisions of §92a.36 regarding cooling water intake structure design standards. Tom Starosta replied that the provisions would only apply to power plants, but acknowledged that the Department is waiting for direction from the EPA in relation to this provision, as it is anticipated EPA will issue a rulemaking concerning these requirements in the near future. Mr. Starosta also noted that the issues relevant to §92a.36 are elaborated on in the preamble of the rulemaking, where it is also noted that the Board is particularly interested in receiving comments on the issue.

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

**ADJOURN:**

With no further business before the Board, Mr. Strong moved to adjourn the meeting. Mr. Yim seconded the motion, which was unanimously approved by the Board. The November 17, 2009, meeting of the Board was adjourned at 9:54 a.m.