

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
August 27, 2013

VOTING MEMBERS OR ALTERNATES PRESENT

E. Christopher Abruzzo, Chairman, Acting Secretary, Department of Environmental Protection (DEP)
Scott Robinette, 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
Kerry Speelman, 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
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and Museum
Commission
Patrick Henderson, alternate for Jennifer Branstetter, Secretary, Governor's Office of Policy and
Planning
Cynthia Carrow, Citizens Advisory Council
William Fink, Citizens Advisory Council
John Walliser, 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. Kandiah Sivarajah, alternate for Michael Wolf, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel
Hayley Book, Director, Policy Office
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Abruzzo called the meeting to order at 9:01 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the July 16, 2013, EQB meeting minutes.

**Adam Pankake moved to adopt the July 16, 2013, EQB meeting minutes.
Richard Fox seconded the motion, which was unanimously approved
by the Board.**

CONSIDERATION OF PROPOSED RULEMAKING: ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS AT OIL AND GAS WELL SITES (25 Pa Code Chapter 78, Subchapter C):

Scott Perry, Deputy Secretary, Office of Oil and Gas Management, provided an overview of the proposed rulemaking. Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, and Elizabeth Nolan, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Richard Fox inquired about the management of drill cuttings, in particular, the potential of those cuttings to be radioactive and trip radioactivity monitors at waste landfills. Deputy Secretary Perry responded that this is an area that is of great interest to the Department and is one of the reasons why the Department is undertaking an extensive study to examine the levels of technologically enhanced naturally occurring radiation in a variety of equipment, materials and media associated with oil and gas development in the Commonwealth. Deputy Secretary Perry explained to the Board that over two years ago, the Department conducted an analysis of the radioactivity of shale cuttings and found some of those cuttings to contain radioactive material that is only slightly higher than background levels. He noted, however, that it may be the comingling or mixing of drill cuttings with sludges that is causing the presence of radioactivity of oil and gas waste at landfills and is therefore tripping radioactive monitors. As such, he explained to the Board that the proposed regulations would only permit the onsite burial of drill cuttings that are generated at an unconventional well site under the condition that a chemical analysis of the cuttings is completed and included in the well site restoration report. He further noted that the proposed regulations would prohibit the onsite encapsulation of solid waste generated by processing fluids from the hydraulic fracturing of unconventional wells. He explained to the Board that currently under law waste can be stored for up to 9 months after well drilling is completed. He further explained that the encapsulation of drill cuttings is a practice that has been used throughout Pennsylvania without any known negative environmental impacts, but noted that due to the significant volume of drill cuttings generated in the development of unconventional wells, this practice is rarely, if ever, used in those operations. He acknowledged that unconventional well operations present different challenges, simply from the sheer volume of drill cuttings generated, which is why the Department is proposing additional provisions to strengthen its regulations.

Burt Waite noted to the Board the letter from the Oil and Gas Technical Advisory Board (TAB) which was included in the meeting materials for the proposed rulemaking. He stated that since he was a member of both TAB and the EQB, he felt obligated to explain TAB's position on the proposed rulemaking and why the letter was sent. He first acknowledged the extensive outreach the Department undertook with stakeholders in the development of the rulemaking and noted that the regulations were improved as a result of that outreach. He also acknowledged that at the April 23, 2013, TAB meeting, he made a motion that the proposed rulemaking proceed to public comment primarily as a means to thank the Department for their outreach efforts on the proposed rulemaking. However, subsequent to TAB's meeting in April, he noted members of TAB concluded that there were several provisions in the rulemaking that were not fully developed and that should be addressed before the proposal was presented to the EQB for its consideration. Therefore, TAB asked that the Department withhold submitting the rulemaking to the EQB until additional refinements could be made to the proposal. Because the Department did not share TAB's viewpoint, TAB felt compelled to submit the letter to the Board, which was included in the rulemaking package. Mr. Waite also stated that his main concern was the impact of the proposed regulations on conventional well operators.

Mr. Waite noted that TAB, with the assistance and support of the Department, has formed four subgroups to discuss specific areas of the proposal and to seek further input and comments from multiple parties. He

stated that the workgroups are focused on the four following areas of the rulemaking: water supply restoration standards, public resource protection, pre-hydraulic fracturing assessment and waste management at well sites. He concluded by stating that TAB's concerns with the rulemaking are not focused on the concepts related to the four areas noted but rather on the details associated with each subject area, which in TAB's estimation, are incomplete. He noted that if it is the will of the Board to adopt the proposed rulemaking as it now exists, it is TAB's recommendation to reserve certain sections of the rulemaking pending the final recommendations from TAB.

Deputy Secretary Perry acknowledged the significant interest that the rulemaking has generated with TAB and other stakeholders, in particular those issue areas identified by Mr. Waite. He noted that the Department first presented the detailed concepts of the proposed regulation in April 2011, and conducted numerous meetings and other outreach since that time to gain input on the rulemaking. Deputy Secretary Perry stated in light of that significant outreach, the Department believes it is appropriate to submit the rulemaking to the Board for adoption as a proposed rulemaking so that the public as a whole has an opportunity to comment on the proposed rulemaking. Deputy Secretary Perry also noted that additional input from the public, in addition to the valuable input from TAB, will be beneficial to the development of the final rulemaking and noted that is why the Department is recommending increasing the public comment period for the proposal from the normal 30-day timeframe to a 60-day comment period with at least six public hearings across the state.

Richard Fox moved to adopt the proposed rulemaking with a 60-day public comment period and six public hearings. David Spotts seconded the motion, which was approved by a majority of the Board members. Burt Waite and William Fink voted in opposition to the motion.

OTHER BUSINESS:

The next meeting of the Board is scheduled for Tuesday, September 17, 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, Burt Waite moved to adjourn the meeting. John Walliser seconded the motion, which was unanimously approved by the Board. The August 27, 2013, meeting of the Board was adjourned at 9:34 a.m.