

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
July 13, 2021

VOTING MEMBERS AND/OR ALTERNATES PRESENT

Patrick McDonnell, Chair, Secretary, Department of Environmental Protection
Erin Wachter, alternate for Allison Jones, Secretary, Governor’s Office of Policy and Planning
Russell Redding, Secretary, Department of Agriculture
Dennis Davin, Secretary, Department of Community and Economic Development
Alison Beam, Acting Secretary, Department of Health
Jennifer Berrier, Secretary, Department of Labor and Industry
Yassmin Gramian, Secretary, Department of Transportation
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Jeff Painter, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Gladys Dutrieuille, Chairman, Public Utility Commission
Senator Gene Yaw, Senate Environmental Resources & Energy Committee
Senator Carolyn Comitta, Senate Environmental Resources & Energy Committee
Representative Daryl Metcalfe, House Environmental Resources & Energy Committee
Representative Greg Vitali, House Environmental Resources and Energy Committee
Robert Barkanic, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
John St. Clair, Citizens Advisory Council
Jim Welty, Citizens Advisory Council
John Walliser, 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

The meeting of the Environmental Quality Board (EQB or Board) was called to order at 9:00 a.m. by Chairperson McDonnell.

After Chairperson McDonnell stated the rules for the hybrid meeting, Representative Metcalfe asked if the recording of today’s live-streamed EQB meeting would be available for the public to view online. Chairperson McDonnell answered that the video would be made available and posted on the PACast website.

Representative Metcalfe went on to voice his opinion regarding the Sunshine Act (Act). He thought that proceeding with the meeting while being closed to the public would be violating the Act, as well as its spirit which seeks to promote transparency in government.

Representative Metcalfe made a motion to table the regulation and postpone the meeting until the Rachel Carson State Office Building can be open to the public, which he opined is required by the Sunshine Act. Senator Yaw seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in support.

APPROVAL OF MINUTES

The Board went on to consider its first agenda item: approval of the June 15, 2021, EQB meeting minutes.

Erin Wachter made a motion to adopt the June 15, 2021, EQB meeting minutes. Jim Welty seconded the motion, which was unanimously approved by the Board. (19-0)

CONSIDERATION OF FINAL RULEMAKING: CO₂ BUDGET TRADING PROGRAM (25 Pa. Code Chapter 145)

Hayley Book (Senior Advisor for Energy and Climate) provided an overview of the final rulemaking. Allen Landis (Executive Director for Pennsylvania Energy Development Authority), Krishnan Ramamurthy (Deputy Secretary for Waste, Air, Radiation and Remediation), and Jennie Demjanick (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation Jim Welty questioned if there was anything in the rulemaking that would legally preclude the General Assembly from transferring money out of the Clean Air Fund as had been done in previous budgets. Assistant Counsel Jennie Demjanick replied that while there is nothing specific in the regulation itself, it falls under the existing authority of the Air Pollution Control Act, so all money would go toward eliminating air pollution within the Clean Air Fund.

Jim Welty asked if there was anything in the regulation that precludes third parties from purchasing allowances and retiring them prematurely, thereby manipulating the market. Senior Advisor Hayley Book responded that there is an independent market monitor, like what is used for the PJM market. Third parties may purchase allowances, which helps develop the robust and active secondary market for the sale of allowances and allows people to purchase allowances outside of those quarterly auctions. However, limits are placed on the amount of allowances that can be purchased by a single entity or related entities and it is closely monitored to prevent any sort of market manipulation or collusion. She added that in the ten plus years that the auctions have been held, there have been no signs of improprieties in terms of market manipulation. However, if it were to occur in the future, there are mechanisms in place to step in and address it. Jim Welty expressed concern about announcements that several entities are being created specifically to purchase allowances to retire them and questioned if RGGI, Inc. would be responsible for ensuring that wouldn't happen. Hayley Book responded that the market monitor is Market Analytics, not RGGI, Inc., who has been the monitor since the origination of the RGGI program. They monitor market movement and analyze for any sort of collusion prior to the auction and RGGI, Inc. announcing the results of the auction and the clearing price, not after the fact.

Jim Welty indicated that the Regulatory Analysis Form (RAF) did not appear to be updated to reflect the new modeling. Hayley Book responded that the RAF in fact includes all modeling and where the regulatory analysis relies on 2020 modeling, it's used as the basis for the health benefits assessment and the economic analysis. The 2020 modeling is only mentioned as it relates to other outcomes, but the RAF and the Preamble were updated to reflect the most recent modeling that was completed.

