

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 16, 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 Biehler, Department of Transportation
Yasmin Snowberger, 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, Pennsylvania Game Commission
Richard Manfredi, Citizens Advisory Council
David Spotts, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
Joanne Denworth, alternate for Acting Secretary Ian Rosenblum, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Michael Pechart, alternate for Secretary Russell Redding, Department of Agriculture
Dr. James Logue, alternate for Acting Secretary Michael Huff, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel
Randal (Duke) Adams, Acting Director, Policy Office
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Hanger called the meeting to order at 9:03 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the October 12, 2010, EQB meeting minutes.

**Michael Pechart moved to approve the October 12, 2010, EQB meeting minutes.
Joanne Denworth seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: COAL MINING PROGRAM AMENDMENTS
(INCIDENTAL COAL EXTRACTION, BONDING, ENFORCEMENT, SEDIMENT CONTROL AND
REMINING FINANCIAL GUARANTEES) (25 Pa Code, Chapters 86-90):**

Tom Callaghan, Director, Bureau of Mining and Reclamation, provided an overview of the final rulemaking. Bill Allen, Environmental Program Manager, Bureau of Mining and Reclamation, and Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Richard Manfredi asked whether the letters of credit referred to in the final rulemaking are irrevocable and whether they ever expire. Mr. Allen responded that the Department requires irrevocable letters of credit and that they must be renewed annually.

David Strong moved to adopt the final rulemaking. Walter Heine seconded the motion, which was approved by a majority of the Board members. Richard Manfredi voted in opposition to the motion.

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

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 Department's presentation, Patrick Henderson asked whether the final rulemaking includes emission fees for greenhouse gases. Ms. Epps replied that it does not. Mr. Henderson asked whether the Department intends to start permitting greenhouse gas emissions in 2011, or if that responsibility would fall to the U.S. Environmental Protection Agency (EPA). Ms. Epps responded that according to the structure of EPA's Greenhouse Gas Tailoring Rule, in the first six months of 2011, the Department is required to permit greenhouse gases from facilities subject to major source permitting for criteria pollutants under the Prevention of Significant Deterioration program, provided that the facility emits 75,000 tons of CO₂ equivalents. Ms. Epps noted that the Department currently has five pending permit applications for facilities applicable to the Prevention of Significant Deterioration program. She further elaborated that several petitions have been filed that challenge EPA's rule; however, in the absence of Congressional or judicial action, the Department would proceed with completing the processing (including greenhouse gas permitting) for the five pending applications. She further noted that EPA issued guidance in early November 2010 on the best available control technology that should be implemented at sources subject to the Greenhouse Gas Tailoring Rule and that the Department is examining the guidance. In response, Mr. Henderson asked whether the Department has determined a cost for reviewing and processing permit applications applicable to the Greenhouse Gas Tailoring Rule. In particular, he noted that the final rulemaking does not include fees to cover the Department's anticipated review of these permits and inquired whether other permittees would be underwriting the costs associated with the Department's review of those permits. Ms. Epps replied that permittees covered under this rulemaking will not be underwriting the cost of the Department's review of greenhouse gas emissions permits because the Department will not be using emissions fees to cover those costs. She further elaborated on the structure of the Department's air quality permitting program and noted that the Department's fee for the plan approval program (pre-construction permitting program) is a separate program; emissions fees do not cover plan approval applications. Therefore, emissions fees would not be used to support work conducted by the Department on the review of plan approval permit applications.

Mr. Manfredi asked for the Department's response to those commentators who called for more timely review of permits subject to the fee increases in the rulemaking. Acting Deputy Secretary Reisinger replied that the Department moves applications through the system as quickly as possible and that these fees are designed to offset the cost of existing workloads and to ensure that the program's financial situation is viable in the future, considering that the budget for the Air Quality Program has steadily decreased over the past several years. Regarding the Department's review of the adequacy of the fees, Mr. Manfredi asked whether it would be possible for the Department to complete its analysis sooner than the 5-year increments prescribed in the rulemaking. Ms. Epps replied that the Department will be

conducting an on-going analysis of the fees every fiscal year to ensure that fees are sufficient to cover program costs. She further elaborated that the five-year review increment was chosen for the rulemaking to coincide with requirements of the Air Pollution Control Act, which also requires the Department to perform an evaluation of the program every five years, including a financial analysis of the program. Nevertheless, Ms. Epps noted that the Department will evaluate the financial standing of the program on an on-going basis and would return to the Board with an analysis sooner than the 5-year increment if warranted.

Mr. Manfredi asked whether the Department considered establishing a sliding scale to assess Request for Determination Fees to small businesses. Ms. Epps replied that the program looked into that issue as well as reducing or waiving the fee for small businesses and while the Air Pollution Control Act does not authorize the Department to waive the fee, it does allow the Department to reduce the fee. As part of its analysis on this issue, Ms. Epps explained that the Department reviewed the number of Request for Determination applications it received over the past three years. During that time, the Department received on average 1,000 applications, including those applications that were submitted via the Department's online request system. For those applications submitted electronically, approximately 42% of those applications were from non-major sources, however, it was not evident whether these sources met the definition of a "small business", as that term is defined in regulation. Therefore, Ms. Epps noted that the Department will revise the application so that the Department can capture that information to ascertain which non-major sources meet the criteria of a small business.

Jolene Chinchilli moved to adopt the final rulemaking. Joanne Denworth seconded the motion, which was approved by a majority of the Board members. Mr. Henderson, Mr. Deklinski, and Mr. Manfredi voted in opposition to the motion.

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

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

There was no discussion following the Department's presentation.

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

In closing remarks, Chairman Hanger noted his appreciation to the Board for its action on the fee packages presented at the meeting and noted that regardless of how services by the Department are funded, either through the General Fund or by the imposition of fees, those services are vital to the public health and safety of the citizens of the Commonwealth and should not be cut or go unfunded.

OTHER BUSINESS:

Chairman Hanger announced that the next meeting of the Board is scheduled for Tuesday, December 21, 2010. The meeting will convene at 9:00 a.m. in room 105 of the Rachel Carson State Office Building, Harrisburg.

ADJOURN:

With no further business before the Board, Mr. Pechart moved to adjourn the meeting. David Spotts seconded the motion, which was unanimously approved by the Board. The November 16, 2010, meeting of the Board was adjourned at 9:45 a.m.