

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
January 21, 2020

VOTING MEMBERS OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection
Joe Lee, alternate for Gerald Oleksiak, Secretary, Department of Labor and Industry
Natasha Fackler, alternate for Yassmin Gramian, Acting Secretary, Department of Transportation
Andrew Place, alternate for Gladys Brown Dutrieuille, Chairman, Public Utility Commission
Representative Greg Vitali, Pennsylvania House of Representatives
Representative Daryl Metcalfe, Pennsylvania House of Representatives
Senator Steven Santarsiero, Senate of Pennsylvania
Nick Troutman, alternate for Senator Gene Yaw
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
John St. Clair, Citizens Advisory Council
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Erin Wachter, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning
James Schmid, Citizens Advisory Council
Duane Mowery, Citizens Advisory Council
Mark Caskey, Citizens Advisory Council
Denise Brinley, alternate for Dennis Davin, Secretary, Department of Community and Economic Development
Michael Hanna, alternate for Russell Redding, Secretary, Department of Agriculture
Dr. Sharon Watkins, alternate for Dr. Rachel Levine, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, Regulatory Coordinator
Jessica Shirley, Policy Director
Kristen Furlan, Alternate Counsel to the Board

CALL TO ORDER AND APPROVAL OF MINUTES

The meeting was called to order at 9:00 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 17, 2019, EQB meeting minutes.

Andrew Place pointed out a correction that was needed on page 8, paragraph 6, in the sentence that read, "Mr. Place asked if the Department considered an error for pneumatics." The word "error" should be replaced with "instrument air".

Senator Santarsiero made a motion to adopt the December 17, 2019, EQB meeting minutes. James Schmid seconded the motion, which was unanimously approved by the Board. (17-0)

(Michael Hanna was not present for voting on minutes.)

CONSIDERATION OF FINAL-OMITTED RULEMAKING: HAZARDOUS WASTE GENERATOR IMPROVEMENT RULE (25 Pa. Code Chapters 261a – 265a)

This rulemaking ensures the alignment of Pennsylvania’s hazardous waste regulations with revisions to the Federal hazardous waste regulations. On November 28, 2016, the U.S. Environmental Protection Agency (EPA) finalized the Hazardous Waste Generator Improvements Rule, which substantially revised provisions in 40 CFR Parts 260 – 268 and 270, reorganizing many of the Federal generator regulations to make them more intuitive for users. The amendments included in this rulemaking will ensure the consistency of Chapters 261a – 265a with the revised Federal regulations, update the cross-references in the Pennsylvania regulations to match the revised Federal regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the final-omitted rulemaking. Walt Harner (Director for Bureau of Waste Management) and Nikolina Smith (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

No discussion followed the Department’s presentation.

Andrea Lowery made a motion to adopt the final-omitted rulemaking.

Andrew Place seconded the motion, which was unanimously approved by the Board. (18-0)

CONSIDERATION OF FINAL RULEMAKING: REVISION OF THE MAXIMUM ALLOWABLE SULFUR CONTENT LIMIT FOR NO. 2 AND LIGHTER COMMERCIAL FUEL OIL (25 Pa. Code Chapter 123)

This final-form rulemaking provides for the reduction of sulfur dioxide (SO₂) emissions from the combustion of No. 2 and lighter commercial fuel oil (No. 2 fuel oil). The SO₂ emissions released by combustion of sulfur-containing No. 2 fuel oil contribute to the formation of regional haze and fine particulate matter (PM_{2.5}) both of which are serious public health and welfare threats and affect visibility. Adopting this final rulemaking is part of the Commonwealth’s strategy for meeting regional haze obligations under Section 169A of the Federal Clean Air Act, 42 U.S.C.A. § 7491, and its implementing regulations under 40 CFR Part 51, Subpart P (protection of visibility).

This rulemaking: lowers the maximum allowable sulfur content limit of No. 2 and lighter fuel oil from 500 parts per million (ppm) to 15 ppm in the subject air basins; establishes a compliance date of September 1, 2020; revises the “store by” provision to allow No. 2 and lighter commercial fuel oil stored on-site by the ultimate consumer before September 1, 2020, that was compliant with the prior applicable limit, to be used on and after September 1, 2020, by the ultimate consumer; and revises the recordkeeping and reporting requirements for affected owners and operators to specify identification of the sulfur content of the shipment as being at or below 15 ppm, whereas previously it was at or below 500 ppm.

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation and Remediation) provided an overview of the final rulemaking. Bryan Oshinski (Bureau of Air Quality) and Jesse Walker (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department’s presentation, Mr. Place commented that the presentation stated there are no Class 1 areas in Pennsylvania. He asked if Allegheny National Forest was considered a Class 1 area. Mr.

Oshinski replied that Class I areas fall under a certain mandate of size. The Allegheny National Forest, for example, does not fall under the 156 Class I areas as defined by the Regional Haze Rule. Mr. Place followed up asking about the Appalachian Trail to which Mr. Oshinski responded that it also was not considered part of the 156 Class I areas.

Senator Santarsiero made a motion to adopt the final rulemaking.

Representative Vitali seconded the motion, which was unanimously approved by the Board. (18-0)

CONSIDERATION OF FINAL RULEMAKING: UNCONVENTIONAL WELL PERMIT APPLICATION FEES (25 Pa. Code Chapter 78a)

This final-form rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b), to provide the EQB with an evaluation of the Chapters 78 and 78a well permit application fees and recommend regulatory changes to address any disparity between Oil and Gas Program (Program) income generated by the fees and the Department's cost of administering the Program to ensure compliance with the 2012 Oil and Gas Act. The Department has determined that a significant disparity exists between fee income and costs to run the Program. In order to continue administering the Program, the unconventional permit application fee must be increased. This final-form rulemaking reflects the necessary fee increase.

