

**MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
February 20, 2018**

VOTING MEMBERS OR ALTERNATES PRESENT

Ramez Ziadeh, Acting Chairperson, Acting Executive Deputy Secretary for Programs,
Department of Environmental Protection
Natasha Fackler, alternate for Leslie Richards, Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown, Chairman, Public Utility Commission
Richard Fox, alternate for Representative Mike Carroll
Leda Lipton, alternate for Representative John Maher
Joanne Manganello, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Mike DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Terry Dayton, Citizens Advisory Council
Heather Smiles, alternate for John Arway, Executive Director, Pennsylvania Fish and Boat Commission
Sam Robinson, alternate for Sarah Galbally, Secretary, Governor's Office of Policy and Planning
John St. Clair, Citizens Advisory Council
William Fink, Citizens Advisory Council
Don Welsh, Citizens Advisory Council
Jim Sandoe, 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 Dr. Rachel Levine, Acting Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Jessica Shirley, Policy Director
Robert Bo Reiley, 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 Environmental Quality Board (EQB or Board) considered its first item of business – the approval of the December 12, 2017, EQB meeting minutes.

Andrew Place noted that in the fourth paragraph on page 3, where it reads “air quality monitors in the Schuylkill Valley,” should be changed to read Pittsburgh-Beaver Valley.

Andrew Place made a motion to adopt the December 12, 2017, EQB meeting minutes, as amended. William Fink seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: HANDLING AND USE OF EXPLOSIVES (25 Pa. Code Chapters 210 and 211)

This final-form rulemaking amends the explosives regulations at 25 Pa. Code Chapter 210 (relating to blasters' licenses) and 25 Pa. Code Chapter 211 (relating to storage, handling and use of explosives). The regulations are authorized under the 1937 and 1957 Explosives Acts, the Surface Mining Conservation and Reclamation Act, the Noncoal Surface Mining Conservation and Reclamation Act and the Administrative Code of 1929. This rulemaking revises current explosives regulations to address blasting activities relating to seismic exploration. The rulemaking also updates explosives use requirements and eliminates outdated requirements.

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations, provided an overview of the final rulemaking. Tom Callaghan, Director for Bureau of Mining Programs, and Joe Iole, Assistant Counsel for Bureau of Regulatory Counsel, assisted with the presentation.

After the presentation, Richard Fox inquired if there were fees prior to the development of this rulemaking. Deputy Secretary Stefanko responded affirmatively that fees are currently in place and are included in statute. He further explained that DEP plans to work with the General Assembly to revise and update the statute. The existing fees will remain in place at this time.

Richard Fox made a motion to adopt the final rulemaking.

Terry Dayton seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS:

Marcellus Shale Coalition's (MSC) Challenge to Chapter 78a Regulations:

Nels Taber provided the following updates:

The Chapter 78a regulations addressing Unconventional Wells became final on October 8, 2016. The MSC filed a petition challenging select portions of the new regulations and requesting a preliminary injunction of the challenged regulations.

- Count I of their petition challenges the validity of 25 Pa. Code §§ 78a.1 and 78a.15(f), and (g), pertaining to public resources; including the definition of "public resource agency" and "Playground" and the application of species of special concern during the permitting process,
- Count II challenging the validity of 25 Pa. Code §§ 78a.52a and 78a.73(c), and (d), pertaining to area of review as it applied to active, inactive, orphan, abandoned, and plugged and abandoned wells on neighboring properties 1,000 feet measured horizontally from the vertical well bore and 1,000 feet measured from the surface above the entire length of a horizontal well bore;
- Count III challenging the validity of 25 Pa. Code § 78a.58(d), pertaining to onsite waste processing;
- Count IV challenging the validity of 25 Pa. Code §§ 78a.59b and 78a.59c, pertaining to freshwater and wastewater impoundments;
- Count V challenging the validity of 25 Pa. Code § 78a.65, pertaining to site restoration;
- Count VI challenging the validity of 25 Pa. Code § 78a.66(c), pertaining to remediation of spills;
- Count VII challenging the validity of 25 Pa. Code § 78a.121(b), pertaining to waste reporting;

After the hearing, Commonwealth Court issued its decision on November 8, 2016. In its decision, the court granted a preliminary injunction as follows:

