

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
April 16, 2013

VOTING MEMBERS OR ALTERNATES PRESENT

Alisa Harris, Acting Chairperson for E. Christopher Abruzzo, Acting 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
Pamela Witmer, alternate for Robert Powelson, Chairman, PA Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Jonathan Lutz, alternate for Representative Ron Miller
Richard Fox, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
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
Patrick Henderson, alternate for Jennifer Branstetter, Secretary, Governor's Office of Policy and Planning
Pat Lupo, Citizens Advisory Council
Walter Heine, 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, 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 9:07 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 20, 2012, EQB meeting minutes.

Burt Waite moved to adopt the November 20, 2012, EQB meeting minutes.
Richard Fox seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: REGULATED MEDICAL AND CHEMOTHERAPEUTIC WASTE (25 Pa Code Chapters 271-273, 284-285, 287-288 and 299):

Ken Reisinger, Director, Bureau of Waste Management, provided an overview of the proposed rulemaking. Ali Tarquino Morris, Manager, Program Development and Support Section, Bureau of Waste Management and Susan Seighman, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, Richard Fox inquired how much medical waste is generated and disposed in Pennsylvania. Mr. Reisinger responded that the Department doesn't track the volume of medical waste generated in Pennsylvania, however, on average, approximately 87,500 tons of medical waste is disposed in the Commonwealth annually. Mr. Reisinger also noted that medical waste must be disinfected prior to disposal or incineration. In response, Mr. Fox asked if the Department develops a waste management plan for the management and disposal of medical waste in Pennsylvania, similar to what is developed for the treatment and disposal of hazardous waste in the state. Mr. Reisinger responded that to his knowledge such a report is not developed.

Pam Witmer moved to adopt the proposed rulemaking with a 30-day public comment period. Bill Capouillez seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF RULEMAKING PETITION: CRANBERRY CREEK, MONROE COUNTY (25 Pa Code Chapter 93.9c)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the rulemaking petition. Lee McDonnell, Director, Bureau of Point and Nonpoint Source Management, Rodney Kime, Chief, Water Quality Standards Division and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the presentation, the Board did not pose any questions or comments about the rulemaking petition or the Department's presentation. The petitioner – the Brodhead Watershed Association – was unable to attend the Board meeting.

David Spotts moved to accept the petition for further study by the Department. Burt Waite seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: TRIENNIAL REVIEW OF WATER QUALITY STANDARDS (25 Pa Code 93)

Kelly Heffner, Deputy Secretary for Water Management, provided an overview of the final rulemaking. Lee McDonnell, Director, Bureau of Point and Nonpoint Source Management, Rodney Kime, Chief, Water Quality Standards Division and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

In response to comments submitted to the Board by several organizations, Representative Vitali inquired about the Department's recommendation to withdraw the aquatic life criteria for chlorides from the final rulemaking. Deputy Secretary Heffner responded that the recommendations included in the final rulemaking, including the recommendation to withdraw the proposed aquatic life criteria for chlorides, are appropriate based on the information currently available to the Department. She stressed however, that the Department's commitment to the Board, the Department's Water Resources Advisory Committee (WRAC) and the public at large is to continue to study and monitor chlorides to determine the most appropriate criteria. She also noted that while not addressed in her presentation to the board, there are criteria that were included in the proposed rulemaking for which the Department, based on comments received, has decided to withdraw in the final rulemaking in order to gather further information and documentation. She noted, for example, that commentators expressed concern that further documentation was needed to demonstrate the statewide need for criteria for molybdenum and 1,4-dioxane. As a result of these comments, Deputy Secretary Heffner noted that the Department may be modifying certain

permits in order to require the operator to monitor its effluent for certain parameters and to report that information to the Department. The collection of this data will assist the Department in making an informed decision about the appropriate criteria to pursue in a future rulemaking. She also emphasized that the Department is not limited by its required triennial review of water quality standards to propose a rulemaking on water quality criteria. If the Department determines the need for water quality criteria, the Department will be responsive to that need and propose a rulemaking independent of a triennial review.

In response, Representative Vitali noted that the Department had proposed aquatic life criteria for chlorides in 2010 through a separate rulemaking but did not finalize that proposal. Deputy Secretary Heffner acknowledged that the Department had proposed a different aquatic life criteria for chlorides through a separate rulemaking, but noted that rulemaking was substantiated on information and data that commentators expressed was not the most recent scientific information available. She emphasized that the Department strives to collect the best information possible during a triennial review to support its criteria recommendations; however, through the rulemaking and public comment process, the Department may become aware of additional or more relevant information that it needs to examine in order to propose the most appropriate criteria.