Scott Perry (Deputy Secretary for Oil and Gas Management) provided an overview of the final-form rulemaking. Kurt Klapkowski (Director for Bureau of Oil and Gas Planning and Program Management) and Elizabeth Davis (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Representative Vitali commended Deputy Secretary Perry for the good work done by him and his staff and asked clarifying questions regarding open positions and workload increases.

Specifically, Representative Vitali commented that staffing levels are down, but the workload continues to increase for Department Program staff. He asked for clarification if the fee increase would allow for an increase in staff. Deputy Secretary Perry answered that this fee increase allows the Department to maintain staffing at current levels. It will not allow for the addition of staff.

Representative Vitali inquired regarding plugging abandoned wells. Deputy Secretary Perry explained that the well plugging fees are set by statute and the Department receives less than \$550,000 annually. The Department ensures funding to cover emergency situations which only leaves enough funding to plug a very small number of wells annually. At the current rate the Department is able to plug abandoned wells, Deputy Secretary Perry estimated it would take over 17,000 years to complete plugging in Pennsylvania.

Mr. Caskey noted the significant drop in the number of well permit applications. Deputy Secretary Perry confirmed that there has been a decrease in the number of applications filed. Mr. Caskey inquired if the decrease is likely to continue. Deputy Secretary Perry responded that while not possible to predict the number of applications the Department may receive, there may be fewer applications in future years.

Mr. Caskey further noted that the Department receives six million dollars from the Impact Fee. Deputy Secretary Perry commented that the Impact Fee money can be used to fund oil and gas programs as well

as air quality and water programs but that the entire \$6 million has been allocated to the oil and gas program every year. The fee included in the final-form rulemaking is needed to ensure adequate funding for the oil and gas program.

Senator Santarsiero commented that prior fee packages differentiated between vertical and horizontal wells. Deputy Secretary Perry explained that differentiation was not included in this rulemaking as drilling nonvertical wells no longer occurs.

Senator Santarsiero further inquired, with well permit applications decreasing, is this fee increase truly adequate to cover the cost of running the oil and gas program. Deputy Secretary Perry responded that the increase provided in this rulemaking is based on an analysis done between 2014 and 2017. The analysis was fair and highlighted the funding needs of the program.

Senator Santarsiero asked if more personnel are needed. He noted that a decrease in permit applications does not appear to mean less work for the Department, but rather an increased workload. Deputy Secretary Perry affirmed this statement stating that the overall inventory of wells continues to grow and so the workload correspondingly grows. Senator Santarsiero asked if the staff number of 190 is inclusive of field inspectors as well. Deputy Secretary Perry responded that the staff number is inclusive.

Representative Metcalfe questioned the reasonableness of the 150 % fee increase. He questioned whether other funding means were available. Deputy Secretary Perry noted that, currently, the mechanism the Department has to maintain adequate funding to support program operations is to raise the permit application fee.

Mr. Place inquired regarding the fee analysis and whether the data used was adequate to demonstrate the actual funding necessary to support program operations. Deputy Secretary Perry noted that the data included in the fee analysis, while somewhat dated, still provides an accurate representation of current funding needs. If the fee increase is implemented, the Department will have funding necessary to maintain the program as it exists currently, sustaining the program at its current complement.

Mr. Place also noted the downward trend of applications submitted and stated concern that the Department will soon not receive enough applications to support the program. Deputy Secretary Perry commented this downward trend in applications and program needs support the reasonableness of this fee increase.

Mr. Mowery inquired if ongoing operating costs are funded by new well drillings. Deputy Secretary Perry responded affirmatively. If no new wells are drilled, the program would have no income. The Department has contemplated different funding mechanisms to support program operation. The well permit application fees are the available funding mechanism.

Mr. Mowery asked what the Oil and Gas Technical Advisory Board recommended. Deputy Secretary Perry responded that the Department discussed the rulemaking with the Board, but because the Board is a technical advisory board, they declined to provide comment on funding structure.

Mr. Schmid inquired what is being done to regulate gathering lines. Deputy Secretary Perry responded that the Department reviews erosion and sediment permits and stream and wetland permits. These permits generate less than two million dollars annually and that funding is deposited in the Dam Safety and Clean Water funds.

Mr. Troutman asked how the Department plans to use the funds that will be received from the ETP fine. Mr. Perry responded that \$25.6 million of the fine will go to the Oil and Gas Program Fund in order to sustain the Program.

Representative Vitali made a motion to adopt the final rulemaking. Dr. Watkins seconded the motion, which was approved by a majority of the Board members. Mark Caskey, Representative Metcalfe, John St. Clair and Nick Troutman voted in opposition. Motion passed. (14-4)

OTHER BUSINESS:

Laura Edinger provided a regulatory update on two final rulemakings.

- This Board adopted two final-form rulemakings on November 19, 2019; the Federal Office of Surface Mining Reclamation and Enforcement Program Consistency rule and the Triennial Review of Water Quality Standards. Both rulemakings are scheduled for consideration by the Independent Regulatory Review Commission on January 31, 2020.

Jessica Shirley provided an update to the Cap and Trade petition.

- The Department is continuing to work with the consultant to analyze and model the impacts of the economy wide cap and trade program proposed in the petition. The first part of that analysis, currently occurring, is analyzing the Electricity Generation sector. Concurrently, the consultant is beginning to model and analyze the other sectors, including transportation, manufacturing, and energy production. As progress is made through the modeling and analysis, the Board will be updated.

Next Meeting:

The next meeting of the EQB is tentatively scheduled for Tuesday, March 17, 2020.
The February meeting is cancelled.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. James Schmid seconded the motion, which was unanimously approved by the Board. The January 21, 2020, meeting of the Board was adjourned at 10:08 a.m.