



**DATE:** April 4, 2012

**SUBJECT:** April 17, 2012, Environmental Quality Board (EQB) Meeting

**TO:** EQB Members and Alternates

**FROM:** Michele L. Tate  
Regulatory Coordinator

The next meeting of the EQB is scheduled for Tuesday, April 17, 2012, 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: Triennial Review of Water Quality Standards (25 Pa Code Chapter 93):** Section 303(c)(1) of the federal Clean Water Act requires that states periodically, but at least once every three years, review and revise as necessary their water quality standards. This proposed regulatory package will fulfill Pennsylvania's triennial review obligation. Pennsylvania's water quality standards, which are codified in Chapter 93 and portions of Chapter 92a, are designed to implement the requirements of Sections 5 and 402 of The Clean Streams Law and Section 303 of the Federal Clean Water (33 U.S.C.A. § 1313). The water quality standards consist of the designated uses of the surface waters of this Commonwealth, along with the specific numerical and narrative criteria necessary to achieve and maintain those uses and an antidegradation policy. Thus, water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements, such as treatment requirements and effluent limitations, on individual sources of pollution. The proposed regulations are comprised of:

- Updates to definitions and terms in Section 93.1 in order to reflect their current use in Chapter 93 and the water quality standards program.
- Revisions and updates to cross references in Chapter 93 pertaining to Chapter 92a in order to correct obsolete references to old Chapter 92.
- Amendments to Section 93.4d(a) to improve the public notification process associated with a redesignation.
- Updates to Specific Water Quality Criteria in §93.7 Table 3, including Chloride and Sulfate and Dissolved Oxygen.
- Updates to Metals Criteria in §93.8b Conversion Factors Table, including Chromium III conversion factor, which was updated by the U.S. EPA
- Updates to Water Quality Criteria for Toxic Substances - §93.8c. Table 5, including *Aquatic Life Criteria* for Acrolein (EPA Update – Aug 2009); Nonylphenol (EPA Update – Feb 2006); Molybdenum; and Resorcinol and sulfonates - site-specific criteria (Beazer & BCACS); and *Human Health Criteria Updates* for Acrolein (EPA Update – May 2009); Phenol (EPA Update – May 2009); Benzyl chloride; 2-Butoxyethanol; Cyclohexylamine; 1,2 cis-dichloroethylene; 1,2,4 and 1,3,5-trimethylbenzene; Acrylamide and 1,4-dioxane

(currently in Ch 16, App A, Table 1A); Strontium; Molybdenum; and Resorcinol (added by DEP for site-specific criteria (Beazer & BCACS))

- Updates, revisions and corrections in Chapter 93 for typos, translation errors and missed references associated with prior rulemaking and/or publication activities; including corrections to use designations and stream entries in Drainage List in Sections 93.9a-93.9z, which are not being addressed by other stream redesignation rulemakings.

The Department of Environmental Protection (Department) consulted with the Water Resources Advisory Committee (WRAC) in its development of the proposed rulemaking at the committee's July 14, 2010, April 13, 2011, June 15, 2011, October 12, 2011, December 16, 2011 and January 11, 2012 meetings. On January 11, 2012, the WRAC voted to present this rulemaking package to the Board.

The Department recommends the Board's approval of the proposed rulemaking, with a 45-day public comment period and at least one public hearing to be held in Harrisburg.

**2.) Consideration of Rulemaking Petition: Upper and Middle Delaware River Watershed:** On December 14, 2011, the Department received a rulemaking petition submitted by the Delaware Riverkeeper Network. The petitioner requests the amendment of 25 *Pa Code* § 93.9a, § 93.9b, and § 93.9c in order to redesignate the main stem Delaware River and all Pennsylvania tributaries that flow into the Upper and Middle Delaware River from their current designated use status of High Quality or lower designation to Exceptional Value (EV) status. Co-petitioners include American Rivers, the PA Council of Trout Unlimited, Clean Water Action and over twenty other organizations. Over 150 watershed residents have joined as original co-petitioners as well. The petition was submitted with a number of appendices and supporting documentation, which is available to the Board upon request.