Richard Fox noted his appreciation for the work and outreach conducted by the Department concerning the proposed standards for molybdenum and noted that at final rulemaking the Department recommended removing the proposed human health and aquatic life criteria for molybdenum based on public comments received that a statewide criterion for molybdenum is not warranted. Mr. Fox asked the Department to elaborate on its goals to monitor molybdenum in the future. Deputy Secretary Heffner responded that while the Department has full confidence that the science used in the development of the criteria for molybdenum is appropriate, the Department is not recommending a statewide criterion for molybdenum at this time. In lieu of statewide criteria, the Department will monitor the presence of molybdenum in effluent and where warranted will issue site-specific criterion for molybdenum in an NPDES permit. She also emphasized that the criteria included in the NPDES permit will be very site-specific and will not impact other industry in that area. In response, Mr. Fox inquired if an NPDES permit can be reopened at any time or if additional monitoring requirements can only be included when that NPDES permit is renewed. Deputy Secretary Heffner responded that most, if not all NPDES permits have reopen clauses, therefore, in the event DEP determines that additional monitoring is necessary associated with the parameters of an effluent, it can reopen the NPDES permit.

Pat Lupo noted that criteria for molybdenum was proposed in the Department's previous triennial review and voiced concern that the Department is again recommending to withdraw the proposed criteria. Deputy Secretary Heffner clarified that criterion for molybdenum was included in the previous triennial review but standards for sulfates and chloride were not. She furthered by noting that for various reasons articulated by commentators of the proposed rulemaking, the Department has concerns with moving forward with criteria for molybdenum, sulfates and chlorides at this time. She emphasized, however, that these criteria are important to the Department and that it will continue to evaluate and study the science associated with these substances and if substantiated, will recommend criteria to the Board, independent of a triennial review. Patrick Henderson inquired if the federal Environmental Protection Agency (EPA) has issued a drinking water standard for molybdenum. Deputy Secretary Heffner responded that EPA has not issued such a standard. Mr. Henderson stated that it is important to note that since the last triennial review, the Department and Board have taken action on sulfates and chlorides through the Chapter 95 Wastewater Treatment Requirements rulemaking. Deputy Secretary Heffner responded that as sulfates and chlorides are components of Total Dissolved Solids (TDS), they are managed through regulations under Chapter 95 and that the Department has worked extensively with public treatment facilities in Pennsylvania to ensure compliance with the regulatory requirements.

David Spotts noted the disappointment of the PA Fish and Boat Commission concerning the Department's recommendation to withdraw criteria for sulfates, chlorides, molybdenum, and 1,4-dioxane from the triennial review rulemaking, but noted the Commission's support of the dissolved oxygen (DO) criteria in the regulations. He also stated, with regard to the criteria for sulfates and chlorides, that there may be better science to rely upon and that the Commission would be willing to work with the Department on further research. Mr. Spotts also noted that in the Comment/Response document for the final rulemaking, the Commission was inadvertently listed as a member of the Department's Water Resources Advisory Committee, which it is not. Mr. Spotts inquired about the repercussions if the Board would disapprove the final rulemaking. Deputy Secretary Heffner noted that completion of a triennial review is required under the federal Clean Water Act and that the Department would have to work directly with EPA if it could not fulfill its obligations. Michelle Moses noted that she doesn't believe the Department has ever not fulfilled its obligations under federal law to deliver a timely triennial review rulemaking to EPA.

Mr. Spotts noted that in the Comment/Response document of the final rulemaking, WRAC at their November 28, 2012, meeting adopted a resolution stating its support of the Department developing chloride criteria before the next triennial review, but noted that such support or a target date was not expressed for sulfates, 1,4-dioxane or molybdenum. He expressed the Commission's support of certain aspects of the final rulemaking but noted concern over the delay in finalizing good science-based criteria for chlorides, sulfate, molybdenum and 1,4-dioxane. Deputy Secretary Heffner clarified that it is not the Department's intention to delay or dismiss action on the criteria until the next triennial review. She reiterated that the Department wants to base its recommendations on the best science available and will advance criteria independent of a triennial review, if warranted. In response, Mr. Spotts noted the Commission's inclination that the triennial review rulemaking be approved as presented, but with the stipulation that the Department return to the Board within one-year with a proposed rulemaking for criteria on chlorides, sulfate, molybdenum and 1,4-dioxane. In response, Patrick Henderson questioned the authority of the Board to compel the Department to develop a proposed rulemaking, but noted it may be more appropriate to request the Department report back to the Board on the status of latest science and research findings associated with the development of criteria for sulfates, molybdenum, chlorides and 1,4-dioxane. Doug Brennan confirmed that the Board does not have the authority to compel the Department to develop a rulemaking but may request the Department report to the Board on a pertinent issue. In response to the discussion, Mr. Spotts modified his earlier comments by proposing the following motion:

David Spotts moved to request the Department to report to the Board within one year the progress of science and related research associated with water quality criteria for sulfates, chlorides, molybdenum, and 1,4-dioxane. Bill Capouillez seconded the motion, which was adopted by a majority of Board members by a vote of 15-1. Pamela Witmer voted in opposition to the motion.

Following the Board's vote, a separate motion was offered to adopt the final rulemaking, as presented.

Richard Fox moved to adopt the final rulemaking, as presented by the Department. Burt Waite seconded the motion, which was adopted by a majority of Board members by a vote of 13-3. Those voting in opposition to the motion were Representative Vitali, Pat Lupo and Walter Heine.

ADJOURN:

With no further business before the Board, Richard Fox moved to adjourn the meeting. Adam Pankake seconded the motion, which was unanimously approved by the Board. The April 16, 2013, meeting of the Board was adjourned at 10:05 a.m.