Jim Welty asked if the calculations were based off the old modeling for the RAF, why wouldn't the calculations be updated to the new modeling. Hayley Book stated the RAF is not based on old modeling, it pulls from all modeling as a basis for the regulation and the updated modeling highlights the need for the regulation and its benefits. All modeling is included and all documentation on modeling is posted online. Jim Welty argued that the health and economic calculations are based on the new modeling. He went on to suggest that those calculations be updated to reflect the new modeling if the RAF is going to reflect the new rulemaking.

Jim Welty then asked what specifically the EQB would be voting on today. Assistant Counsel Jennie Demjanick answered that the EQB is only voting on the regulatory annex. Jim Welty stated the Regulatory Review Act requires EQB to submit the rulemaking package to the Independent Regulatory Review Commission (IRRC). Jennie Demjanick agreed that the rulemaking package does go to IRRC, but the EQB is specifically voting on the regulatory annex only. She explained that the Annex is the actual regulation and the RAF and Preamble are additional, supplemental documents. The Regulatory Analysis Form is submitted to IRRC to answer IRRC's specific questions and the Preamble is an explanation of what is contained in the Annex. She concluded that while the other documents are important parts of the rulemaking package, the key document that the EQB votes on is the Annex.

Jim Welty argued that the Regulatory Review Act requires the EQB to submit the full package to IRRC, not the Department, which would require the EQB to vote on all the documents in the rulemaking package, not just the Annex. Bo Reiley responded that the EQB only votes on the Annex. The Administrative Code only gives the Board the authority to promulgate regulations. The Department submits any additional documents on behalf of the EQB, but the EQB itself does not vote on the Regulatory Analysis Form.

Jim Welty expressed concerns about a lack of engagement with elected officials and building trade associations, specifically with those elected officials who have districts that would be adversely impacted by this rulemaking, and asked if the Department has been responsive to all inquiries that have come as a part of this rulemaking from those specific stakeholders. Chairperson McDonnell said he was unaware of any communication received that has not been responded to. Erin Wachter agreed.

Senator Yaw opened by stating that climate change is here. He noted that 11,000 years ago the Finger Lakes of New York were ice, but something happened and it's called climate change. He said he was unsure of what caused climate change, but unless the Native Americans and their campfires were responsible for global warming, there's something that's bigger than what we can do individually. He opined that RGGI is a superficial attempt to address climate change because it only targets a very small part of energy production from fossil fuels. He added the need for a diverse energy portfolio and commented that there can be no clean or green energy projects without fossil fuels and mining. Senator Yaw further discussed the drawbacks of using non-fossil fuel energy production sources, such as wind, solar, geothermal, and nuclear. He noted that there are emissions from manufacturing and constructing non-fossil fuel energy projects, electricity storage limitations, and recycling and disposal considerations.

He went on to state that Pennsylvania has lowered its emissions on its own and to a greater extent than the other states that participate in RGGI, noting his concern that Pennsylvania would be participating in RGGI without explicit legislative direction to do so. Senator Yaw questioned what happens if powerplants close in Pennsylvania and asserted that energy from powerplants in West Virginia and Ohio would replace the supply from powerplants that close in Pennsylvania. He expressed concern for loss of jobs and local economic impact to the communities where those powerplants are located. He commented that the concept of leakage had not been discussed, noting that because winds blow west to east, Pennsylvania will still get pollution from powerplants west of the state. Senator Yaw questioned whether the actual CO₂ emissions reductions would be worthwhile compared to the economic impacts to businesses, loss of energy production jobs, and increased electricity rates. He concluded his comments by contending that coal plants should stay open in Pennsylvania instead of driving energy production from coal to other parts of the world, like Africa, India and China, or to other states.

Representative Metcalfe expressed his opinion that the Department did not engage in robust outreach with communities that would be impacted by the rulemaking and that holding public hearings virtually did not satisfy the Air Pollution Control Act requirements.

Representative Metcalfe made a motion to table the regulation until the Department can hold in-person meetings in impacted communities, which he opined is required by the Air Pollution Control Act. John St. Clair seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in support.

Representative Metcalfe voiced his concerns about how few changes were being made to such an extensive regulation from the proposed stage to final. He added that IRRC's comments, an entity created to engage with the agency and the public during the regulatory process, were not sufficiently considered and the Department should take more time to fully consider the other issues raised by commentators and discussed by IRRC.

Representative Metcalfe made a motion to table the regulation for a period of one year. Jim Welty seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in support.

Representative Metcalfe expressed his concern about the timing of the regulation and the fact that the General Assembly just concluded the budget process and would not be back in session until September. He went on to state that the General Assembly has a key role to play if the regulation is approved and should be in session to fully engage with the regulatory process.

Representative Metcalfe made a motion to table the regulation until the EQB's September meeting. Senator Yaw seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (14-5). Senator Gene Yaw, Representative Daryl Metcalfe, Gladys Dutrieuille, and CAC members John St. Clair and Jim Welty voted in support.

