

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
February 3, 2016

VOTING MEMBERS OR ALTERNATES PRESENT

John Quigley, Chairman, Secretary, Department of Environmental Protection
Eileen Cipriani, alternate for Kathy Manderino, Secretary, Department of Labor and Industry
Roger Cohen, alternate for Leslie Richards, Secretary, Department of Transportation
Gladys Brown, Chairman, PA Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
*Representative John Maher, Pennsylvania House of Representatives
Richard Fox, alternate for Senator John Yudichak
Senator Gene Yaw, Senate of Pennsylvania
Michael DiMatteo, alternate for Matthew Hough, Executive Director, PA Game Commission
Burt Waite, Citizens Advisory Council
John Arway, Executive Director, PA Fish and Boat Commission
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and
Museum Commission
Sam Robinson, alternate for John Hanger, Secretary, Governor's Office of Policy and Planning
Cynthia Carrow, Citizens Advisory Council
William Fink, Citizens Advisory Council
Don Welsh, Citizens Advisory Council
John Walliser, Citizens Advisory Council
Paul Opiyo, alternate for Dennis Davin, Secretary, Department of Community and
Economic Development
Michael Smith, alternate for Russell Redding, Secretary, Department of Agriculture
Sharon Watkins, alternate for Karen Murphy, Secretary, Department of Health
**arrived late – Jonathan Lutz was present for roll-call.*

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Patrick McDonnell, Policy Director
Kim Childe, Director, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called 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 approval of the November 17, 2015, EQB meeting minutes.

**Eileen Cipriani made a motion to adopt the November 17, 2015, EQB meeting minutes.
Representative Vitali seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: ENVIRONMENTAL PROTECTION
PERFORMANCE STANDARDS AT OIL AND GAS WELL SITES (25 Pa. Code Chapters 78-78a)**

Secretary Quigley explained the order in which presentations would be made to the Board: DEP staff would present an overview of the regulation; the Conventional Oil and Gas Advisory Committee (COGAC) would present comments, and the Oil and Gas Technical Advisory Board (TAB) would present comments. Immediately following the presentations, the Board would have an opportunity to ask DEP staff questions about provisions in the final rulemaking, to obtain any needed clarification and the Board would then proceed to formal consideration of the rulemaking.

Scott Perry, Deputy Secretary for Office of Oil and Gas Management provided an overview of the final rulemaking. Kurt Klappowski, Director, Bureau of Oil and Gas Planning Program Management, and Elizabeth Nolan, Bureau of Regulatory Counsel, assisted with the presentation. David Ochs, chairman of COGAC, provided comments on behalf of COGAC. Brian McConnell, chairman of TAB, provided comments on behalf of TAB.

Secretary Quigley opened up the meeting for discussion of the rulemaking.

Burt Waite referenced parts of Act 13 that he believed have been declared unconstitutional, specifically Section 32.15(c). Mr. Waite inquired, referring to the area of review for well pads that are within 100 feet of streams and wetlands and other public resources, if Section 78.15 is appropriate for inclusion in the rulemaking.

Deputy Secretary Perry responded that DEP acknowledges that the hard setback for wells from streams and wetlands specified in Act 13 was indeed invalidated by the Supreme Court. However, DEP has an obligation under the Clean Streams Law to ensure that water resources are adequately maintained and protected during development activities. He noted that, in developing riparian buffer rules under Chapter 102, DEP learned that a 100-foot setback eliminates over 80% of potential impacts from erosion just by having that riparian buffer in place. However, this provision does not establish a setback. Mr. Perry acknowledged the law was struck down and that DEP does not believe that authority exists to create setbacks. DEP determined it was within our authority to have a heightened review of sites that are going to be in close proximity to resources that could be negatively affected during development activities. This includes a review of permits, or plans or permits that are already otherwise required, so this provision is a reasonable step. With respect to the other provisions of 78.15 for protecting public resources, DEP does not believe that provision was struck down by the Supreme Court. The Supreme Court stated that it would be struck down to the extent it implemented the setback requirements for streams and wetlands, which is outside the intent of this rule. DEP is aware of the industry's disagreement with that interpretation and this topic is currently being litigated in Commonwealth court. That court has not ruled on the validity of that section; it has only ruled that the Pennsylvania Independent Oil and Gas Association (PIOGA) has standing to sue DEP. DEP also believes that we have much broader authority, beyond Act 13, to support greater protection of public resources. DEP administers a number of different environmental statutes – the Clean Streams Law, Dam Safety Encroachment Act, the Solid Waste Management Act, and others, as well as Article 1 Section 27 of the Pennsylvania Constitution that would justify greater protection of public resources. DEP will continue through the litigation process and the decisions on the advocacy of the rule will be decided at the conclusion of those proceedings.

Senator Yaw inquired as to why the regulations are currently moving forward. He noted that in July of 2013, TAB stated in a document to the EQB that the proposed regulation does not meet the requirements included in Executive Order of 1996-1 or Departmental Policy which requires rules to address compelling

public interests in a manner by which costs do not outweigh benefits. Senator Yaw further stated that another document was sent by TAB to DEP on March 11, 2014, reaffirming the notion that the proposed regulations do not address a compelling public interest in a cost effective manner. He continued that, in March of 2015 TAB was reconstituted under the new administration and COGAC was created. Senator Yaw noted that TAB implies in its January 6, 2016, report to the EQB that DEP was less than cooperative with regard to providing information to assist TAB with making a decision regarding this rule. TAB incorporated COGAC's resolution from October 29, 2015, into its report regarding the rule that states DEP should not move the regulatory package to the EQB for the reasons stated above. Many of those reasons noted in the resolution relate to the rule not responding to a compelling public interest. Senator Yaw stated that Deputy Secretary Perry did not use the words compelling public interest in his overview of the rule. He inquired as to why it appears that DEP did not listen to its advisory board's advice to not move forward with the regulation.

