

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
May 18, 2022

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
Greg Hostetter, alternate for Russell Redding, Secretary, Department of Agriculture
Adam Walters, alternate for Neil Weaver, Acting Secretary, Dept. of Community & Economic Development
Peter Blank, alternate for Dr. Denise Johnson, Acting Secretary, Department of Health
Patrick McKenna, alternate for Jennifer Berrier, 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
Donald Wandling, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Andrea Lowery, Executive Director, Pennsylvania Historical and Museum Commission
Regi Sam, alternate for Gladys 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
Glendon King, alternate for Rep. Daryl Metcalfe, House Environmental Resources & Energy Committee
Representative Greg Vitali, House Environmental Resources and Energy Committee
Cynthia Carrow, Citizens Advisory Council
Trisha Salvia, Citizens Advisory Council
James Schmid, Citizens Advisory Council
John St. Clair, Citizens Advisory Council
Jim Welty, Citizens Advisory Council

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Griffin, Regulatory Coordinator
Brian Chalfant, Acting Policy Director
Robert “Bo” Reiley, Bureau of Regulatory Counsel

CALL TO ORDER AND APPROVAL OF MINUTES

The hybrid meeting of the Environmental Quality Board (EQB or Board) was called to order by Chairperson McDonnell at 9:02 a.m. The Board considered its first item of business: approval of the March 15, 2022, EQB meeting minutes.

Representative Vitali made a motion to adopt the March 15, 2022, EQB meeting minutes. Patrick McKenna seconded the motion, which was unanimously approved by the Board. (19-0)

CONSIDERATION OF PROPOSED RULEMAKING: ADMINISTRATION OF THE LAND RECYCLING PROGRAM – VANADIUM MSC RULE (25 Pa. Code Chapter 250)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the proposed rulemaking. Troy Conrad (Director for Bureau of Environmental Cleanup and Brownfields), Mike Maddigan (Bureau of Environmental Cleanup and Brownfields) and Nikolina Smith (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department’s presentation, Glendon King thanked the Department for moving expeditiously on the rulemaking.

Glendon King made a motion to adopt the proposed rulemaking. Jim Welty seconded the motion, which was unanimously approved by the Board. (19-0)

CONSIDERATION OF FINAL RULEMAKING: COAL REFUSE DISPOSAL REVISIONS (25 Pa. Code Chapters 88 and 90)

John Stefanko (Deputy Secretary for Office of Active and Abandoned Mining Operations) provided an overview of the final rulemaking. Nate Houtz (Director for Bureau of Mining Programs), Greg Greenfield (Environmental Group Manager for Bureau of Mining Programs) and Susan Despot (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department’s presentation.

Nick Troutman made a motion to adopt the final rulemaking. Representative Vitali seconded the motion, which was approved by a majority of the Board members. John St. Clair abstained from the vote. (18-0-1)

OTHER BUSINESS:

Laura Griffin provided the following regulatory updates.

- The CO₂ Budget Trading Program final rulemaking was published in the *Pennsylvania Bulletin* on April 23, 2022 and is effective upon publication.
- The VOC RACT Requirements for Shipbuilding and Ship Repair Surface Coating Operations, SOCFI Processes, and Large Petroleum Dry Cleaners for the 2015 Ozone NAAQS proposed rulemaking public comment period closed on April 4, 2022. One public comment was submitted on the rulemaking, and Independent Regulatory Review Commission (IRRC) provided comments on May 4, 2022.
- The Safe Drinking Water PFAS MCL proposed rulemaking public comment period closed on April 27, 2022. The EQB received 3,550 public comments on the rulemaking, and 29 people provided testimony at the public hearings. IRRC’s comments are due May 27, 2022.
- The Control of Emissions from Oil and Natural Gas Sources final rulemaking was adopted by the Board on March 15, 2022 and was scheduled for consideration at IRRC’s May 19, 2022 public meeting. The rulemaking was withdrawn from IRRC consideration on May 4, 2022.

