

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**July 13, 2010**

**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 Spilla, 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  
David Spotts, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission  
Dr. Walter Meshaka, alternate for Barbara Franco, Executive Director, PA Historical and Museum Commission  
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning  
Jolene Chinchilli, 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 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  
Randal (Duke) Adams, Policy Office, Acting Director  
Michele Tate, Regulatory Coordinator

**CALL TO ORDER AND APPROVAL OF MINUTES**

Chairman Hanger called the meeting to order at 9:05 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 15, 2010, EQB meeting minutes.

**Michael Pechart moved to approve the June 15, 2010, EQB meeting minutes.**

**Walter Heine seconded the motion, which was unanimously approved by the Board.**

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

Ken Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, provided an overview of the final 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, Walter Heine noted that he, as a township supervisor, has received a number of complaints regarding the use of outdoor wood-fired boilers (OWBs). He further noted that townships and other local municipalities will have limited abilities to enforce the rulemaking once it is finalized. In light of his observations, Mr. Heine asked whether the Department has considered the impact the final rulemaking will have on staff resources including the need for additional staff to follow-up on complaints that are received concerning the use of OWBs. Acting Deputy Secretary Reisinger confirmed that the Department has examined the resources needed to implement the rulemaking, but noted that the Department has already been routinely addressing complaints about the use of OWBs in the state, especially during winter months. He acknowledged that he does expect staff will receive an increase in the number of complaints once the regulations are final, but noted that the Department will be focusing its efforts on informing and educating the public and OWB manufacturers about the final rulemaking, including the fuels that are permitted to be used in an OWB, to ensure OWBs are operated lawfully and according to manufacturer's specifications in Pennsylvania.

Richard Fox inquired whether the Department anticipates receiving requests to use other fuels in OWBs beyond the allowable fuels specified in the rulemaking. Acting Deputy Secretary Reisinger replied that he was uncertain about the number of exemption requests the Department may receive, but noted that if such an exemption request was submitted to the Department by an OWB manufacturer, the Department would carefully consider the request and possibly institute a "blanket exemption", if warranted.

Edward Yim noted that Representative George believes the issues associated with the use of an OWB are issues that are best dealt with at the local government level; however, given the changes the Department has incorporated in the final rulemaking, he is willing to support the final regulations.

Patrick Henderson noted that he appreciates the Department's responsiveness to the concerns Senator White raised with the rulemaking, and that Senator White supports the final regulations.

Chairman Hanger, in closing, thanked those involved in the development and further refinement of the final rulemaking and noted that he believes the final regulations are a "good compromise" for all parties impacted.

**Joanne Denworth moved to adopt the final rulemaking. Mr. Yim 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: COMMERCIAL FUEL OIL SULFUR LIMITS FOR COMBUSTION UNITS (25 Pa Code, Chapters 121, 123 and 139)**

Ken Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, provided 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.

Mr. Henderson commented that Senator White is inclined to support the proposed rulemaking as a means to solicit further public comment and input on the Department's proposal. He further noted, however, that while Senator White supports lowering the sulfur limit in commercial fuel oil, she believes a 500 ppm standard is more reasonable and that the standard in the rulemaking is aggressive and may not be reasonably achievable by refineries in Pennsylvania. He also noted that Senator White's two primary concerns with the rulemaking are its effects on the price and supply of commercial fuel oil. In relation to

§ 123.22(b)(2)(iii) of the proposal, which provides that the Department may temporarily suspend or increase the applicable limit or percentage by weight of the sulfur content in commercial fuel oil if approved by the Environmental Protection Agency, Mr. Henderson asked why the Department structured the regulation in such a way that it must obtain EPA's approval to modify or suspend the sulfur limit in commercial fuel oil. As background, Mr. Henderson noted that the state of New York has adopted similar legislation for commercial fuel oil but provides its Governor with the ability to temporarily suspend or modify its rule, without federal concurrence. Joyce Epps responded that the Department is intending to submit the final rulemaking after its adoption to the EPA as a revision to the Commonwealth's State Implementation Plan (SIP). Once it is approved by the EPA as a component of its SIP, Ms. Epps noted that Pennsylvania will want to take credit for those reductions in sulfur dioxide (SO<sub>2</sub>) and fine particulate matter (PM<sub>2.5</sub>) that are achieved as a result of the limits imposed in the rulemaking. She further noted that there are several areas in the Commonwealth that are non-attainment for the 24-hour standard PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) and that the SIP revisions to address those areas are due to the EPA in December 2012. She also noted that there are a few areas in Pennsylvania for which the Department has not yet received approval for its annual 1997 PM<sub>2.5</sub> NAAQS attainment demonstrations. Therefore, once Pennsylvania is permitted to include the final rulemaking as a SIP revision, the Department will rely on EPA to help the Department with its investigation to determine if there is a legitimate shortage of fuel. If a shortage is found, Ms. Epps noted that the Department will seek concurrence of the EPA to suspend or modify the rulemaking. In response, Mr. Henderson inquired if the state of New York does not intend to submit its legislation as a revision to their SIP. Ms. Epps responded that she would inquire about the intentions of New York and follow up with Mr. Henderson directly.