Deputy Secretary Perry responded that the rule does, indeed, address compelling public interests. It is necessary to have water supplies restored or replaced that have been polluted by oil and gas activities; necessary to have spills reported and cleaned up that can have deleterious effects on the environment. He further stated that the legislature also identified a need to further protect public resources. Also, he noted that DEP wants to ensure that there are appropriate standards for cleaning up polluted water supplies. DEP wants to be able to identify wells that, if fracked into, could pollute ground water, and could jeopardize public safety through methane migration that costs millions of dollars to clean up. He provided one example of an operator fracking into a conventional well and impacted a high voltage transmission line. If that line had provided power to a hospital, that would have been a direct and immediate threat to public safety. He noted that there is disagreement between DEP and its advisory committees on some of these issues. Two issues where disagreement is known is with regard to water supply restoration and public resource protection, both of which were a judgment of the legislature that these were important to be included in Pennsylvania's regulatory program. Two areas that DEP created rules without specific legislative directive pertain to area of review (fracking into abandoned or active wells) and reporting and cleanup of spills. The cost of cleanup and the potential threat to public safety drove the change for the area of review. For spill reporting and cleanup, since 2001, the standard for reporting a spill in Pennsylvania for brine has been five gallons over a 24-hour period. There are few things at a well site that are spilled are less harmful than brine, and given that something as innocuous as five gallons of brine is required to be reported to DEP, it was prudent to apply that standard to all regulated substances that could be spilled. For additional context, Deputy Secretary Perry explained that when someone intentionally or accidentally spills something today, whether it is a truck driver, whether it is a residential home heating oil tank, whether it is a petrochemical facility, it must be cleaned up to an Act 2 standard. DEP would mandate that those spills be cleaned up to a scientifically-sound standard to which the oil and gas industry was not previously being held. These rules rectify that.

Deputy Secretary Perry continued addressing the reconstitution of TAB and COGAC. He explained that, when developing the rules, the previous TAB members did not have the expertise to provide DEP with the guidance that was needed on unconventional development. Similarly, it would not have been appropriate to have a Board that included only those professionals who drill unconventional wells when DEP is also charged with managing the conventional oil and gas industry. DEP asked for recommendations on membership to COGAC, and we accepted every single recommendation. These recommendations came from Senator Hutchinson to have members of the Pennsylvania Grade Crude Coalition (PGCC), Pennsylvania Independent Oil and Gas Association (PIOGA), and Pennsylvania Independent Petroleum Producers (PIPP) to be included on the Board. DEP wanted to get the best advice and feedback possible on conventional drilling and we receive that from COGAC. DEP also needed technical advice on some of the well development practices that the unconventional operators engage in.

DEP believed that there was a compelling interest in having new and very specific voices on these advisory committees. Unfortunately, we could not reach a consensus on all of the provisions in the rulemaking, but DEP believes we have done a reasonable job of tailoring the rules to meet the needs that we have identified.

Senator Yaw commented that DEP still did not listen to its advisory committees as the committees are recommending not moving forward with the regulation or offering recommendations to modify it.

Deputy Secretary Perry responded that the rule is a direct result of significant engagement with previous and current TAB members, as well as the other members of the industry. He offered examples of industry engagement – when the rule was first proposed several provisions (such as: vandal-proofing tanks, the gathering line provisions, and the horizontal directional drilling rules) that are currently in the unconventional chapter of the regulation, were also all in Chapter 78, and were proposed to be applied to the conventional industry. DEP heard the concerns from industry and from our advisory committee and those provisions were removed from the conventional rules. Other than codifying policies (such as site restoration) and effectuating statutory mandates, the area of review and spill cleanup and reporting are the only two provisions that are new to the conventional industry. The conventional industry is actually more likely to frack into abandoned and active wells than the unconventional industry because they are still drilling and fracking in the same formations as in the past. DEP believes we have a compelling need for those provisions. The substantive changes that occurred from proposed to final is evidence of that, but some recommendations made by industry could not be incorporated into the rule. DEP based decisions on sound judgment and on experience. DEP understands what the potential risks of oil and gas development are on Pennsylvania and has taken incremental and appropriate steps in this rule.

Senator Yaw affirmed that he is not against environmental regulation, but he wants to ensure that all regulatory development is reasonable, rational, and responsible. He is not convinced that standard is being met.

PUC Chairman Brown commended Deputy Secretary Perry and his staff for the outreach conducted during EQB review of this regulation. She expressed gratitude for having the opportunity to discuss the regulation and garner a better understanding of the regulation in its entirety. Chairman Brown brought forward comments provided to her by her fellow Commissioners. PUC Commissioners have some concerns regarding the expansion of impacts to public resources included in the Advance Notice of Final Rulemaking and whether that inclusion was appropriate. Also, Commissioners shared concerns regarding the legislative intent of Act 126 of 2014 – whether the rule should have been promulgated as two separate chapters or whether the bifurcation of the regulation into Chapter 78 and 78a meets the requirements of the law. Chairman Brown stated that, overall, she and her colleagues at the PUC respect the effort that DEP is undertaking with this rulemaking and will defer to DEP expertise. Ultimately, the commission's greatest concerns relate to its mission with respect to regulated utilities. In discussion with DEP concerning this regulation, it did not appear as though any water utilities were impacted by the regulation. She inquired if DEP received any comments from regulated water companies. Deputy Secretary Perry stated that we did not. Chairman Brown concluded her statement.

Informal discussion of the rulemaking concluded. Secretary Quigley asked for a motion to approve the Chapter 78/78a final rulemaking as presented and recommended by DEP.

**John Arway made a motion to adopt the final rulemaking.
John Walliser seconded the motion.**

Mr. Arway discussed his motion. He noted that it was his intention to speak to the need for these regulations from a professional and a personal perspective. He noted that he began his career with the Commonwealth in the 1980s and he provided historical perspective regarding oil and gas development at that time. He talked about the EPA coming to PA and declaring a major oil spill in the 1980s – Mr. Arway, serving as a fisheries biologist, was on a team of people working with federal teams and agencies to walk the watersheds of northwestern Pennsylvania to identify sources of both oil and brine in the surface waters and ground waters of Pennsylvania. Mr. Arway turned over that database of information, which still exist today, to Deputy Secretary Perry a couple of months ago. In the 1980s, the Fish and Boat Commission’s role was to help the EPA, perform the assessment and then work with the DEP through the Oil and Gas Environmental Advisory Committee to develop a set of rules and regulations to help control discharges into the future. He continued that this process was unfortunately not very successful. Also in the mid-1980s, Mr. Arway took the Citizens Advisory Council on a tour where they were witness to pit discharge from a primary oil well going into a creek. Additionally, in his professional capacity, Mr. Arway noted that he served as an expert witness in federal court speaking to major water flood discharges. He also testified in both Commonwealth and Civil and Administrative courts throughout the State regarding the toxicity of oil and gas brines and oil on fish. Also throughout his professional career, he has given talks at major conferences around the country and he is published in scientific literature about the effects of these substances on fish and aquatic life in our state.

