



DATE: March 2, 2010

SUBJECT: March 16, 2010, Environmental Quality Board Meeting

TO: EQB Members and Alternates

FROM: Michele L. Tate
Regulatory Coordinator

The next meeting of the Environmental Quality Board (EQB) is scheduled for Tuesday, March 16, 2010, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board will consider the following items:

1. Consideration of Proposed Rulemaking: Ambient Water Quality Standards – Chloride (25 Pa Code, Chapter 93): This proposed rulemaking amends 25 Pa Code Chapter 93 by adding a new aquatic life criterion for chloride. Current water quality standards in Chapter 93 include criterion for chloride; however, the criterion was developed primarily for the protection of drinking water supplies and is applicable only at the point of water withdrawal. Although the current water quality criterion for chloride is protective of instream aquatic life uses when applied, it is not applied in all waters of this Commonwealth. Therefore, to ensure protection of aquatic life in all waters of the state, the Department is recommending through this rulemaking the addition of ambient water quality criterion for chloride. The chloride standard included in the proposed rulemaking is the current national chloride criteria for the protection of aquatic life as recommended by the U.S. EPA in their February 1988 publication *Ambient Water Quality Criteria for Chloride*. The EPA determined the criteria continuous concentration (CCC-four-day average) and the criteria maximum concentration (CMC – one-hour average) should not exceed 230 mg/l and 860 mg/l, respectively. This criterion is included in the Department's regulatory proposal, which when finalized, will be implemented through the Department's permit and approval actions.

The Department recommends the approval of the proposed rulemaking, with a 45-day public comment period.

2. Rulemaking Petition to Amend 25 Pa Code Chapter 78.51 and 78.52: On November 30, 2009, the Stephenson Group Natural Gas Company submitted a rulemaking petition to the Environmental Quality Board to amend §§ 78.51 and 78.52 to address, in the petitioner's assessment, ambiguities concerning the regulatory requirement that a well permit applicant notify all landowners or water purveyors whose water supplies are within 1000 feet of the location of the proposed well. The petitioner claims that it is problematic if not difficult to ascertain the ownership or the right of a purveyor of a water supply, thus making it difficult to comply with their notification obligations under the Department's current regulations. Department staff reviewed and evaluated the petition request and found that certain amendments requested by the petitioner were not appropriate, as they would conflict with statutory law. By letter, dated January

5, 2010, the petitioner was advised of the Department's review and was asked to confirm with the Department how it would like to proceed with its rulemaking petition. In response to the Department's letter, the petitioner submitted a revised petition to the EQB on January 19, 2010, which proposes several amendments that would, according to the petitioner, clarify the notification procedures a well operator must adhere to be assured that the Department will deem the well operator to have made proper notification.

Based on its administrative completeness, the Department recommends the Board's approval of the petition for further review and study. In lieu of proceeding with Section 23.6 of the Board's Policy for Processing Petitions, which requires the Department to prepare a report evaluating the petition within 60 days, the Department is recommending it review the petitioner's suggested amendments as it proceeds with a proposed rulemaking to amend Chapter 78. On January 30, 2010, at 40 *Pa.B.* 623, the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with the proposed Chapter 78 regulations, it will address the petitioner's recommendations within the rulemaking package.

Based on the administrative completeness of the petition, the Department recommends the acceptance of the petition for further study, with subsequent review of the petitioner's recommendations to be included in the Department's proposed Chapter 78 rulemaking.

3. Consideration of Proposed Rulemaking: Coal Mining Program Amendments (25 Pa Code, Chapters 86 - 90): The purpose of this proposed rulemaking is two-fold. First, the proposal addresses regulatory program deficiencies identified by the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), which has oversight authority over Pennsylvania's coal mining program. A majority of the deficiencies that are addressed in this rulemaking are minor and include modifications that are needed to ensure that state regulations are consistent with and as effective as federal regulations. The regulatory deficiencies must be addressed in order for Pennsylvania to retain regulatory authority for its coal mining program. If program deficiencies are not resolved to the satisfaction of OSMRE, the Commonwealth is at risk for losing or receiving less federal funding for the Abandoned Mine Land Reclamation program. Second, the rulemaking includes improvements to the Remaining Financial Guarantee program, which are needed because of the transition in the coal mining bonding program from an alternate bonding system, which used acre-based bond rates, to a conventional bonding system where the bond amount is based on the actual costs of reclamation. The changes proposed in the rulemaking are not expected to increase or add costs to the regulated community. The Department's Mining and Reclamation Advisory Board reviewed the proposed rulemaking on October 22, 2009.

The Department recommends the Board's approval of the proposed rulemaking, with a 30-day public comment period.