Representative Metcalfe went on to state the revenue generated through the auction mechanism in RGGI is a tax and the EQB should not be taking any action that violates the law and Pennsylvania's constitution.

Representative Metcalfe made a motion to table the regulation until the Department can provide the Board with legal justification of why this is a fee and not a tax. John St. Clair seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe, and CAC members John St. Clair and Jim Welty voted in support.

Representative Metcalfe reiterated that he felt the EQB meeting was being held in violation of the Sunshine Act.

Representative Metcalfe made a motion to table the regulation until it can be considered at a meeting that is open to the public, which he opined is required by the Sunshine Act. Senator Yaw seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in support.

Representative Metcalfe voiced his opinion on DEP's lack of transparency throughout the regulatory process. He said it could be argued that the Sunshine Act was temporarily satisfied by streaming meetings on the internet during the COVID disaster declaration, but he felt the practice was no longer acceptable once the declaration was terminated. He added that having the meeting while the building was not open to the public violated the law and the meeting should be postponed until at least September and reiterated that the Department was required to have in-person meetings in impacted communities. Representative Metcalfe repeated his concerns about ICF, the company contracted to perform modeling on the regulation's economic and environmental impacts, not remaining neutral by signing letters commenting on legislation related to RGGI and sharing their perspective about how the funds should be allocated. He also stated that it was unfair to ask the Board to vote today since a change to the draft final regulation was made the morning before the meeting. Representative Metcalfe said that the Air Pollution Control Act and the Uniform Interstate Air Pollution Agreements Act do not give the EQB and the Department the statutory authority to implement the regulation as requiring participation in the RGGI auction would represent a tax on powerplants. He further commented RGGI is operating as an interstate compact that requires the approval of U.S. Congress. Representative Metcalfe echoed Senator Yaw's concerns about the impact to the communities where powerplants are located, as well as the economic impacts to businesses, loss of energy production jobs, and increased electricity rates throughout the Commonwealth. He ended his comments by stating the General Assembly will continue to pursue legislation and urged a no vote.

Representative Vitali thanked the Department staff for their persistence in moving forward with the regulation. He commented that climate change is the most serious long-term threat to the planet, citing recent record-breaking temperatures as evidence of a slow-motion catastrophe that needs to be addressed. He acknowledged that Pennsylvania is an enormous greenhouse gas producer and said we must do something to address climate change, emphasizing that the General Assembly has failed to act in the 20 years since he introduced greenhouse gas legislation. Representative Vitali noted that critics of any measures taken to address climate change never acknowledge the seriousness of the problem and never

propose any solutions of their own. He countered that the auction proceeds will create local jobs for solar and wind generation and energy conservation, pointing out that the announcement that Pennsylvania was proposing to participate in RGGI saved one thousand jobs at the Energy Harbor nuclear powerplant. He disputed the assertion that public input was somehow lacking, as the rulemaking received over 14,000 comments and ten public hearings were held. He stated the rulemaking is a small, but good first step towards addressing climate change and urged a yes vote.

John St. Clair expressed his concerns about the powerplants closing saying it is detrimental for the energy community in Indiana County where he lives. He added that the promised jobs that would be created, such as a solar technician, do not pay on the same scale as some of the existing energy sector jobs, like an underground coal miner. He asked why Pennsylvania was choosing to address the second largest source of CO₂ emissions first, instead of the largest source, and indicated the Department hasn't explained any direct or indirect environmental benefit to the Pennsylvania climate by enacting this CO₂ budget trading program. He then asked if there was a projected amount of annual revenue that would be obtained from the fee that would be placed on carbon. Senior Advisor Hayley Book responded that the auction proceeds coming into the Commonwealth depends on two factors – amount of allowances that are sold at auction and the price of the allowances. She indicated estimates are between \$131 and \$187 million annually, but as the annual allowance budget decreases the number of allowances sold would decrease also. John St. Clair thanked Hayley and went on to make his motion.

John St. Clair made a motion to table the regulation until the investment plan and expenditures can be reviewed by the public and the EQB. Representative Metcalfe seconded the motion. There was no discussion on the motion. The motion failed by a majority vote of the Board (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in support.

Jim Welty stated between 2008 and 2018, Pennsylvania saw a 256 million short ton reduction in CO₂ in the power generation sector primarily because of the transition from coal to gas, which was accomplished under free market principles and is a larger net impact than RGGI is projected to have. He noted that from 2005 to 2018, NO_x, SO_x, and VOCs decreased as a result, which translates into historic gains in public health benefits already because of the free market. He added that the revised modeling touts 97 million short ton cumulative benefit to Pennsylvania, yet 80% of those benefits are transferred elsewhere, leaving the net benefits for Pennsylvania to 19 million short tons. He noted that in the cases cited in the rulemaking's supporting documentation pertaining to a fee versus a tax, courts were ruling on the actions of legislative bodies and those situations are different from RGGI. He stressed that such action as the rulemaking would take should be authorized by the General Assembly to ensure it is legally valid. He strongly encouraged IRRC to look at the process, consider the shortcomings of the rulemaking, the documentation, and the rulemaking package as a whole.