Speaking from a personal perspective, Mr. Arway has a family cottage in the middle of the Allegheny National Forest and in the middle of the oil fields. He grew up there and now owns the cottage, that is a typical hunting and fishing camp in Forest County (northwestern) Pennsylvania, a rural area with a small populous. Despite the low populous, there are no Class A wild trout streams in that area due to the cumulative – and recent – impact of oil and gas development. He continued that about ten years ago, a new oil and gas developer drilled new wells into an area that had been drilled previously. The company drilled and fracked those wells, and the hydraulic pressures forced brine and oil back to the surface and contaminated three water supplies to three camps along the hillside. He explained that the oil and gas developer went bankrupt and left behind contaminated springs. He commented that he hopes these regulations will help prevent a similar situation from happening in the future. He concluded that, from a personal and professional perspective, he speaks in favor of these regulations and the need for them noting that they are long overdue. He asked his fellow EQB members to vote with him to support DEP’s recommendations for the amendments to Chapter 78 and 78a.

Burt Waite requested to make a motion to discuss considering Chapter 78 and 78a separately. His rationale for that is Act 126 asked that the regulations be viewed separately. Also, he asserted that this may afford more flexibility and options for Board members to approve or disapprove the conventional and/or the unconventional regulations.

Burt Waite made a motion to amend the final rulemaking to consider Chapters 78 and 78a separately. Representative Maher seconded the motion.

Representative Maher commented that he supports this motion noting that the legislature directed that the unconventional and conventional regulations be considered separately. He stated concerns that this statutory directive has been disregarded to date. Approval of this motion would allow the option to promulgate the rules separately.

Representative Vitali spoke in opposition to the motion stating that this appears to be an attempt to delay this process. He additionally contended that, in the legislature, there has been an unconstitutional attempt to delay the regulations through two different fiscal code bills. He continued that there is a cost to delay,

noting that the public and environment is subject to the impact of lesser protection standards. He believes that the regulation has been through a robust public comment period and comments were responded to. He noted that this should move forward without delay and he will not vote in favor of this amendment. He further encouraged other EQB members to vote no on this motion and other amendments.

Representative Maher argued that this motion is not about postponing or delay but about separating the Chapter 78 and 78a for separate consideration.

Mr. Arway asked for DEP's position on the motion. Secretary Quigley responded that DEP would be opposed.

The motion to amend the final rulemaking to consider Chapter 78 and Chapter 78a separately failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite and Senator Yaw voted in support of the motion.

Secretary Quigley noted that other motions could be brought to the floor.

Representative Maher brought forward his package of amendments to the regulation, beginning with his Amendment #1 regarding the centralized impoundment definition.

Representative Maher made a motion to consider his Amendment #1. Burt Waite seconded the motion.

Representative Maher explained that his package of amendments is intended to be technical cleanup for clarity. Regarding Amendment #1, he noted that centralized impoundment is not currently defined to identify that it deals with wastewater. This amendment makes a reference to a form in order to provide clarifying language.

Rep. Maher's Amendment #1 failed by a vote of 6-13. Bill Fink, Richard Fox, Representative Maher, Burt Waite, Donald Welsh, and Senator Yaw voted in support of the motion.

Representative Maher introduced his Amendment #2 pertaining to the definition of mine influenced water.

Representative Maher made a motion to consider his Amendment #2. Burt Waite seconded this motion.

Representative Maher explained Amendment #2 stating that, currently, DEP, by permit, allows water from mines to be treated to NPDES standards and then the water can be discharged into surface water. That water, in the context of this definition, would revert to being deemed polluted water. The first part of this amendment clarifies that this water which DEP allows to discharge into streams and lakes and rivers is not the water that is being considered in the regulation related to mine influenced water. Also, regarding drawing water, DEP currently is required to provide an integrated list of all waters in the Commonwealth to EPA – that list is categorized and two of those categories deal with polluted surface waters. This is a concrete reference that people can look to that if they are drawing water so that there is no uncertainty as to whether or not the water source involved is subject to this definition.

Mr. Arway requested DEP's position on this amendment. Deputy Secretary Perry explained that the definition of mine-influenced water has undergone substantial review during the development of the rulemaking. This concept is also discussed in the comment/response document accompanying the rule. He explained further that the primary concern for DEP is – just because water is being discharged under an NPDES permit, does not necessarily mean that it is clean. In particular, not clean for any watershed in which it may be stored. Sewage is discharged under an NPDES permit, industrial wastes are discharged under an NPDES permit and frequently they rely on the assimilative capacity of streams to blunt its otherwise harmful effect. DEP wants to encourage the use of degraded sources of water for hydraulic fracturing, but believes that it is reasonable for DEP to evaluate the quality of these waters before allowing it to be stored in very lightly regulated impoundments. DEP needs to assume that these impoundments are actively leaking; that they are in high quality watersheds; and that the water leaving those impoundments has the potential to get into drinking water supplies. Fluids that are known to be polluted and stored in impoundments need to be regulated to a higher standard. As such, DEP does not believe this to be a sound amendment to provide protection that Pennsylvania requires during hydraulic fracturing processes.

Representative Maher asked DEP what makes storing water dangerous. He further inquired why water that is deemed safe enough to be discharged into streams and rivers is not also deemed safe enough to store. If it is not deemed safe to store, DEP should not permit it to be released into streams and rivers.

Deputy Secretary Perry responded that DEP should evaluate the water to ensure that it is safe to discharge and that it will not have an impact. He further explained that just because water is being treated under a permit and discharged, does not necessarily mean that it is as clean as the stream that is receiving it. DEP's primary concern is that the water is properly evaluated to determine whether it is clean enough to be stored in a lightly regulated freshwater impoundment.

Rep. Maher's Amendment #2 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Representative Maher explained that Amendment #3 pertains to the definition of well development pipeline. As currently defined, it lacks the specificity to deal with site restoration at the conclusion of drilling. Without this additional specification, the well development pipeline would have a lifespan that would go well beyond the temporary nature that is anticipated. His understanding is that the objective of the rule is that if a water development pipeline is temporary, after the drilling of the well is complete, that water development pipeline is to be removed. This amendment would provide for that – without the amendment, he contended that there would be an open-ended timeline for removal. This amendment is offered to make the regulation operative in the way that has been described.