4. Proposed Rulemaking: Designation of Area as Unsuitable for Surface Mining (Muddy Run) (25 Pa Code, Chapter 86): This proposed rulemaking was initiated in response to a rulemaking petition submitted to the Department of Environmental Protection by the Read Township Municipal Authority (RTMA) under 25 *Pa Code*, Chapter 86. The petitioner is requesting that approximately 3,200 acres of the Muddy Run watershed be designated as "unsuitable for mining". RTMA's purpose for pursuing the petition was the protection of public water supply wells from potential, adverse mining-related impacts. Pursuant to receipt of the complete petition, the Department initiated a technical study of the petition area, including water sampling and site reconnaissance and notified potentially interested parties about the

petition and the Department's technical study of the area. Interested parties were invited to provide comments to the Department, as well as provide testimony at a public hearing.

As a result of the technical study of the petition, the Department determined that there is a presence of high sulfur zones, with little or no alkaline strata, in the petition area and that there is a very significant potential for the production of acid mine water from surface mining of coal in the petition area. The technical study also confirmed that there is a potential for mining-related pollution of the RTMA wells and that surface mining activities significantly degraded groundwater resources within the technical study area, including numerous domestic and private water supplies. A copy of the Department's technical study as well as its Comment and Response document is available on the EQB's website.

In response to the rulemaking petition and as a result of technical studies, this proposed rulemaking amends *25 Pa Code* Chapter 86.130 to add subsection (b)(18), which designates the Lower Kittanning, Clarion, Brookville and Mercer coals within the upper portions of the Muddy Run watershed, Reade Township, Cambria County, as unsuitable for surface mining operations. The designation will protect the RTMa's water supply wells by restricting mining on acid mine drainage producing coal seams situated in close proximity to the water supply's source aquifers.

The Department recommends the Board's approval of the proposed rulemaking, with a 30-day public comment period.

5. Final Rulemaking: Control of NO_x Emissions from Cement Kilns (25 Pa Code, Chapter 145):

This final rulemaking amends existing requirements in Chapter 145 in order to further reduce NO_x emissions from Portland cement kilns in Pennsylvania during the ozone season (May 1 – September 30). Emissions of NO_x are precursors to the formation of ground-level ozone and fine particulate matter (PM_{2.5}) pollution, both of which are serious human health and public welfare threats. In Pennsylvania, there are nine cement plants, with 21 cement kilns. These kilns are one of the largest industrial NO_x emission source categories, and account for approximately 29% of the more than 45,000 tons per year of NO_x emitted into the air from all nonelectric generating unit sources in the Commonwealth. Adoption of the revised NO_x emission limits for cement kilns in this rulemaking is part of the Commonwealth's strategy, in concert with other Ozone Transport Reduction (OTR) jurisdictions, to reduce the transport of ozone in order to attain and maintain the health-based 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) of 0.075 parts per million in this state and throughout the OTR. If approved, the revised NO_x emission limits in the final-form rulemaking must be met by owners and operators of Portland cement kilns by May 1, 2011.

The regulations were approved by the Board at proposed rulemaking on February 19, 2008. A 66-day public comment period commenced on April 19, 2008, and three public hearings were respectively held on the proposed rulemaking in Wilkes-Barre, Pittsburgh and Harrisburg. During the comment period, seven commentators provided comments on the proposal, including comments submitted by Senators Mary Jo White and Raphael J. Musto and the Independent Regulatory Review Commission. Although some commentators expressed their support of the goal of the regulations to lower ozone in the Commonwealth, some questioned several aspects of the rulemaking including provisions that subject new cement kilns to lower emission limits than existing cement kilns and the necessity for restricting NO_x emissions trading to only those kilns owned or operated under common control. The rulemaking includes a Comment and Response document that summarizes the comments received by the Board and the Department's responses.

At final rulemaking, editorial changes were made to the regulations, including deleting all proposed amendments under Chapter 129 and incorporating those amendments under Chapter 145, as well as adding several new terms and definitions. An additional compliance option was also added at final rulemaking which allows the purchase of Clean Air Interstate Rule (CAIR) NO_x allowances to account for emissions in excess of the proposed limits. The Citizens Advisory Council (CAC) and the Air Quality Technical Advisory Committee (AQTAC) reviewed the draft final regulations. The CAC concurred with the Department's recommendation to forward the final-form rulemaking to the Board for consideration. The AQTAC shared the position of the CAC, but recommended certain changes be made to the rulemaking before its submission to the Board. The Department has addressed the AQTAC's recommendations, which are elaborated in the Order of the final rulemaking.

When implemented, it is expected the final regulations will provide approximately 1,300 tons per year of additional NO_x emission reductions in Pennsylvania. Control technologies are readily available to achieve NO_x emission reductions of greater than 20% from cement kilns. The final-form amendments will allow a number of this Commonwealth's cement manufacturers to develop and implement compliance strategies without the need for widespread installation of control equipment on the older technology long kilns, which will likely be replaced with more energy efficient technologies, like preheater or precalciner technologies, over time.