Senator Comitta expressed her support for Pennsylvania to participate in RGGI and encouraged the Board to approve the final rulemaking, emphasizing that Pennsylvania has a responsibility to reduce its carbon emissions for the benefit of all. She discussed the advantages from RGGI participation in improving public health, protecting the environment, strengthening Pennsylvania's economy, supporting environmental justice communities, and helping impacted workers' and communities' transition to the clean energy economy. She noted that reducing emissions and air pollution can help prevent hundreds of premature deaths and hospital visits for those suffering from asthma and respiratory illnesses, and highlighted that RGGI is projected to bring tens of thousands of new family-sustaining jobs and add \$1.9

billion to the gross state product in Pennsylvania by 2030. Senator Comitta pointed out that environmental justice communities have shouldered a disproportionate share of the pollution burden for too long and RGGI could pave the way for investment in those communities. She noted that coal-fired powerplant owners are already shuttering their facilities, largely due to market forces, and the trend will continue with or without RGGI, but RGGI participation would allow Pennsylvania to invest in workers and communities impacted by the transition to clean energy. Senator Comitta concluded by stating that climate change is here and we cannot afford to wait, so we should move forward and prepare for tomorrow wisely, fairly, and equitably.

Representative Metcalfe commented that India, Turkey, China and Vietnam are all eager to build coal-fired powerplants and what is proposed in the rulemaking is going to hurt Pennsylvanians. He questioned whether the law had been followed and the speed with which the rulemaking progressed through the process and stressed that the Board members have a responsibility to the public.

Chairperson McDonnell asked if there was a motion to adopt the final rulemaking.

Representative Vitali made a motion to adopt the final rulemaking. Senator Comitta seconded the motion. There was no discussion on the motion. The motion was approved by a majority of the Board members (15-4). Senator Gene Yaw, Representative Daryl Metcalfe and CAC members John St. Clair and Jim Welty voted in opposition.

Chairperson McDonnell stated the final rulemaking was adopted and will be presented to the Independent Regulatory Review Commission. Before moving on to other business, he thanked everyone for their participation and discussion.

OTHER BUSINESS:

Laura Griffin provided a regulatory update.

- On April 20, 2021, the Board adopted the Water Quality Standards – Dunbar Creek et al. Stream Redesignations proposed rulemaking. This rulemaking was delivered to IRRC and legislative committees on June 24, 2021 and will be published in the *Pennsylvania Bulletin* on July 31, 2021.
- On May 19, 2021, the Board adopted the Additional RACT Requirements for Major Sources of NOx and VOCs for the 2015 Ozone NAAQS proposed rulemaking. This rulemaking is scheduled for delivery to the Independent Regulatory Review Commission (IRRC) and legislative committees on July 14, 2021 and scheduled to be published in the *Pennsylvania Bulletin* on August 7, 2021.
- On May 19, 2021, the Board adopted the Radiation Safety Requirements for Non-Healing Arts Radiation Generating Devices proposed rulemaking. This rulemaking is scheduled for delivery to IRRC and legislative committees on July 14, 2021 and scheduled to be published in the *Pennsylvania Bulletin* on August 14, 2021.
- On June 15, 2021, the Board adopted the Administration of the Land Recycling Program final rulemaking. This rulemaking is scheduled for delivery to IRRC and legislative committees on July 14, 2021 and anticipated to be considered at IRRC's September 1, 2021 public meeting.

Krishnan Ramamurthy provided an update on the VOC emissions rulemaking for the control of oil and natural gas sources, indicating that some staff who had been assisting with the CO₂ budget trading

program rulemaking are now focusing on the rulemaking and based on comments, had to reevaluate some control options and emissions. He added that staff are cognizant of statutory obligations, close to finalizing the package and progressing to move it to EQB.

Representative Vitali asked to hear about the status of regulations relating to methane emissions from existing oil and gas wells. Chairperson McDonnell replied the VOC rulemaking being referenced is also the one that addresses methane as a co-benefit. He indicated staff is focused on that and aiming for a fall meeting of the Environmental Quality Board. While he hesitated to put a specific date to it, he announced it was imminent.

NEXT MEETING:

The next meeting of the EQB is tentatively scheduled for Tuesday, August 17, 2021.

ADJOURN:

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Robert Barkanic seconded the motion, which was unanimously approved by the Board. The July 13, 2021, meeting of the Board was adjourned at 11:21 a.m.