**Representative Maher made a motion to consider his Amendment #3.
Richard Fox seconded the motion.**

Mr. Fox inquired if this amendment was included as a recommendation in the TAB report to the EQB. Representative Maher responded in the affirmative.

Mr. Arway requested DEP's position on this amendment. Deputy Secretary Perry stated that discussions were held previously regarding the recommendation included in this amendment. DEP believes that the rule as written will not require permanent lines to be subject to this revision. For this reason, DEP does not believe it to be a necessary amendment that will add value to the rule.

Rep. Maher's Amendment #3 failed by a vote of 6-13. Bill Fink, Richard Fox, Representative Maher, Burt Waite, Donald Welsh, and Senator Yaw voted in support of the motion.

Representative Maher introduced his Amendment #4.

**Representative Maher made a motion to consider his Amendment #4.
Burt Waite seconded the motion.**

Representative Maher explained that Amendment #4 addresses two issues. The regulation as drafted is internally inconsistent. One section states that it is the landowner's prerogative to restore a site to his/her wishes as long as the restoration is in compliance with other sections of the rule. Unless the rule makes it clear that site restoration is subject to the landowner's prerogative, the rule will contradict itself. The second part of the amendment pertains to site restoration for sites which the former/pre-drilling condition of the site is unknowable. The concern is that the rule as written will discourage operators from pursuing site restoration efforts as they will be asked to meet an impossible standard.

Mr. Arway asked for DEP's position on this amendment. Deputy Secretary Perry responded that making this amendment will create more disputes than it resolves between DEP and drillers. He further contended that, if someone was to visit a well site, the previous condition of the land is easily viewable by looking to the right side of the site, to the left side of the site, up slope and down slope to see how the land was altered during well development. If the landowner is fine with the current condition post-drilling, DEP agrees that they can sign off on it and the land will remain in its current state, provided it does not otherwise pose a potential environmental harm. One area where there is potential for environmental harm is with large freshwater impoundments. It would not be reasonable to allow an impoundment that can store millions of gallons of water, that may exhibit signs of slumping and the like, to remain perched above someone else's home or someone else's property. For this reason, DEP has to retain some authority to require restoration if there exists an unreasonable environmental risk for the site to be left in its current condition. DEP feels confident that the rule as written allows reasonable choices when restoring sites. Further, DEP is not demanding that the sites be restored to exact original contours, but merely approximate original contours which would be those that are exhibited by the sites surrounding it and landowners consenting to that condition. Subsection G speaks clearly to the landowner consent authorization.

Representative Maher argued that Subsection G is actually the source of the problem because it refers to compliance with Section A and Section B.2 to 7. In order for the landowner's consent to be operative, it must comply with sections where the landowner's consent is not acknowledged. He believes this amendment will provide internal consistency with the regulation.

Mr. Klapkowski noted that the disagreement lies with the statement that the regulation is internally inconsistent. Subsection G states the operator has to develop and implement a site restoration plan that complies with those sections, not that the landowner has to comply with those sections. Further, there are concerns with stormwater management that remain even after a site has been restored. Post construction stormwater management requirements may have to be met by the landowner as part of that consent. For these reasons, DEP affirms that the rule is internally consistent.

Representative Maher argued that the section requires the operator to comply with these sections that do not provide for the landowner's consent in the same section where it is stated that the landowner's consent

will be respected. He further stated that DEP pointed out that the operator is required to disregard the landowner's consent in order to comply with those sections as written. He restated that this amendment is to provide internal consistency.

Deputy Secretary Perry responded that it appears that there is disagreement with the interpretation of the rule. There are clearly times when post construction stormwater management features need to be maintained in perpetuity. A well driller cannot walk away from that responsibility by signing it over to the landowner who would then have to agree to maintain those post construction stormwater features throughout the life of the facility. The rule provides for consent, but the landowner cannot consent to creating an environmental impact.

Representative Maher contended that we have long established laws and regulations that deal with dams that present a hazard and so we do not need to be addressing that indirectly in this regulation. After restoration, that impoundment would be subject to the laws that apply to all dams in Pennsylvania.

Rep. Maher's Amendment #4 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Representative Maher introduced his Amendment #5.

Representative Maher made a motion to consider his Amendment #5. Richard Fox seconded the motion.

Representative Maher explained that the area of review provision was not dictated by statute, and while it may be a good idea in theory, it introduces an impossible standard for operators to meet. This amendment requires the best efforts of operators to identify surface and bottom holes using all sources of information known to DEP (including databases) or the operator.

Mr. Arway asked if DEP has a position on this amendment. Deputy Secretary Perry noted, the way this amendment reads, it would pose an enormous cost increase for industry. Requiring operators to use best efforts to identify the surface and bottom hole location of these wells would mean entering the well to physically log it. DEP does not intend to require operators to use best efforts to identify the bottom hole location of wells. Vertical wells were presumed to have a bottom hole location the same as the surface hole location, which may or may not actually be true. In that way, this amendment would create more ambiguity and not accomplish what it intended to do. Further, the issue of using other databases and maps has been more contentious than many people have realized. DEP has considered and discussed this provision at length with members of the industry. DEP's goal was to have a single database with all of the wells for the convenience of all operators. With this goal in mind, DEP requested that the industry provide us with their historic maps in order to digitize and incorporate them into one database. Rather than receiving the requested maps, DEP was provided with a lengthy legal brief explaining why we would not receive that information. Lacking the requested map information, DEP retained the language to include a review of applicable maps. DEP recognizes that this is a bit of a soft standard. Operators can access DEP's database which has the precise location of approximately 9,000 of the more than 250,000 abandoned wells in the Commonwealth and operators can ask surface landowners who may have direct knowledge of where abandoned wells are located. DEP believes that, after an extensive consideration of all the comments received on crafting the area of review, we have done a reasonable job of avoiding unnecessary expenses requiring invasive procedures like using best efforts to identify the bottom hole locations of wells. In sum, DEP believes that this amendment will create ambiguity and is not necessary.

Mr. Fox inquired as to what is meant by the term farm line map. Deputy Secretary Perry responded that it is a historic map demarcating property boundaries. Frequently the old farm line maps have locations of oil and gas wells on them. Mr. Fox asked if these maps are available at a central location. Deputy Secretary Perry answered that operators have them and refuse to provide them to DEP.

