

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**March 20, 2012**

**VOTING MEMBERS OR ALTERNATES PRESENT**

Dana Aunkst, Acting Chairman for Michael Krancer, Secretary, Department of Environmental Protection  
Gwenn Dando, alternate for Julia Hearthway, Secretary, Department of Labor and Industry  
Bryan Kendro, alternate for Barry Schoch, Secretary, Department of Transportation  
Patrick McDonnell, 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  
Michael DiMatteo, alternate for Carl Roe, Executive Director, PA Game Commission  
Richard Manfredi, Citizens Advisory Council  
David Spotts, alternate for John Arway, Executive Director, PA Fish and Boat Commission  
Bradley Smith, alternate for James Vaughan, Executive Director, PA Historical and Museum  
Commission  
Patrick Henderson, alternate for Jennifer Branstetter, Director, Governor's Office of Planning and Policy  
Cynthia Carrow, Citizens Advisory Council  
Terry Dayton, Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
Pat Lupo, Citizens Advisory Council  
Paul Opiyo, alternate for C. Alan Walker, Secretary, Department of Community and Economic  
Development  
Heidi Crager, alternate for George Greig, Secretary, Department of Agriculture  
Dr. James Logue, alternate for Eli Avila, Secretary, PA Department of Health

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Meg Murphy, alternate for Doug Brennan, Director, Bureau of Regulatory Counsel  
Patricia Allan, Director, Policy Office  
Michele Tate, Regulatory Coordinator

**CALL TO ORDER AND APPROVAL OF MINUTES**

Acting Chairman Aunkst 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 September 20, 2011, EQB meeting minutes.

**Richard Manfredi moved to approve the September 20, 2011, EQB meeting minutes.  
Joseph Deklinski seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING (with Notice of Proposed Rulemaking Omitted)  
EMPLOYER TRIP REDUCTION; REPEAL (25 Pa. Code Chapters 121 and 126):**

Vincent Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final-omitted rulemaking. Joyce Epps, Director of the Bureau of Air Quality and Kristen Furlan, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, there were no questions raised by the Board on the rulemaking.

**Richard Fox moved to approve the final-omitted rulemaking. Jamie Serra seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING (with Notice of Proposed Rulemaking Omitted)  
PORTABLE FUEL CONTAINERS; REPEAL (25 Pa. Code Chapter 130, Subchapter A):**

Vincent Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final-omitted rulemaking. Joyce Epps, Director of the Bureau of Air Quality and Kristen Furlan, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Richard Fox inquired if the Commonwealth will be compelled to make up the emission reductions achieved through the portable fuel containers regulations since they were a part of the state's State Implementation Plan (SIP). Deputy Secretary Brisini responded no. Joyce Epps elaborated that the Department's regulation provides no ozone air quality benefit for the Commonwealth because the Federal requirements are more stringent than those in Pennsylvania. She noted that the Commonwealth will be required to demonstrate that the federal rulemaking provides at least equivalent emission reductions in order to remove Pennsylvania's portable fuel container requirements from its SIP. Ms. Epps also noted that she is aware of only one state – Texas – that has a state-specific portable fuel container rulemaking.

Richard Fox asked for additional information concerning the two votes cast by AQTAC members that reflected they were against the rulemaking being presented to the EQB for action. Ms. Epps responded that the two votes were from AQTAC members who preferred that Pennsylvania incorporate by reference the federal portable fuel containers regulations so that the Commonwealth could enforce the federal regulations. Ms. Epps noted that the Department does not always adopt federal regulations that apply nationwide. She further explained that when the Department receives complaints about federal regulations in Pennsylvania, the Department refers those complaints to EPA who then conducts its own investigation.

**Walter Heine moved to approve the final-omitted rulemaking. Richard Fox seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING (with Notice of Proposed Rulemaking Omitted)  
ST. JOE RESOURCES COMPANY; REPEAL (25 Pa. Code Chapter 128):**

Vincent Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the final-omitted rulemaking. Joyce Epps, Director of the Bureau of Air Quality and Robert (Bo) Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, there were no questions raised by the Board on the rulemaking.

**Richard Fox moved to approve the final-omitted rulemaking. Richard Manfredi seconded the motion, which was unanimously approved by the Board.**

**OTHER BUSINESS:**

Under Other Business, Michele Tate provided background information to the Board concerning the withdrawal of the Safe Drinking Water Program Fees proposed rulemaking, which was withdrawn from further regulatory review by Chairman Krancer in December 2011.

Upon the conclusion of Ms. Tate's comments, Richard Fox commented that he was uncomfortable having a rulemaking that the Board took action on be withdrawn at the discretion of the DEP Secretary. He stated that he believes the Department should have asked for Board approval before withdrawing a rulemaking from further regulatory review. In response, Patrick Henderson noted the importance of a prescribed process for withdrawing a rulemaking, but also stated there were distinct details associated with the withdrawal of this rulemaking. He further commented that he is not concerned that the withdrawal of the Safe Drinking Water Program Fees rulemaking will establish a precedent that the Secretary or Governor would follow for future rulemakings.

In response, Richard Fox noted that he believes it is important for the Board to have a process in place to identify the boundaries of the Chairperson's authority to withdraw a rulemaking. He also noted he is available to work with any board member or Department counsel on a formal process or procedure for formal adoption by the Board. Richard Manfredi asked if Mr. Fox was interested in developing a procedure that would apply to future actions associated with the withdrawal of a rulemaking. Mr. Fox responded in the affirmative and noted he was looking to establish a procedure for future actions. Patrick Henderson noted Mr. Fox's request to establish procedures for future rulemaking withdrawals was reasonable but noted that it is important that the Secretary retain some discretion in the matter. Acting Chairman Aunkst noted that from the Department's perspective, Department staff are not opposed to discussion on this matter and would be happy to work with the Board on a formal process or procedure to withdraw a rulemaking.

**Richard Fox moved that Board members work with DEP staff and Counsel to the Board on a process or procedure to use in the future to withdraw a rulemaking from the regulatory review process. Walter Heine seconded the motion. The motion was unanimously approved by the Board.**

**ADJOURN:**

Acting Chairman Aunkst noted that the next meeting of the Board is scheduled for Tuesday, April 17, 2012. The meeting will convene at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

With no further business before the Board, Patrick McDonnell moved to adjourn the meeting. Terry Dayton seconded the motion, which was unanimously approved by the Board. The March 20, 2012, meeting of the Board was adjourned at 9:31 a.m.