Based upon the administrative completeness of the petition, including meeting the requirements for acceptability as defined in §23.2 of the Board's petition policy, the Department recommends the Board accept the petition for further study.

**3.) Consideration of Proposed Rulemaking: Measurement and Reporting of Condensable Particulate Matter Emissions (25 *Pa Code* Chapters 121 and 139):** This proposed rulemaking includes amendments to 25 *Pa. Code* Chapters 121 and 139 in order to clarify certain requirements for owners and operators of affected stationary sources regarding compliance demonstrations for particulate matter (PM) emissions. From 1971 through 1997, the Department's regulations required stationary sources – including power plants, industrial boilers and other industrial burning or combustion-related activities – to use both dry filters and wet impingers to test for PM emissions. In 1997, the Department removed the requirement to use wet impingers—which measured condensable PM—because that provision was more stringent than the applicable federal requirement. Subsequent federal regulations have defined two sub-categories of particulate matter (PM-10 and PM<sub>2.5</sub>), which include both filterable and condensable PM. Sources in Pennsylvania subject to both PM-10 and PM<sub>2.5</sub> emission standards monitoring in their operating permits are currently measuring both fractions of PM using filterable and condensable methods, while other sources are only required to measure the filterable fraction of PM. The proposed regulation updates Chapter 139 to clarify the sampling and testing methods necessary to demonstrate compliance with the relevant PM emission limitations. As such, the proposed amendments do not impose new or additional requirements or compliance costs on the owners and operators of existing stationary sources.

The Department discussed the draft proposed rulemaking with the Air Quality Technical Advisory Committee (AQTAC) at its October 20, 2011, meeting. Prior to concurring with the Department's

recommendation to present the proposed rulemaking to the Board for consideration, the AQTAC recommended that clarifications be made regarding the definition of "condensable particulate matter" and the effective compliance date for the provisions in § 139.12(b) and (d). The proposed rulemaking has been revised to address the Committee's concerns. The Department also consulted with the Citizens Advisory Council Air Committee on January 31, 2012.

The Department recommends the Board's approval of the proposed rulemaking, with a 60-day public comment period and three public hearings in Norristown, Harrisburg and Pittsburgh.

**4.) Consideration of Final Rulemaking: Noncoal Mining Fees (25 Pa Code Chapter 77):** This final rulemaking includes amendments to 25 Pa Code Chapter 77 in order to modify and establish permit fees to fund the noncoal mining program. The existing fees are nominal and have not been adjusted in the history of the program. The proposed fees are calculated to provide full funding for the program, which costs about \$2,500,000 per year. The rulemaking includes two types of fees, including the permit application fee and the administration fee. The permit application fee is intended to cover the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted, with the amount of the fees based on the number of hours typically required by the Department to review a specific type of permit application. The annual administration fee is intended to cover the Department's costs to administer the permit. These include, among other things, the cost of performing inspections of noncoal mining operations, compliance assistance, and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administration fees have been set based on workload analyses conducted by the Department.

The proposed regulation was approved by the Board on June 15, 2010, and published in the *Pa Bulletin* for comment on August 28, 2010, at 40 *Pa.B.* 4963. Twenty commentators, predominantly representing noncoal mine operators and industry groups, provided comments to the Board on the rulemaking. On January 28, 2012, DEP solicited additional comment on the rulemaking through a notice in the *Pa Bulletin* at 42 *Pa.B.* 553. As a result, comments were submitted from twenty commentators. While there was some support for the proposal, the majority of comments were in opposition to the imposition, and the amounts, of the increased fees. Many of the comments focused on the negative financial impacts the increased fees will have on small businesses that operate bluestone operations and sand and gravel pits. The large aggregate producers, commenting through PACA, recognized the reason for the increased fees but requested increased program efficiencies and questioned DEP's fee calculation method.

There is no advisory board to the Department for the Noncoal Mining Program. However, the Department has initiated significant outreach with the regulated community on the rulemaking.

The Department recommends the EQB's approval of the final rulemaking.

I 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 April 17, 2012, EQB meeting. If you have any immediate questions or concerns, please contact me at 717.783.8727 or by e-mail at [mtate@pa.gov](mailto:mtate@pa.gov).

Thank you.

Enclosures