

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
November 20, 2012

VOTING MEMBERS OR ALTERNATES PRESENT

Alisa Harris, Acting Chairperson for Michael Krancer, Secretary, Department of Environmental Protection (DEP)

Gwenn Dando, alternate for Julia Hearthway, Secretary, Department of Labor and Industry

Bryan Kendro, alternate for Barry Schoch, Secretary, Department of Transportation

Yasmin Snowberger, alternate for Robert Powelson, Chairman, PA Utility Commission

Jamie Serra, alternate for Representative Camille George

Jonathan Lutz, alternate for Representative Scott Hutchinson

Richard Fox, alternate for Senator John Yudichak

Adam Pankake, alternate for Senator Mary Jo White

Bill Capouillez, alternate for Carl Roe, Executive Director, PA Game Commission

Burt Waite, Citizens Advisory Council

David Spotts, alternate for John Arway, Executive Director, PA Fish and Boat Commission

Rebekah Ludwick, alternate for Jennifer Branstetter, Secretary, Governor's Office of Policy and Planning

Cynthia Carrow, Citizens Advisory Council

Terry Dayton, Citizens Advisory Council

Walter Heine, Citizens Advisory Council

Gail M. Conner, Citizens Advisory Council

Paul Opiyo, alternate for C. Alan Walker, Secretary, Department of Community and Economic Development

Ben Junkin, alternate for George Greig, Secretary, Department of Agriculture

Dr. James Logue, alternate for Michael Wolf, Acting Secretary, PA Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel

Patricia Allan, Director, Policy Office

Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Acting Chairperson Harris 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 October 16, 2012, EQB meeting minutes.

Richard Fox moved to approve the October 16, 2012, EQB meeting minutes.

Adam Pankake seconded the motion, which was unanimously approved by the Board.

**CONSIDERATION OF EMERGENCY CERTIFICATION FINAL-OMITTED RULEMAKING:
EMERGENCY RESPONSE PLANNING AT UNCONVENTIONAL WELL SITES
(25 Pa. Code Chapter 78)**

Scott Perry, Deputy Secretary for Oil and Gas Management, provided an overview of the emergency certification final-omitted rulemaking. Kurt Klappkowski, Director, Bureau of Oil and Gas Planning and Program Management, and Glenn Cannon, Director, Pennsylvania Emergency Management Agency, assisted with the presentation.

Prior to making his presentation to the Board on the rulemaking, Deputy Secretary Perry noted to the Board that an updated version of the sample site entrance signage specifications, as included in Figure 1 of Section 78.55 of the Annex, was provided at each Board member's chair. He explained to the Board that inadvertently a previous draft version of the signage specifications was included in the materials mailed to the Board prior to the meeting and noted that the updated version of the signage specifications, as provided at today's meeting, is the version that will be included in the final rulemaking. He further noted that the updated version of the signage specifications offers additional and more flexible provisions in the border that is required for the entrance signs.

Following the Department's presentation, Richard Fox inquired if the signage requirements included in the rulemaking are retroactive in nature and therefore would be required by existing operators. Deputy Secretary Perry replied yes, but noted that the rulemaking includes a transition period and delayed effective dates for well sites containing a well that is being drilled or has been drilled, a well site for which a well permit has been issued but no wells have commenced drilling, and well sites for which an administratively complete well permit application is pending. Mr. Fox asked if the signs are required to be placed at the access road to the well site. Deputy Secretary Perry replied that a sign must be placed at the entrance to the well site and that it must be clearly visible from the road and cannot be obstructed by any vegetation or other structures. In terms of timing, Mr. Fox inquired when the emergency rulemaking would be effective and published in the *Pennsylvania Bulletin*. Michele Tate responded that the Department anticipates that the rulemaking will be published as final sometime in December 2012. Kurt Klappkowski explained to the Board the circumstances associated with an emergency certification final rulemaking, and noted that under the Regulatory Review Act an emergency certified rulemaking can be published and become effective prior to the Independent Regulatory Review Commission (IRRC) and the Standing Committees taking action on the rulemaking.