Representative Maher commented that he does not understand how this amendment would increase costs. He stated that relating to vertical wells, in the regulation as it currently is drafted, it says the operator shall identify the surface and bottom hole locations. He inquired as to why the language is included in the regulation if this will not be required.

Deputy Secretary Perry responded that the precise location of horizontal wells and that pathway must be identified. DEP assumes for vertical wells that the bottom hole location is the same as the surface hole location. If there are records indicating that the well bore is intentionally deviated, those should be provided. With regard to cost, he explained that the amendment would increase costs because requiring the practice of best efforts requires identifying bottom hole locations, which means entering the well.

Representative Maher questioned why the regulation is not more explicit as to what DEP intends to do in this section.

Deputy Secretary Perry responded that it appears that the issue is DEP acknowledging that vertical wells without records will be presumed to have the same bottom hole location as the top hole location. He further explained that, while this is not precisely stated in the rule, many rules require additional technical guidance documents to provide the kind of clarity to nuanced situations that we are discussing. DEP is committed to, and has been, working collaboratively with our advisory committees to finalize this guidance in order for us to adequately address these issues.

Rep. Maher's Amendment #5 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Representative Maher introduced his Amendment #6.

Representative Maher made a motion to consider his Amendment #6. Richard Fox seconded the motion.

Representative Maher explained that this subsection is not intended to establish any new requirements and therefore DEP attributes no cost to this section. DEP states that these provisions "simply reiterate the requirements already existing in Pennsylvania Code Sections 91.34 and 102.5." He noted that there is considerable discomfort in the regulated community that this does not simply reiterate those sections and he is therefore putting forward this amendment. If the intent is the reiteration of these code sections, then that is exactly what the regulation should say.

Mr. Arway asked for DEP's position on this amendment. Deputy Secretary Perry responded that the impetus for this change is actually the precise language that is being proposed by this amendment to be stricken out. Prevention Preparedness and Contingency (PPC) plans need to be site-specific plans. While the term "site-specific" was not used in the previous iteration of the rule, that is what was intended by that rule, but was apparently not being followed. For this reason, DEP needed to have greater clarification that when an operator is conducting oil and gas activities, a PPC plan that addresses the activities conducted on that site is required. For example, if a well is being operated in Tioga County and someone on-site needs to go to the hospital, the appropriate hospital needs to be identified in the PPC plan. If the identified

hospital is Mercer County Hospital, that is not a sufficient plan. However, many times conventional operators may not need to have a plan that varies because all activities are conducted in the same area. They construct their pads in the same way, the wastes and fluids they store on site are managed in the same way. So a “generic” plan can work throughout. DEP has made that point in discussions with industry. In sum, this amendment would negate the reason we opened this section up for change.

Rep. Maher’s Amendment #6 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Representative Maher introduced his Amendment #7.

**Representative Maher made a motion to consider his Amendment #7.
Richard Fox seconded the motion.**

Representative Maher explained that his Amendment #7 would strike the reference for manuals in the regulation.

Mr. Arway inquired if DEP has a position on this amendment. Deputy Secretary Perry responded that the same PPC plan provision just discussed contains a reference to a manual that if operators follow, it would be deemed to satisfy the requirements of that particular section. Erosion and sediment control issues are the primary environmental problem at both conventional and unconventional sites and also the primary cause of stream impairment in Pennsylvania. DEP believes that it is helpful to reference the guidance that is available to operators so that they can adequately address these issues. The language does not mandate that the manual is strictly required in order to comply with the rule. This provision provides a helpful cross-reference to existing guidance, so that the industry can adequately address this problem. Further, reference to helpful manuals is an existing part of the surface activities rules and DEP believes it should remain as such.

Representative Maher withdrew his motion to consider his Amendment #7.

Representative Maher introduced his Amendment #8.

**Representative Maher made a motion to consider his Amendment #8.
Richard Fox seconded the motion.**

Representative Maher noted that brine is considered a regulated substance in the regulation. If it is appropriate to put thousands of gallons of brine on the roadways, he questioned how it can be considered a pollutant to be regulated. He contended that it should either be considered a regulated pollutant or non-regulated and appropriate for spreading on the road as a dust suppressant.

Mr. Arway asked for DEP’s position on this amendment. Deputy Secretary Perry responded that a regulated substance applies to substances beyond those considered to be pollutants. For example, he explained that if someone was to dump a truckload of milk on the ground, that milk is now a regulated substance. Rock salt used to de-ice roads is a regulated substance. DEP has considered this issue. It sounds like the primary concern pertaining to this amendment is the use of brine on Pennsylvania’s roadways. DEP does not require treated brine to be used as a dust suppressant. Untreated brine has been used throughout Pennsylvania and other states as a dust suppressant by municipalities for many years. It has many constituents in it including radium and heavy metals as well as organic compounds. But the application rates and the prohibitions of applying it to roads with a 10% grade or greater or within 150

feet of streams has proven to be environmentally protective. It would appear that this amendment would be mandate that only treated brine be used in a beneficial way. DEP does not have the data to support having that requirement across the board. Brine can be used as a de-icing agent, but it needs to be very salty in order for it to be effectively used as an anti-icing agent. Brines from most shallow oil wells would probably freeze on roads, which is the reason for the differentiation. In sum, it would be considered to be a regulated substance but it would not be a violation of our rules if used in the manner prescribed.

Mr. Cohen inquired if this regulatory language has limiting reach on the state or municipal efforts to de-ice roadways across the Commonwealth. Deputy Secretary Perry responded that it does not. In fact, the applicant for this authorization would be PennDOT or the municipality or, perhaps an individual in occasional circumstances – but typically, the entities applying to use this are municipalities. Currently, he noted that he is not aware of any entity that has used brine as a de-icing agent.

Representative Maher commented that the amendment recognizes that those who are applying this brine are municipal and state employees. He averred that he finds it intrusive to list personally identifying information including listing license plate numbers. He would like to see that requirement dropped.

Rep. Maher's Amendment #8 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Senator Yaw put forward his package of three amendments. He introduced his Amendment #1; a clarification relating to the drinking water standards.

**Senator Yaw made a motion to consider his Amendment #1.
Richard Fox seconded the motion.**

Senator Yaw referenced the TAB report to the EQB – stating that this amendment addresses a recommendation included therein. TAB recommended that the provision relating to drinking water be revised to provide a clearer standard. This amendment clarifies that an operator is only responsible for restoring a comparable standard that was degraded through an oil and gas activity.

