

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**April 20, 2021**

**VOTING MEMBERS AND/OR ALTERNATES PRESENT**

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection  
Katy Spehar, alternate for Meg Snead, Secretary, Governor's Office of Policy and Planning  
Michael Hanna, alternate for Russell Redding, Secretary, Department of Agriculture  
Denise Brinley, alternate for Dennis Davin, Secretary, Dept. of Community and Economic Development  
Peter Blank, alternate for Alison Beam, Acting Secretary, Department of Health  
Mohona Siddique, alternate for Jennifer Berrier, Acting Secretary, Department of Labor and Industry  
Natasha Fackler, alternate for Yassmin Gramian, Secretary, Department of Transportation  
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission  
Michael DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission  
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission  
Gladys Brown Dutrieuille, Chair, Public Utility Commission  
Nick Troutman, alternate for Senator Gene Yaw, Senate Environmental Resources & Energy Committee  
Emily Eyster, alternate for Senator Carolyn Comitta, Senate Environmental Resources & Energy Committee  
Representative Daryl Metcalfe, House Environmental Resources and Energy Committee  
*Glendon King, alternate for Representative Metcalfe, on second voting item and adjournment*  
Representative Greg Vitali, House Environmental Resources and Energy Committee  
*Sarah Iversen, alternate for Representative Vitali, on second voting item and adjournment*  
Robert Barkanic, Citizens Advisory Council  
Cynthia Carrow, Citizens Advisory Council  
John St. Clair, Citizens Advisory Council  
John Walliser, Citizens Advisory Council  
Jim Welty, Citizens Advisory Council

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Laura Griffin, Regulatory Coordinator  
Jessica Shirley, Policy Director  
Robert "Bo" Reiley, Bureau of Regulatory Counsel

**CALL TO ORDER AND APPROVAL OF MINUTES**

The virtual meeting of the Environmental Quality Board (EQB or Board) was called to order by Chairperson McDonnell at 9:09 a.m. via Webex. Representative Vitali requested the agenda items be switched so that the petition could be heard and considered first. Hearing no objections, Chairperson McDonnell indicated the Dunbar Creek proposed rulemaking would be second on the agenda. The Board considered its first item of business: approval of the March 16, 2021, EQB meeting minutes.

**Representative Vitali made a motion to adopt the March 16, 2021, EQB meeting minutes. Andrea Lowery seconded the motion, which was unanimously approved by the Board. (19-0)**

**CONSIDERATION OF NO CHANGE RECOMMENDATION FOR A PETITION FOR STREAM REDESIGNATION – UNNAMED TRIBUTARY TO WHETSTONE RUN (25 Pa. Code Chapter 93)**

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the Department's recommendation. Josh Lookenbill (Acting Director for Bureau of Clean Water) and Michelle Moses (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, John Walliser asked why a 75th percentile exceptional value stream was used when the petitioner was looking for a high-quality warm water fishes designation. Josh Lookenbill explained that the Department's regulations and antidegradation guidance for the benthic macroinvertebrate test requires the comparison of candidate streams to a reference stream in order to evaluate the biological qualifiers for exceptional value and high-quality water uses. All comparisons were made to an exceptional value stream. The 75th percentile benchmark is used to ensure the appropriate reference quality stream is used, establishes consistency, and prevents dilution of the reference condition. He went on to explain if the Department did not adhere to the 75th percentile rule, it would promote inconsistency and essentially lower the bar for subsequent evaluations.

Representative Vitali voiced his interest in this specific stream redesignation petition and mentioned his work with the petitioner on the issue. He then made a motion to table the recommendation to allow for additional technical analysis.

**Representative Vitali made a motion to table the recommendation and send it back to the Department for additional technical analysis. Emily Eyster (alternate for Senator Carolyn Comitta) seconded the motion.**

Discussion on the motion continued with Representative Vitali expressing the petitioner's concerns that the Department did not include the petitioner's macroinvertebrate data in the report and used comparison streams that are larger in size than the tributary in question. Representative Metcalfe asked if Representative Vitali had a conflict of interest due to his work with the petitioner. Bo Reiley responded that there is no prohibition on working with petitioners, Representative Vitali disclosed his interest in the petition to the Board, and there is no rule associated with this activity so there is no conflict of interest in this case.

Robert Barkanic asked if development on a property is affected by stream designations. Aneca Atkinson replied that while different permits may be applicable depending on how the stream is designated, the designation does not prevent development.

Gladys Brown Dutrieuille questioned the difference between a motion to postpone versus a motion to table. Bo Reiley stated there is no difference between the two.

**Representative Vitali's motion failed by a vote of 15-4. Andrea Lowery, Emily Eyster (alternate for Senator Carolyn Comitta), Representative Vitali and John Walliser voted in support.**

**Gladys Brown Dutrieuille then made a motion to accept the Department's recommendation. Katy Spehar seconded the motion, which was approved by a majority of the Board. The motion passed with a vote of 16-3. Emily Eyster (alternate for Senator Carolyn Comitta), Representative Vitali and John Walliser voted in opposition.**

**CONSIDERATION OF PROPOSED RULEMAKING: WATER QUALITY STANDARDS – DUNBAR CREEK ET AL. STREAM REDESIGNATIONS (25 Pa. Code Chapter 93)**

Aneca Atkinson (Deputy Secretary for Office of Water Programs) provided an overview of the proposed rulemaking. Josh Lookenbill (Acting Director for Bureau of Clean Water) and Michelle Moses (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department’s presentation, John St. Clair asked how pH plays into an exceptional value designation, referencing the Bear Run stream designation. Josh Lookenbill responded that the Department evaluates all water quality parameters that it collects, including pH. He added that it isn’t necessary for pH to fall within the standard of 6-9 to qualify for exceptional value or high-quality; the assessment of the protected use is independent of the evaluation of the correct designated use.

**Katy Spehar made a motion to adopt the proposed rulemaking.  
Andrea Lowery seconded the motion.**

Heather Smiles voiced the Fish and Boat Commission’s appreciation for the Dunbar Creek package to be moving forward and added her support of the recommended stream redesignation.

**The motion to adopt the proposed rulemaking passed with a vote of 17-2. Nick Troutman (alternate for Senator Gene Yaw) and Glendon King (alternate for Representative Daryl Metcalfe) voted in opposition.**

**OTHER BUSINESS:**

Laura Griffin provided a regulatory update.

- On November 17, 2020, the Board adopted two final rulemakings: The Water Supply Replacement for Surface Coal Mining and Water Quality Standards – Class A Stream Redesignations final rulemaking. Both were approved by the Independent Regulatory Review Commission (IRRC) at its April 15, 2021 public meeting.
- On March 16, 2021, the Board adopted the Water Quality Management and National Pollutant Discharge Elimination System Permit Application Fees and Annual Fees final rulemaking. The House and Senate Environmental Resources and Energy Committees and IRRC received the final rulemaking package on April 6, 2021. IRRC will consider this final regulation at its May 20, 2021 public meeting.

**NEXT MEETING:**

The next meeting of the EQB is scheduled for Wednesday, May 19, 2021; the date was changed due to the primary election. The change will be published in the April 24 issue of the *Pennsylvania Bulletin*.

**ADJOURN:**

With no further business before the Board, Katy Spehar moved to adjourn the meeting. Denise Brinley seconded the motion, which was unanimously approved by the Board. The April 20, 2021, meeting of the Board was adjourned at 10:08 a.m.