**Cynthia Carrow moved to adopt the emergency certification final-omitted rulemaking.
Richard Fox seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: AIR QUALITY TITLE V FEE
AMENDMENT (25 Pa. Code Chapter 127)**

Vince Brisini, Deputy Secretary of Waste, Air, Radiation and Remediation, provided an overview of the proposed rulemaking. Dean Van Orden, Assistant Director, Bureau of Air Quality, and Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the conclusion of Deputy Secretary Brisini's presentation, Burt Waite noted that it appears this rulemaking package penalizes those facilities that are reducing their Title V emissions. Deputy Secretary Brisini responded that he understood Mr. Waite's perspective and acknowledged that a Title V program supported solely by emissions fees may not be the most appropriate approach to ensure the future viability of the program. Nevertheless, he stressed that the fundamental issue associated with the rulemaking is

that the Department is required to assess fees to cover the costs associated with the Title V program and that the Department is facing imminent program budget deficits. Deputy Secretary Brisini emphasized that the rulemaking provides a “bridge” for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions.

Gail Conner stated she shares the same concerns as those expressed by Mr. Waite and noted that the fee increases included in the proposal may be appropriate in the short term, but not for the long term. She suggested that opportunities be examined, including working with the federal Environmental Protection Agency and renegotiating Pennsylvania’s State Implementation Plan, in order to develop long-term solutions or approaches that do not force Pennsylvania’s industries out of business or overly charge the coal industry in order to support Pennsylvania’s Title V program. Deputy Secretary Brisini responded that the issues identified by Ms. Conner and Mr. Waite are the same concerns the Department has and noted that the Department does not believe it is appropriate to shift support of the Title V program to one particular industry.

Richard Fox inquired how much Title V revenue is generated from coal-fired power plants. Deputy Secretary Brisini responded that a very large portion of revenue generated under the Title V program is paid by coal-fired power plants but noted that continued reliance on that industry to support the program is not viable in the long-term as a significant portion of Pennsylvania’s coal-fired power plants have been retired or announced for deactivation. Deputy Secretary Brisini noted that the Department will be working with stakeholders to define options for the long-term viability of the Title V program and noted that he expects the Department will return to the Board by mid-2014 with an equitable regulatory fee proposal to sustain the Title V program.

Bill Capouillez inquired if the fee proposal included any incentives to those power plants that burn coal refuse. Deputy Secretary Brisini responded no, but noted that a representative on the Air Quality Technical Advisory Committee who is in the coal refuse business reviewed the proposed rulemaking and voted in favor of the proposal.

Richard Fox moved to adopt the proposed rulemaking, with a 60-day public comment period and three public hearings. Jamie Serra seconded the motion, which was approved by a majority of the Board members. Jonathan Lutz voted in opposition to the motion.

CONSIDERATION OF RULEMAKING PETITION: LITTLE SEWICKLEY CREEK
(25 Pa. Code §93.9w)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Lee McDonnell, Director, Bureau of Point and Nonpoint Source Management, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation. Following the Department’s presentation, Nathan Reinhart and Edward Schroth from Duquesne University were introduced to the board and asked to make a brief presentation to the Board on the petition.

Following the presentations, Terry Dayton asked if there were any major industries located within the petition area. Deputy Secretary Heffner responded no. Cynthia Carrow noted that she is familiar with the petition area and acknowledged that the area is largely residential.

David Spotts moved to accept the rulemaking petition for further study. Walter Heine seconded the motion, which was approved by a majority of the Board members. Jonathan Lutz voted in opposition to the motion.

SAFE DRINKING WATER PROGRAM UPDATE

In response to discussion at the Board's last meeting where the withdrawal of the Safe Drinking Water Program Fees rulemaking was discussed, Jeff Logan, DEP Executive Deputy Secretary for Administration and Management, provided the board with information concerning the initial rationale for the rulemaking and the subsequent analysis that took place that led to the determination that the rulemaking should be withdrawn. The Board did not pose any questions to Executive Deputy Secretary Logan at the conclusion of his presentation.

OTHER BUSINESS:

Under Other Business, Acting Chairperson Harris commended Senator Mary Jo White and Representative Camille George for their long-standing service and involvement on the Board. Acting Chairperson Harris noted Senator White's and Representative George's retirement from their respective offices in the state legislature and therefore their retirement from the Board.

Acting Chairperson Harris noted to the Board the schedule of 2013 EQB meetings and noted that the Board is not expected to meet until Tuesday, January 15, 2013. 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, the November 20, 2012, meeting of the Board was adjourned at 10:04 a.m.