Mr. Henderson also inquired about the projected emission reductions that are referenced on page 3 of the Order of the rulemaking. In the Order, the Department states that commercial fuel oil combustion in residential and commercial combustion units in Pennsylvania contributes between 2% and 3% of SO<sub>2</sub> emissions in the MANE-VU region, depending on the season. The Department further noted in the Order that NESCAUM evaluation indicates that the anticipated annual SO<sub>2</sub> emission reduction benefits in the Commonwealth would be approximately 29,000 tons when the proposed rulemaking is fully implemented. To ensure understanding of the projected benefits that may be realized in Pennsylvania as a result of this rulemaking, Mr. Henderson inquired what the 29,000 tons reduction estimate would equal as a percentage value. Ms. Epps responded that to address Mr. Henderson's question, the Department would have to verify the total percentage of the Commonwealth's overall inventory of SO<sub>2</sub> emissions. She noted however that with relation to the reductions realized in all sectors, the percent reduction applicable to this specific rulemaking would be smaller in comparison to SO<sub>2</sub> emissions that are emitted by larger emitting sources, such as power plants.

Richard Fox inquired whether Ms. Epps could elaborate on the current sulfur content of heating units. Ms. Epps responded by referring to Annex A of the rulemaking and stating that the current sulfur limit, which was effective on August 1, 1979, is 0.3% for No. 2 and lighter Commercial Fuel Oil. She stated that the percentage translates to about 3,000 ppm.

Wayne Gardner asked whether the reductions included in the proposed rulemaking would impact residential consumers, including any changes that may be necessary to their furnace equipment. Ms. Epps replied that residential consumers will not need to make any changes to their furnace equipment and noted that with a 15 ppm limitation, consumers will actually realize a cost savings from the rulemaking because their maintenance costs will decrease. Mr. Gardner further asked the Department the consumer impacts that may be realized if a temporary waiver of the rulemaking requirements is initiated, in particular the impacts to the operation of equipment. Ms. Epps responded that very little impacts would result during

the time a temporary waiver is in place, because under the waiver provisions in the rulemaking, a 500 ppm limitation would be applicable during the interim period.

**David Strong moved to accept the proposed rulemaking, with a 60-day public comment period and three public hearings. Commissioner Gardner seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.**

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

John Hines, Deputy Secretary for Water Management, provided an overview of the final rulemaking. Andy Zemba, Environmental Planning Manager, Water Planning Office, 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 regarding the final rulemaking.

**Michael Pechart moved to accept the final rulemaking. Ms. Denworth seconded the motion, which passed unanimously by the Board.**

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

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

Following the Department's presentation, the Board did not present any questions concerning the final rulemaking.

**Jolene Chinchilli moved to accept the final rulemaking. Mr. Heine seconded the motion, which was approved by a majority of Board members. Mr. Deklinski voted in opposition to the motion.**

**CONSIDERATION OF PROPOSED RULEMAKING: FISHING CREEK, et al STREAM REDESIGNATIONS (25 Pa Code, Chapter 93)**

John Hines, Deputy Secretary for Water Management, provided an overview of the proposed rulemaking. Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Henderson asked whether the Department is currently protecting the existing uses of all streams included in the proposed rulemaking. Deputy Secretary Hines responded yes. Mr. Henderson asked Deputy Secretary Hines if the Department could provide the Board with a brief overview of how reference stations are chosen for comparative analyses of streams. In response, Tony Shaw, Water Pollution Biologist with the Department's Bureau of Water Standards and Facility Regulation, explained to the Board how reference stations are selected. Mr. Shaw noted there is a

misperception that great biological variability between candidate and reference streams can exist; depending on the streams' distance from each other and local geological differences. This is usually not the case. However, he clarified that because of this misperception, the Department does select reference stations with characteristics that are approximately comparable to those of the candidate streams, such as similar drainage size and stream type. Mr. Shaw further noted that as part of the Department's assessment of a stream, biologists collect samples at stations at the same time as samples are collected from a reference station to ensure against seasonal variability. He further elaborated that the Stream Evaluation Report for each stream redesignation in a rulemaking package includes a discussion of the comparable nature and applicability of each reference station. Mr. Shaw noted that the Department monitors the selected reference stations in order to develop a record of performance that ensures the reference stations are maintaining the proper metric scoring performance that qualifies their use for candidate stream comparisons.

Mr. Spotts, of the PA Fish and Boat Commission, complimented the Department on the proposed rulemaking, especially its work with biometrics, and noted his support of the designations included in the proposed rulemaking. Mr. Spotts also stated the Department did an excellent job on the evaluation of the Upper Lehigh. Chairman Hanger agreed and also complimented the public who brought forth the stream redesignation petitions that prompted the proposed rulemaking and noted that, even though not all petition requests were granted as requested, all were treated consistently and staff did a terrific job applying the law and science.

**David Strong moved to accept the proposed rulemaking, with a 45-day public comment period. Mr. Spotts seconded the motion, which was approved by a majority of the Board members.**

#### **OTHER BUSINESS:**

Chairman Hanger announced that the next meeting of the Board is rescheduled from Tuesday, August 17, 2010, to Monday, August 30, 2010. The meeting will convene at 9:00 a.m. in room 105 of the Rachel Carson State Office Building.

#### **ADJOURN:**

With no further business before the Board, the meeting was adjourned by Chairman Hanger at 10:26 a.m.