Senator Yaw asked Deputy Secretary Perry's opinion of this amendment. Deputy Secretary Perry responded that DEP agrees that the parameters that need to be rectified in the event that a water supply has been affected by oil and gas activities – they will be identified by DEP. Parameters that are otherwise elevated that were not caused by oil and gas activities do not need to be fixed in the course of a water supply restoration. Frequently, DEP sees cases where individuals have total or fecal coliform in their water, which was not caused by oil and gas activities, but elevations of iron or manganese or methane were caused by oil and gas activities. DEP would not order operators to clean up the coliform problem while they are addressing the iron and manganese problem. One of the concerns that DEP had with this amendment is that once the parameters that need to be addressed are identified, a solution can be from a variety of ways and the solution cannot introduce new contaminants that were not there otherwise. For this reason, DEP is forming a workgroup with our advisory boards, members of the industry, and interested members of the public in order to properly address this particular issue in guidance document. Deputy Secretary Perry provided an example – if an iron and manganese problem is identified and the suggested fix for this is to drill a new water well. This new well is now acceptable for iron and manganese, but there are elevated levels of barium, strontium, and chlorides. DEP was concerned that the proposed amendment would allow an operator to consider the obligation fulfilled to provide a safe drinking water supply, even though the new water well has not provided a safe water supply. Deputy Secretary Perry noted that the concept of not requiring an operator to fix what they did not break and

identifying methods to restore a water supply with replacement supplies so that homeowners are not left worse off is a topic that DEP is committed to working with stakeholders to develop appropriate guidance. While DEP believes this amendment could be problematic, DEP can address the underlying impetus for it to everyone's satisfaction.

Sen. Yaw's Amendment #1 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Senator Yaw introduced his Amendment #2 which would eliminate the 3-day notice requirement.

**Senator Yaw made a motion to consider his Amendment #2.
Richard Fox seconded the motion.**

Sen. Yaw's Amendment #2 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Senator Yaw introduced his Amendment #3 relating to impoundments. The amendment proposes to restore the freshwater impoundment classification.

**Senator Yaw made a motion to consider his Amendment #3.
Richard Fox seconded the motion.**

Senator Yaw explained that this amendment would make it so the storing of freshwater would not have to meet the same standards for open water areas where, for example, there was residual waste. He continued that DEP, when questioned about this provision, had stated that no problems had been identified involving freshwater. He argued that if a problem is nonexistent than a solution is unnecessary.

Mr. Arway requested DEP's position on the amendment. Deputy Secretary Perry responded that the scope of this rule applies to freshwater impoundments which, according to our dam safety and encroachments Act, if an impoundment stored less than 50 acre feet of water and was shallower than 15 feet deep, it was not regulated. Shale gas development called into question the appropriateness of that decision, as these are impoundments that can store 16 million gallons of water. Further, these impoundments are not traditional and can be located virtually anywhere – including on top of hills, above people's homes. This industry is unlike any other in Pennsylvania – no one builds multi-million gallon ponds in the middle of nowhere that cannot be replenished with streams and the like. DEP had concerns about the embankments and we are not proposing to require a permit for these impoundments, but DEP does believe that they need to be constructed using embankments that resist breaching. When DEP first met with the Marcellus Shale Coalition to discuss these issues, a fact sheet was already in place for best practices for developing freshwater impoundments. The contents of the fact sheet are incorporated into this rule. Industry had assumed they were always required to follow these guidelines and so are already following heightened embankment construction standards. Following these standards has likely prevented catastrophic failure concerning an impoundment (which, if one failed, would at minimum damage property and possibly seriously injure someone or flood a roadway, etc.). DEP wants to continue to take reasonable steps to prevent that from occurring. DEP is not requiring a permit so the construction process is not delayed, we are simply having industry build these embankments to a sound engineering standard.

Mr. Fox asked if this would apply to existing impoundments. Deputy Secretary Perry responded that this would not have a retroactive effect.

Sen. Yaw's Amendment #3 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Mr. Fox introduced Senator Yudichak's five suggested amendments to the final regulation amendments. He proceeded to move to consider Senator Yudichak's Amendment #1.

Richard Fox made a motion to consider Sen. Yudichak's Amendment #1. Senator Yaw seconded the motion.

Mr. Fox explained that Amendment #1 aligns the language in 78.51 and 78a.51 protection of water supplies with language included in Act 13. Act 13 uses the language drilling, alteration or operation of a well as opposed to oil and gas operations.

Mr. Arway asked for DEP's position on this amendment. Deputy Secretary Perry explained that DEP proposed to amend this particular section because of our long standing practice of requiring water supplies that are affected by something other than oil and gas drilling or alteration to be restored or replaced. Water supplies have been affected by pad construction. This is particularly applicable to people who use springs as water supplies. Pad construction can disrupt and cause pollution to springs. Water supplies have also been affected by horizontal directional drilling where pipe is laid under streams and the bentonite mud gets into the aquifer and plugs up water supplies. Further, water supplies have been affected by mismanagement of wastes through the act of drilling. He continued that the statute speaks to water supplies that are affected by drilling, alteration or operation of the well. DEP is aware that the presumption of liability does not apply to these other activities, it does only apply to drilling, alteration and operation, there was a compelling public need to clearly inform the operators and the public what the expectations are with respect to restoring or replacing water supplies. If any of the operator's activities pollute a water supply, water supply restoration or replacement to the standard specified in Act 13 will be required. The regulation is also clear that the presumption of liability did not apply to ancillary activities. Perry continued that rather than engaging in protracted debates or disputes with operators that have affected the water supply by something other than drilling, DEP felt that it was necessary to include this in the rule, so expectations are crystal clear.

Mr. Fox asked if DEP believes that this is an expansion of what the statute says. Deputy Secretary Perry noted that Clean Streams Law is protective of all waters of the Commonwealth including groundwater. It would be an expansion if DEP presumed well pad construction is the cause of an impact to a water supply. If the regulation made that presumption, it would have crossed the line, but it does not cross that line.

Sen. Yudichak's Amendment #1 failed by a vote of 4-15. Bill Fink, Richard Fox, Representative Maher, and Senator Yaw voted in support of the motion.

Richard Fox introduced Senator Yudichak's Amendment #2.

Richard Fox made a motion to consider Sen. Yudichak's Amendment #2. Representative Maher seconded the motion.