The Department recommends the Board's adoption of the final-form rulemaking.

6. Final Rulemaking: Control of NO_x Emissions from Glass Melting Furnaces (25 Pa Code, Chapters 121 and 129): This final-form rulemaking establishes year-round NO_x emission control requirements, emissions standards and emission limitations and related administrative requirements for the owners and operators of glass melting furnaces for the purpose of reducing NO_x emissions. As elaborated above, NO_x emissions are precursors to the formation of ground-level ozone and fine particulate (PM_{2.5}), both of which in excess can cause serious public health concerns. In Pennsylvania, there are 16 glass melting facilities with 26 glass melting furnaces operating. Glass melting furnaces are one of the largest industrial NO_x emission source categories in the Commonwealth and, according to 2005 figures, account for approximately 21% of the more than 45,000 tons per year of NO_x emitted into the air from all nonelectric generating units in the Commonwealth. When implemented, this final-form rulemaking will reduce NO_x emissions from glass melting furnaces by approximately 2,500 tons per year or 25% from 2005 levels. Adoption of the NO_x emission limits for glass melting furnaces in this rulemaking is part of the Commonwealth's strategy, in concert with other Ozone Transport Region (OTR) jurisdictions, to reduce the transport of ozone to attain and maintain the health-based 8-hour ozone National Ambient Air Quality Standard (NAAQS).

The proposed regulations were approved for public comment by the Board on February 19, 2008. A 66-day public comment period on the proposal opened on April 19, 2008, and three public hearings in Harrisburg, Wilkes-Barre and Pittsburgh, respectively, were held. Ten individuals provided comments to the Board on the proposed rulemaking, including Senators Mary Jo White and Raphael Musto, Rep. Hutchinson, and the Independent Regulatory Review Commission. Although some commentators lauded the Department's efforts to reduce NO_x emissions in the state through the rulemaking, some commentators expressed specific concerns with the regulations, including the lack of a variance provision in the rulemaking where a glass melting furnace facility could demonstrate that the regulations were economically unreasonable under certain conditions. Other commentators expressed concern that the rulemaking could cause economic disruption at affected furnaces and that the regulations should allow an existing furnace to operate through its full life cycle before requiring it to be replaced or rebuilt

with control technology in order to meet the NO_x emission limits in the rulemaking. The final rulemaking package includes a Comment and Response document that summarizes the comments received by the Board during the proposed comment period and the Department's responses. To solicit additional comment on the rulemaking, the Department published an Advance Notice of Final Rulemaking (ANFR) on September 12, 2009, at 39 *Pa.B.* 5318. As a result of this subsequent comment period, the final rulemaking package also includes a Comment and Response Document for comments the Department received during the ANFR.

At final rulemaking, several significant changes to the regulations are included. Due to significant concerns expressed by EPA, including the possible denial of the Commonwealth's CAIR SIP revision, the proposed compliance option allowing glass furnace owners and operators to purchase CAIR NO_x allowances is deleted from the rulemaking. Other significant changes also include the removal of the provision in the rulemaking that required compliance with the emission limits during the ozone season from May 1 – September 30. Because NO_x is a precursor to the formation of PM_{2.5}, which is monitored year-round, the Department amended the rulemaking to require compliance with the NO_x emission limits year-round. At final rulemaking, the Department has also added a NO_x emission limit applicable to a glass melting furnace that produces a glass product other than flat, container, fiberglass or pressed, or blow, and has included a petition process for an alternative compliance deadline to any glass melting furnaces that demonstrates it is economically or technologically infeasible to meet the January 1, 2012, compliance deadline.

The Department conferred with AQTAC and the CAC during the development of the final-form rulemaking. At the November 18, 2009, meeting, AQTAC recommended revisions to the final-form regulations and concurred with the Department's recommendation to advance the regulations to the Board for consideration as a final-form rulemaking. At the December 15, 2009, CAC meeting, the Council concurred with the Department to present the final regulations to the Board.

The Department recommends the Board's approval of the final-form regulations.

7. Other Business: On December 23, 2009, the Pennsylvania Supreme Court invalidated the Pennsylvania Mercury Rule, which was published as final on February 17, 2007, at 37 *Pa.B.* 883. In response, the Department will present its recommendation regarding the Board's appropriate response to the invalidation of the rulemaking.

I will be out of the office from March 5 – 12, 2010. Department staff will be contacting each Board member prior to the meeting to discuss any questions or concerns you may have regarding the agenda items for the March 16, 2010, EQB meeting.

If you have any immediate questions or concerns, please contact Kelly Heffner at 783-8727 or by e-mail at kheffner@state.pa.us .

Thank you.

Attachments