Representative Vitali asked what it meant since RGGI was listed as effective upon publication on April 23, 2022 and the status of the litigation. Chairperson McDonnell explained that the regulations to implement RGGI are effective, which means the first compliance period would start in July of this year. There are two lawsuits: one related to the Legislative Reference Bureau publishing the final rulemaking in the *Pennsylvania Bulletin*, which has been combined with the other lawsuit seeking a preliminary injunction and challenging the rulemaking now that it has been published. The hearing on the preliminary injunction was held in Commonwealth Court during the week of May 9th. McDonnell concluded that the Department cannot comment on the litigation itself. Bo Reiley added that the transcripts would be available the week of May 23rd and then both sides have ten days to submit a post hearing brief. Ten days after those briefs are due, the Department will submit a response brief. Then the Court will issue a decision on the preliminary injunction.

Jim Welty and Glendon King asked several questions on the Control of Emissions from Oil and Natural Gas Sources final rulemaking, including why the rulemaking was withdrawn from IRRC consideration, if the rulemaking would need to go back through the regulatory process (including public comment) if changes were made and how the Department would finish that process before EPA's deadline, if the Department plans bring the VOC regulation back to the EQB in June 2022, and the scope of the Department's authority to unilaterally withdraw a rulemaking without consideration by the Board.

Acting Policy Director Brian Chalfant replied that if there was a disapproval resolution initiated under the Regulatory Review Act, the delay from that process could cause a late submission to EPA and the Department is reevaluating to avoid the sanctions that would result. Chalfant explained that possible changes are all within the scope of what was proposed and put out for public comment previously. Chairperson McDonnell replied that yes, that the Department intends to bring the regulation back in June 2022.

Jim Welty and Glendon King asked for clarification on what the EQB's role is when voting on a final or proposed regulation and if it's within the Department's discretion to withdraw or not submit a rulemaking even after the Board has voted to approve a regulation. Jim Welty also asked for an example so Board members could better understand what role the EQB plays and what role the Department plays with the EQB. Bo Reiley explained that the Department can withdraw a rulemaking from IRRC and does not require an action from EQB. After the EQB votes to adopt a final regulation, the Department presents it to IRRC and guides it through the rest of the rulemaking process. Secretary McDonnell added, as an example, that when a final regulation is presented to IRRC for approval, the Department's program attorney presents the regulation to IRRC, not the Secretary.

Reiley was not aware of an instance when the Board approved a regulation but then the Department declined to act on it; however, there may have been a case where the Board approved a regulation and then something happened before the IRRC meeting which required the Department to withdraw. Reiley noted the Department withdrew a mining regulation because there was a concern it would not be approved by IRRC. The Department withdrew the regulation, made revisions to address IRRC's concerns, and then it was re-submitted to the Board for adoption. Laura Griffin confirmed that the noncoal mining program fees rulemaking, Regulation #7-523 or IRRC #3190, was the regulation Bo Reiley referenced.

Jim Welty then asked for a status on petitions, in particular the greenhouse gas petition. Brian Chalfant replied it is currently under review.

Secretary McDonnell explained that Brian Chalfant, Deputy Policy Director, was filling in as Acting Policy Director at today's meeting while the current Policy Director, Kate Cole, is out on maternity leave. Jessica Shirley, former Policy Director, has a new role coordinating implementation of the federal infrastructure funding law grants and programs for the Department.

Laura Griffin added that the bonding petition reports are in development and then went on to explain the updates made to the EQB meeting schedule.

- EQB meetings for June through October 2022 have been tentatively rescheduled to the second week of the month to better align with IRRC's public meeting schedule. The full, updated meeting schedule is posted on the EQB's webpage under the "2022 Meetings" tab.

NEXT MEETING:

The next meeting of the EQB is scheduled for Tuesday, June 14, 2022.

ADJOURN:

With no further business before the Board, Jim Welty moved to adjourn the meeting. Emily Eyster seconded the motion, which was unanimously approved by the Board. The May 18, 2022, meeting of the Board was adjourned at 9:52 a.m.