Mr. Fox stated that he believes a literal reading of the current regulation would have the regulated community believe that a pre-drilling or alteration survey would have to be received exactly 10 days prior to drilling. This amendment would change the language to say "at least" ten business days prior to.

Mr. Arway asked if DEP has a position on this amendment. Deputy Secretary Perry noted that the term “at least” was used in other sections of the rule. However, the precise notification language throughout Act 13 does not include the words “at least.” Further, DEP has notified operators that they can provide us with notification that they are going to spud a well 24-hours prior to the action. They could also alert us that they are planning to spud the well next year. Essentially, operators are aware that they can provide notification when they wish as long as it is more than or equal to 10 days prior to the activity.

Sen. Yudichak’s Amendment #2 failed by a vote of 6-13. Bill Fink, Richard Fox, Representative Maher, Burt Waite, Donald Welsh, and Senator Yaw voted in support of the motion.

Richard Fox introduced Senator Yudichak’s Amendment #3. This amendment was mentioned as a recommendation in the TAB report concerning the questionnaire required under area of review.

Richard Fox made a motion to consider Sen. Yudichak’s Amendment #3. Senator Yaw seconded the motion.

Mr. Fox explained that, as the TAB report to the EQB noted, many questions remain regarding the questionnaire that operators are required to submit by certified mail to the landowner. This amendment removes the requirement for a questionnaire to landowners requesting information on orphaned or abandoned wells. There is too much uncertainty related to this provision to have it included in the regulation. The process and what the questionnaire will look like are unclear.

Mr. Arway asked if DEP has a position on the amendment. Deputy Secretary Perry explained that DEP believes landowners to be the best source of information for wells on their property. He again expressed that DEP would have preferred to have well locations made available in DEP’s database but did not receive cooperation in obtaining the information needed to populate that database. As such, the landowner questionnaire is an effective tool to discover wells for which no records may exist. The process outlined in the regulation is no different than the process the legislature prescribed as part of the well permit process, that water supplies and landowners within a prescribed distance must receive a copy of a plat by certified mail. A way by which the process outlined in the regulation is unlike the well permit process is that they are not being asked to provide all of the “green cards.” The definition of certified mail was expanded to be any verified means of receipt, so operators can use UPS or FedEx, etc. Mr. Klapkowski provided additional information as to how the forms would be structured. The questionnaire asks landowners if they have knowledge of old, abandoned or orphaned wells on their property; it asks locational information (to the extent that they are able to give it to the operator); and the condition of the well (to the extent that they have an understanding of that). A landowner may or may not have that information. The way the regulation is structured is that the operator does not need to provide a response from questionnaire to DEP. However, when they submit their survey report, they must identify if a well was identified as part of the landowner questionnaire and if a well was identified as part of the operators walking in the area. This will ensure context for when the database is being populated. In sum, the questionnaire and processes regarding the questionnaire are fairly straightforward and necessitate inclusion in the rulemaking. The development of forms and guidance, once the rulemaking has been promulgated, will further enhance and inform this process.

Sen. Yudichak’s Amendment #3 failed by a vote of 5-14. Bill Fink, Richard Fox, Representative Maher, Burt Waite, and Senator Yaw voted in support of the motion.

Richard Fox introduced Senator Yudichak’s Amendment #4 which would amend Section 78a.121.

**Richard Fox made a motion to consider Sen. Yudichak's Amendment #4.
Senator Yaw seconded the motion.**

Mr. Fox explained that this amendment touches on the reporting of waste materials. The amendment would change the reporting of waste materials from monthly to every six months. He continued that monthly reporting can be onerous. Further, he contended that other waste streams are not reported on a monthly basis -- hazardous waste and municipal solid waste are reported quarterly, if not less. Reporting twice per year would give operators time to submit more accurate information.

Mr. Fox inquired of Deputy Secretary Perry if he was correct in his statement that other waste streams are reported less frequently. Deputy Secretary Perry responded that hazardous waste is tracked much more rigorously with a manifest. One comment DEP received on the regulation requested that a manifest be required for waste. Ohio may be considering that type of waste tracking currently. DEP's concern is that, should we implement a manifest for tracking of waste, that it be maintained electronically so that the process would not be onerous. The public has identified a compelling need for greater transparency in the manner in which wastes are managed. Several errors have been identified upon DEP evaluation of reports submitted. Self-reporting waste management has not been working as evidenced by the fairly high error rate. DEP believes that we need to be much more diligent on our review of records and that it needs to be done more frequently so that millions of gallons of wastewater are not unaccounted for.

Mr. Klappowski also responded that DEP already has an electronic production and waste reporting in place and has built in the capability to receive reports on a monthly basis. Some operators are doing the monthly reports now. With electronic reporting, the process is not onerous and is manageable. Also, data will be made publicly available as data updates every month.

**Sen. Yudichak's Amendment #4 failed by a vote of 5-14. Bill Fink, Richard Fox,
Representative Maher, Burt Waite and Senator Yaw voted in support of the motion.**

Mr. Fox introduced Senator Yudichak's Amendment #5.

**Richard Fox made a motion to consider Sen. Yudichak's Amendment #5.
Senator Yaw seconded the motion.**

Mr. Fox explained that this amendment would change the effective date of the rulemaking to 180 days after publication in the *Pennsylvania Bulletin*. He stated that a six months' extension would allow operators and DEP to finalize forms, guidance documents, and train field staff, and to have training for the industry so that there is a smooth transition for the implementation of these new regulations.

Mr. Arway asked if DEP has a position on this amendment. Secretary Quigley responded that DEP has been developing this rulemaking package for almost five years. DEP has undertaken an unprecedented, transparent public process. The rule has been well scrutinized. He continued that it is time to finish the work and to put reasonable, balanced, and incremental protections for public health and the environment into effect. Therefore, DEP is not in favor of this amendment.

**Sen. Yudichak's Amendment #5 failed by a vote of 5-14. Bill Fink, Richard Fox,
Representative Maher, Burt Waite and Senator Yaw voted in support of the motion.**

Secretary Quigley called for any additional motions. With no additional motions put forward, he requested that the Board consider the original motion to approve the Chapter 78 and 78a final rulemaking.