- As to Count I, as 25 Pa. Code §§ 78a.1 and 78a.15(f), and (g) to only to the extent that they include "common areas on a school's property or a playground" and "species of special concern" as "public resources" and include "playground owners" in the definition of "public resource agency".
- As to Count II, the court granted the preliminary injunction as to 25 Pa. Code §§ 78a.52a and 78a.73(c), and (d) only to the extent that they impose monitoring and remediation obligations on owners and operators with respect to wells identified in the area of review survey owned and /or operated by others.
- As to Count IV, the court granted a preliminary injunction as to 25 Pa. Code §§ 78a.59b(b) and 78a.59c, in its entirety.
- As to Count V, the court granted a preliminary injunction as to 25 Pa. Code §§ 78a.65(d) in its entirety.

The court denied MSC's application for preliminary judgment as to all other regulations at issue.

DEP and EQB filed an appeal of Commonwealth Court's Order to Supreme Court on December 6, 2016, seeking to have the Supreme Court dissolve the preliminary injunction.

- DEP and EQB briefs filed on February 8, 2017
- MSC filed its brief March 10, 2017
- DEP and EQB filed their Reply Brief on March 24, 2017

Argument on the Appeal was held October 18, 2017. Awaiting decision from the Supreme Court.

Matter simultaneously proceeded before Commonwealth Court.

- MSC filed an application for summary relief on August 31, 2017 on Count I pertaining to public resources
- DEP and EQB filed answer on October 12, 2017
- Sierra Club and Damascus Citizens for Sustainability filed a supporting brief on October 12 and October 23, 2017, respectively
- Argument on the application was held on December 6, 2017
- Awaiting a decision from Commonwealth Court

Discovery closed on January 31, 2018. Motions to dispose of this matter through summary judgment are due February 28, 2018.

Regulatory Update:

Laura Edinger provided the following updates:

- The proposed Triennial Review of Water Quality Standards was published in the *Pennsylvania Bulletin* on Saturday, October 21, 2017, opening the public comment period. The comment period closed on February 16, 2018. Four public hearings were held. Testimony was received at two of them. Including testimony, approximately 780 comments were received. Approximately 700 of those comments were form letters. The regulation is currently under review by the Independent Regulatory Review Commission (IRRC). IRRC has a 30-day review period after the public comment period closes.
- At the December 12, 2017, EQB meeting, DEP provided an update regarding Act 40 of 2017. The Act included a provision directing the EQB to promulgate proposed regulations related to manganese within 90 days from the time of the Act being signed into law on October 30, 2017. DEP noted that significant research and evaluation of data would need to be completed prior to bringing such a rulemaking in front of the EQB. To begin the work on this rulemaking, DEP published an Advanced

Notice of Proposed Rulemaking (or ANPR) on January 27, 2018, opening a 30-day public comment period. The comment period closes on February 26, 2018. DEP will evaluate the data collected through this process and then will begin working on a proposed rulemaking.

- On February 3, 2018, the proposed Noncoal Mining Program Fees rulemaking was published in the *Pennsylvania Bulletin*, opening a 30-day public comment period. The comment period will close on March 5, 2018. No comments have been received to date.
- On February 10, 2018, the Sobers Run et. al. Stream Redesignations rulemaking was published as final in the *Pennsylvania Bulletin*, making the rule effective. This Board adopted the final rule on August 15, 2017 and IRRC approved the rule on November 16, 2017.
- On February 22, 2018, the three rulemakings adopted by EQB on December 12, 2017, will be considered by IRRC at its public meeting: final-omitted Administration of the Land Recycling Program rulemaking, final Disinfection Requirements rulemaking, and final Gasoline Volatility Requirements rulemaking.
- On February 24, 2018, the proposed Administration of the Storage Tanks and Spill Prevention Program rulemaking will be published in the *Pennsylvania Bulletin*, opening a 30-day public comment period. The comment period will close on March 26, 2018.

Next Meeting:

The next meeting of the EQB is tentatively planned for Tuesday, March 20, 2018.

ADJOURN:

With no further business before the Board, Sam Robinson moved to adjourn the meeting. Terry Dayton seconded the motion, which was unanimously approved by the Board. The February 20, 2018, meeting of the Board was adjourned at 9:26 a.m.