

**MINUTES  
ENVIRONMENTAL QUALITY BOARD MEETING  
December 21, 2010**

**VOTING MEMBERS OR ALTERNATES PRESENT**

John Hanger, Chairman, Secretary, Department of Environmental Protection  
Danielle Spilla, alternate for Secretary Allen Biehler, Department of Transportation  
Wayne Gardner, alternate for Chairman James H. Cawley, Public Utility Commission  
Joseph Deklinski, alternate for Representative Scott E. Hutchinson  
Richard Fox, representing the PA Senate Democratic Caucus  
Patrick Henderson, alternate for Senator Mary Jo White  
John Arway, Executive Director, Pennsylvania Fish and Boat Commission  
Dr. Walter Meshaka, alternate for Barbara Franco, Pennsylvania Historical and Museum Commission  
Patricia Allan, alternate for Secretary Ian Rosenblum, Governor's Office of Policy and Planning  
Walter Heine, Citizens Advisory Council  
David Strong, Citizens Advisory Council  
Paul Opiyo, alternate for Secretary Austin Burke, Department of Community and Economic Development  
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 9:05 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the November 16, 2010, EQB meeting minutes.

**Michael Pechart moved to approve the November 16, 2010, EQB meeting minutes. John Arway seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: DAM SAFETY AND WATERWAY MANAGEMENT FEES (25 Pa Code Chapter 105):**

Patricia McSparran, Director, Bureau of Waterways Engineering, provided an overview of the proposed rulemaking. Glenn Rider, Director, Bureau of Watershed Management, and Meg Murphy, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, John Arway stated that the PA Fish and Boat Commission supports the Department's permit fee increases included in the Dam Safety and Waterway Management Fees rulemaking as well as the permit fee increases that were implemented by the Department for

Marcellus Shale drilling. However, he noted there are cost components associated with the review of these permit applications by the PA Fish and Boat Commission for which the Commission is not compensated. He noted that the PA Fish and Boat Commission has been involved in permitting and dam safety inspections since the early 1970's and as a result has incurred expenses. Mr. Arway said that the PA Fish and Boat Commission will be submitting comments during the public comment period for the proposed rulemaking and suggested that the Department consider establishing a fee structure in the rulemaking that would provide compensation to the PA Fish and Boat Commission for the work it conducts in the review of Chapter 105 permits. Chairman Hanger acknowledged the important points brought up by Mr. Arway and noted that the work the Commission does is valuable.

Walter Heine asked whether permit fees, as included in the proposed rulemaking, would be assessed for the cleanup of the Big Spring Creek dam in Cumberland County. Ms. McSparran replied that she is not familiar with that specific dam but noted that a permit modification would not be required unless there was a change in elevation at the top of the dam. Roger Adams, manager of the Department's Division of Dam Safety, added that a permit would not be applicable in this particular case because the Big Spring Creek dam is a low-level and low-risk dam.

Danielle Spila asked if the rulemaking exempts other Commonwealth agencies from paying the fees included in the rulemaking. Ms. McSparran responded yes.

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

**CONSIDERATION OF RULEMAKING PETITION: AQUASHICOLA CREEK  
REDESIGNATION (CARBON AND MONROE COUNTIES) (25 Pa Code Chapter 93.9d):**

Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, provided an overview of the Rulemaking Petition. Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, and Rodney Kime, manager, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, assisted with the presentation.

Following the Department's presentation, the petitioner, John Vogt, President of the Aquashicola – Pohopoco Watershed Conservancy, was invited to address the Board. Mr. Vogt thanked the Department for recognizing the petition.

**Mr. Arway moved to approve the rulemaking petition for further review by the Department. David Strong seconded the motion, which was approved by a majority of the Board members. Joe Deklinski voted in opposition to the motion.**

**OTHER BUSINESS:**

**WITHDRAWAL OF RULEMAKING PETITION TO REDESIGNATE TRIBUTARIES OF THE  
SOUTHFORK OF TENMILE CREEK (GREENE COUNTY) (25 Pa Code Chapter 93.9v):**

Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, provided an overview of the petition and the petitioner's request to withdraw the rulemaking petition from further review by the Department. Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, and Rodney Kime,

manager, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, assisted with the presentation.

Following the Department's presentation, Patrick Henderson inquired whether acceptance of the requested withdrawal was the appropriate course of action to take or if action on the petition should be reserved until the Department returned to the Board with a recommendation on the petitioner's initial redesignation request. Doug Brennan replied that the Board has several options to handle the petitioner's request as there is no mandatory policy to follow. Michelle Moses noted that she does not believe an action by the Board is necessary to accept the withdrawal of the petition and further clarified that the Department would continue to study the stream and take action as necessary based on its evaluation. Chairman Hanger noted that there may be virtue for the Board to take official action on the petitioner's withdrawal request. Mr. Henderson agreed with Chairman Hanger and noted that he believes it would behoove the Board to take official action on the petitioner's request to withdraw the petition.

Mr. Arway inquired whether the Department knew why the petitioner requested that the petition be withdrawn. Mr. Aunkst replied that the Department met with the petitioner and discussed the findings associated with the Department's review; however, he was uncertain whether the Department's findings influenced the petitioner's decision to withdraw the petition. Mr. Arway asked whether the Department has initiated a change to the existing use designation of the petitioned waterbody in light of the results of its analysis. Mr. Aunkst replied that an existing use determination was made by the Department. Mr. Arway inquired when the Department would present a regulatory package to the Board that would include a designated use change for the waterbody in question. Mr. Aunkst replied that he was uncertain, but noted that the decision would be based on several factors, including the Board's vote on the acceptance of the petition withdrawal and Departmental resources.

**Mr. Henderson moved to accept the withdrawal of the petition. Mr. Strong seconded the motion, which was approved unanimously by the Board.**

In closing, Chairman Hanger noted this meeting is his last as Chairman of the Board and expressed his appreciation to every Board member for their hard work and service to the Board. He noted that it was a privilege to serve as Chairman of the EQB.

Chairman Hanger announced that the next meeting of the Board is scheduled for Wednesday, January 19, 2011. 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 December 21, 2010, meeting of the Board was adjourned at 9:50 a.m.