Representative Maher stated that the EQB is the promulgating body for environmental regulations and, while DEP staff support the drafting and development of regulations, it is ultimately the responsibility of the EQB to develop and promulgate rules. He continued that he believes that staff obstructed the regulatory development process for this rule by not providing rulemaking documents upon request. For this reason, he does not believe he had a part in formulating these regulations. He additionally contended that IRRC did not receive all of the appropriate information when the regulation was in its proposed phase. Further, forms associated with the rule were not provided as required by the Regulatory Review Act. The Board was told that forms are in development but have not yet been provided. Representative Maher additionally maintained that the Board is being asked to ignore its statutory duty and to break the law pertaining to how regulations are written and adopted. He further noted that TAB and COGAC recommendations were disregarded. He stated that regulations should be easily understood and should be internally consistent. He believes that the intentions of the final rulemaking are unclear and the intentions of the rule are not necessarily consistent with what is written. Further, he stated that the Board is being asked to vote on a regulation that violates a statute that provided for bifurcation of the regulation, and it violates a statute that states you cannot adopt a regulation until the accompanying forms are published. He additionally noted that much of what is included in the regulations does not offer additional protections. For all of these reasons, Representative Maher stated that he cannot support violating the law by proceeding forward adopting this rulemaking at this time.

Secretary Quigley asked Ms. Childe for clarification with respect to legal issues. Ms. Childe advised the Board that the Office of General Counsel, an independent office of the Governor, plays a substantial role in the regulatory review and development process. This role includes reviewing proposed rules to ensure legality under the Regulatory Review Act. She acknowledged that Representative Maher is correct that the Board has a unique role in the promulgation of environmental regulations. The Environmental Quality Board was established in 1971 at the same time that the Department of Environmental Resources was created predating the Regulatory Review Act, which established the Independent Regulatory Review Commission. She continued that DEP has the distinction of having more oversight of its regulations and involvement of various departments and with the legislature in a way that no other department of the Commonwealth has. She noted that Representative Maher is incorrect in stating that this rulemaking violates the law. It does not violate the law and that has been reviewed very vigorously by the Office of General Counsel. She further asserted that the Office of General Counsel has reviewed everything the Department is doing and requiring and have advised that this rulemaking can and should move forward.

Representative Maher inquired regarding if the Regulatory Review Act's requirements that forms be included with regulations. Ms. Childe responded that it does. Representative Maher further inquired and - if the Board can waive that requirement or if that is a statutory obligation. Ms. Childe responded that we have spoken with Independent Regulatory Review Commission (IRRC) staff regarding this issue and we acknowledge that the Regulatory Review Act-the intent of the Regulatory Review Act is to provide transparency in the regulatory review and development process. The Act does state that forms be included with a rulemaking package upon delivery to IRRC. She continued that this is a practice (including forms) that does not occur for the reasons identified over the course of this discussion. She continued that Further, the reality is - even though the statute dictates the inclusion of forms; - until a regulation is finalized, forms often cannot be developed. While we frequently create forms, they have not been included with rulemaking packages and this is true for other state agencies as well. Ms. Childe reaffirmed that Representative Maher is correct that the Regulatory Review Act requires forms be included in rulemaking packages delivered to IRRC. She noted that the intent of the Regulatory Review Act is to provide

[transparency in the regulatory review and development process.](#) With regard to this regulation, this was identified as an issue that needs to be addressed but, with the knowledge that the forms are in development, this issue was not sufficient to stop the rulemaking from moving forward.

Representative Maher requested affirmation that the EQB, not DEP, is responsible for formulating and promulgating environmental regulations. Ms. Childe confirmed that the Board's role is to promulgate regulations to enable DEP to do the work that it needs to do.

Secretary Quigley called for any final comments or discussion.

Mr. Arway commented that, as a member of the Board, he appreciates and respect the role that Board members have in promulgating rulemakings to direct DEP on the path forward for environmental protection and balancing economics. He contended that the regulations before the Board are not only necessary, but they are the right thing to do. He and his staff reviewed the regulations and believe that they are the correct way forward and long overdue. Further, he believes that the Board has a constitutional duty to uphold Article 1, Section 27 of the Constitution – as trustees for our air, water, soil and public natural resources to preserve them for not only the present generation, but for all future generations. Mr. Arway stated his intention to vote in favor of the regulation and he encouraged the other Board members to do the same.

Mr. Cohen commented that, on behalf of PennDOT and Secretary Richards, he acknowledged and commended DEP and Deputy Secretary Perry for the responsiveness that was showed to PennDOT in ensuring that he was fully informed of all the issues that he needed to be made aware of and answered his questions thoroughly and followed up with additional information. As far as responsiveness and provision of information, he thought that was exemplary and wanted to thank DEP.

Mr. Walliser asked to make a motion to call the previous question. Secretary Quigley noted that this is a procedural issue. He asked Ms. Childe to explain what that motion means. Ms. Childe explained that the Board follows Roberts Rules of Order and Mr. Walliser's motion ends debate and calls for the original question to approve the regulations as presented to be voted on. It is a motion that requires a two-thirds vote of the Board so a hand count was taken to ensure compliance with the process. First, the motion needed to be seconded.

**John Walliser made a motion to call the previous question.
Representative Vitali seconded the motion.**

The motion to call the previous question failed by a vote of 13-6. Bill Fink, Richard Fox, Representative Maher, Burt Waite, Senator Yaw and Chairman Brown voted in opposition of the motion.

Secretary Quigley moved back to the discussion on the original motion.

Senator Yaw commented that there are several members of his committee that have concerns about the way in which the regulations were developed and they are concerned about the cost and whether there is a compelling public interest or need that warrants the cost.

Mr. Fink noted that he is uncomfortable moving forward with the regulations, as TAB and COGAC are not comfortable moving forward with the regulations.

The motion to adopt the Chapter 78 and Chapter 78a final rulemaking was approved by a majority of Board members with a vote of 15 - 4. Bill Fink, Representative Maher, Burt Waite and Senator Yaw voted in opposition to the motion.

Secretary Quigley confirmed that the Chapter 78 and 78a final rulemaking was approved by the Environmental Quality Board.

OTHER BUSINESS:

The next meeting of the EQB is tentatively planned for Tuesday, April 19, 2016. A meeting will not be held in March.

Secretary Quigley thanked all Board members for their diligent and careful review of this package and he also thanked DEP staff for their incredible work over the last almost five years to create and craft this package which is reasonable, balanced and incremental and protective of Pennsylvania's public health and the environment.

ADJOURN:

Representative Vitali moved to adjourn the meeting. Bill Fink seconded the motion, which was unanimously approved by the Board.

The February 3, 2016, meeting of the Board was adjourned at 11:53 a.m.