

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 18, 2011

VOTING MEMBERS OR ALTERNATES PRESENT

Michael Krancer, Chairman, Secretary, Department of Environmental Protection
Ryan Mackenzie, alternate for Julia Hearthway, Acting Sectary, Department of Labor and Industry
Natasha Schock, alternate for Barry Schoch, Secretary, Department of Transportation
Wayne Gardner, alternate for Robert Powelson, Chairman, PA Utility Commission
Jamie Serra, alternate for Representative Camille George
Joseph Deklinski, alternate for Representative Scott Hutchinson
Richard Fox, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Mary Jo White
Richard Manfredi, Citizens Advisory Council
Tim Schaeffer, alternate for John Arway, PA Fish and Boat Commission
Dr. Walter Meshaka, alternate for Barbara Franco, PA Historical and Museum Commission
Patrick Henderson, alternate for Jennifer Branstetter, Governor's Office of Policy and Planning
Gail Conner, alternate for Jolene Chinchilli, Citizens Advisory Council
Dr. Peter Wilshusen, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Heidi Crager, alternate for George Greig, Secretary, Department of Agriculture
Dr. James Logue, alternate for Eli Avila, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Krancer called the meeting to order at 9:04 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the December 21, 2010, EQB meeting minutes.

Richard Manfredi moved to approve the December 21, 2010, EQB meeting minutes. Dr. Peter Wilshusen seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: CLARKS CREEK, et al STREAM REDESIGNATIONS (25 Pa Code Chapter 93):

Kelly Heffner, Acting Deputy Secretary for Water Management, provided an overview of the final rulemaking. Rodney Kime, Environmental Program Manager, Bureau of Water Standards and Facility Regulation, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

There was no discussion following the Department's presentation.

David Strong moved to approve the final rulemaking. 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 FINAL RULEMAKING: FISHING CREEK, et al STREAM REDESIGNATIONS (25 Pa Code Chapter 93):

Kelly Heffner, Acting Deputy Secretary for Water Management, provided an overview of the final rulemaking. Rodney Kime, Environmental Program Manager, 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. Strong asked how this rulemaking affects waterways in Pennsylvania that cross into other states and if Pennsylvania has control over the water quality of waterways entering into the Commonwealth. Michelle Moses replied that adjacent states who issue permits for waterways that flow into Pennsylvania waters are obligated to ensure that their permit requirements meet the Commonwealth's water quality standards.

Mr. Heine moved to approve the final rulemaking. Mr. Strong 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: UNT TO SCHUYLKILL RIVER (MILL CREEK, BERKS COUNTY) (25 Pa Code, Chapter 93.9f)

Kelly Heffner, Acting Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Rodney Kime, Environmental Program Manager, 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, Faith Zerbe, Monitoring Director for the Delaware Riverkeeper Network addressed the Board on behalf of the petitioners. Ms. Zerbe noted that the petition is a body of work supported by watershed citizens as well as the Berks County Conservation District, the Township of Union Environmental Advisory Council, the PA Department of Conservation and Natural Resources, and the Berks Conservancy.

Following Ms. Zerbe's remarks, Richard Fox asked whether the significant change in designation requested by the petition – from Warm Water Fishes to Exceptional Value designation – is possible or has occurred in the past. Rodney Kime replied that it is a change that has been made in the past and can be made again if supported by relevant data.

Patrick Henderson asked Ms. Zerbe whether she is aware of any current or planned point source discharges to Mill Creek. Ms. Zerbe replied that she verified with the Berks County Conservation District that there are no current or planned point source discharges for Mill Creek.

Natasha Schock moved to accept the petition for further study by the Department. Dr. Wilshusen 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: NONATTAINMENT NEW SOURCE REVIEW FOR PM_{2.5} (25 Pa Code, Chapters 121 and 127)

Ken Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, provided an overview of the final New Source Review (NSR) 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, Mr. Gardner inquired if the final rulemaking, with regard to the inclusion of fugitive emissions of PM_{2.5} in the overall calculation of a source’s emissions, is more stringent than federal regulations and would thereby more easily trigger NSR applicability. Ms. Epps responded that the final NSR rulemaking includes provisions related to fugitive emissions. However, those provisions were previously promulgated in 1994; the prohibition against fugitive emission provisions was adopted in 1971. She further expanded by explaining that the final rulemaking adds PM_{2.5} as a “regulated NSR pollutant”. As background, Ms. Epps noted that since 1971, the Department has had, except in limited proscribed circumstances, an explicit prohibition on fugitive emissions under 25 Pa. Code §123.1. In January 1994, she noted the EQB adopted a New Source Review regulation for major facilities that includes fugitive emissions when determining NSR applicability (24 Pa.B. 443, January 15, 1994). Although the provisions in the 1994 EQB final rulemaking were more stringent than federal regulations, the EQB determined that the rulemaking was reasonably necessary to attain and maintain the NAAQS as required under the Air Pollution Control Act for more stringent provisions. The 1994 NSR regulation, which was approved by the EPA at 62 FR 64722 (December 9, 1997), as a revision to the SIP and codified in 40 CFR 52.2020, includes fugitive emissions from all sources when determining the status of a major facility, rather than considering fugitive emissions for just the 28 source categories listed in the federal definition of the term “major stationary source” found at 40 CFR 51.165(a)(1)(iv)(A). Ms. Epps further noted that the EQB relies on this 1994 rulemaking in order to attain and maintain the NAAQS for all NSR regulated pollutants. She further noted that the EQB previously reasoned that all NSR regulated emissions – whether fugitive or non-fugitive – degrade the air quality of an area. In conclusion, Ms. Epps noted that this rulemaking ensures that all facilities, and not just certain facilities, which emit a NSR regulated pollutant make an equitable contribution in reducing air pollution in nonattainment areas.

At the conclusion of Ms. Epps’ response, Chairman Krancer inquired if the adoption of the rulemaking would strengthen the Commonwealth’s capacity for economic development by improving air quality in Pennsylvania. Mr. Reiley responded in the affirmative.

Gail Conner moved to approve the final rulemaking. Mr. Gardner seconded the motion, which was approved unanimously by the Board.

CONSIDERATION OF FINAL RULEMAKING: UNSUITABLE FOR SURFACE MINING (MUDDY RUN) (25 Pa Code, Chapter 86)

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

Following the Department’s presentation, Mr. Fox inquired whether the Department anticipates receiving additional unsuitable for surface mining rulemaking petitions in response to the Pennsylvania Supreme Court’s decision in 2002 in *Machipongo Land and Coal Company, Inc. v. Department of Environmental Resources*, which declared that an unsuitable for surface mining designation is not an unconstitutional

taking. Mr. Callaghan replied that there are currently 4 unsuitable for surface mining petitions that have been submitted to the Department for processing and review.

Mr. Strong moved to approve the final rulemaking. Dr. Wilshusen seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.

OTHER BUSINESS:

Chairman Krancer announced that the next meeting of the Board is scheduled for Tuesday, June 21, 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. Manfredi moved to adjourn the meeting. Dr. Wilshusen seconded the motion, which was unanimously approved by the Board. The May 18, 2011, meeting of the Board was adjourned at 10:00 a.m.