

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
October 12, 2022

VOTING MEMBERS AND/OR ALTERNATES PRESENT

Joseph Adams, Acting Chair, Acting Secretary, Department of Environmental Protection
Aimee Wechsler, alternate for Allison Jones, Secretary, Governor's Office of Policy and Planning
Greg Hostetter, alternate for Russell Redding, Secretary, Department of Agriculture
Paul Opiyo, alternate for Neil Weaver, Acting Secretary, Dept. of Community & Economic Development
(Adam Walters, alternate for Neil Weaver, Acting Secretary, Dept. of Community & Economic Development)
Kristen Rodack, alternate for Dr. Denise Johnson, Acting Secretary, Department of Health
Kristen Gardner, alternate for Jennifer Berrier, Secretary, Department of Labor and Industry
Nathan Walker, alternate for Yassmin Gramian, Secretary, Department of Transportation
Heather Smiles, alternate for Tim Schaeffer, Executive Director, Pennsylvania Fish and Boat Commission
Mike DiMatteo, alternate for Bryan Burhans, Executive Director, Pennsylvania Game Commission
Andrea Lowery, Executive Director, Pennsylvania Historical & Museum Commission
Gladys Dutrieuille, Chair, Public Utility Commission
Nick Troutman, alternate for Senator Gene Yaw, Senate Environmental Resources & Energy Committee
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
Robert Barkanic, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
Trisha Salvia, Citizens Advisory Council
John St. Clair, alternate, 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 Adams at 9:03 a.m. The Board considered its first item of business: approval of the August 9, 2022, EQB meeting minutes.

**Representative Vitali made a motion to adopt the August 9, 2022, EQB meeting minutes.
Gladys Dutrieuille seconded the motion, which was approved by the Board by a vote of 17-0-1.
Kristen Gardner abstained from the vote.**

(Adam Walters was not present for voting on the approval of minutes.)

Final Rulemaking: VOC RACT Requirements for Shipbuilding and Ship Repair Surface Coatings, Large Petroleum Dry Cleaning Facilities and Synthetic Organic Chemical Manufacturing Industry Processes for the 2015 Ozone NAAQS (25 Pa. Code Chapters 121 and 129)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the final rulemaking. Viren Trivedi (Division Chief of Permits for Bureau of Air Quality), Jessie Walker (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

There was no discussion following the Department's presentation.

Representative Vitali made a motion to adopt the final rulemaking. Andrea Lowery seconded the motion, which was unanimously approved by the Board (18-0).

(Paul Opiyo voted on behalf of the Department of Community and Economic Development.)

Final Rulemaking: Safe Drinking Water PFAS MCL Rule (25 Pa. Code Chapter 109)

Lisa Daniels (Acting Deputy Secretary for Water Programs) provided an overview of the final rulemaking. David Mittner (Acting Director, Bureau of Safe Drinking Water), Dawn Hissner (Division Chief, Bureau of Safe Drinking Water) and Leda Lacomba (Assistant Counsel, Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Glendon King asked if there is any indication when the U.S. Environmental Protection Agency's (EPA) PFAS MCL proposed regulation might be out and what would happen if the EPA sets an MCL for PFOA or PFOS that is lower than the Commonwealth's MCL. Lisa Daniels responded that the EPA initially planned for the proposed rule to be out this Fall, but recently updated the estimate to December 2022 now that it has been submitted to the Office of Management and Budget, which is the final step before the rule is published for public comment. Daniels explained that when the EPA comes out with a new regulation, the Department thoroughly reviews it to see where DEP's regulations might be less stringent. If the EPA finalizes its MCL rule at the end of 2023, the Department would then have three years to perform its comparison and, if the EPA rule is more stringent, move forward with a proposed rulemaking to implement the more stringent requirements and get the final rulemaking into place by the end of 2026.

Glendon King asked about the significance of the updated health advisory levels (HAL) that EPA released on June 15, 2022, for several PFAS, including PFOA and PFOS. Lisa Daniels responded that came out with what they are calling "interim" HALs for PFOA and PFOS. Daniels explained that "interim HAL" is not a term EPA has used before, as HALs are usually proposed and then finalized and the Department's legal authority allows it to implement a final HAL. Daniels said the EPA's interim HALs are 0.004 parts per trillion (ppt) for PFOA and 0.02 ppt for PFOS, which are very low numbers compared to the Department's MCLs of 14 and 18 ppt and most other states MCLs in the range of 8 to 20. Daniels explained that the interim HALs are based on draft risk assessments, but the Science Advisory Board has not provided their final recommendations to the EPA. Until the risk assessments and the HALs are finalized, Pennsylvania cannot use them. Daniels also explained that the interim HALs are well below any known reporting limit, so these technical limitations make it not feasible to use limits that are below the level of detection.

King then asked if the Department had any indication from the EPA as to what the proposed federal MCLs might be and if the EPA intends to set MCLs for other PFAS. Daniels responded that the EPA has

asked states that developed their own PFAS MCLs about their MCL development process, the EPA did not provide any insight on what their proposed MCLs might be. Daniels noted that the EPA must consider the same factors that the Department did to develop MCLs, including technical limitations, feasibility and cost and benefits, so any MCL that the EPA proposes must be higher than the HALs because the MCLs must be technically achievable and above the detection limit. Daniels added that on June 15 the EPA also announced two final HALs of 10 ppt for GenX, which is a replacement chemical for PFAS and PFOS a shorter chain, and 2,000 ppt for PFBS, but the EPA appears to be limiting the proposed MCL rule to just PFOA and PFOS.

Glendon King concluded by asking how much money the Department spent to develop the rulemaking, including the contract with Drexel, the costs for the sampling plan, and an estimate of staff time or resources. Lisa Daniels provided an estimated total of \$1.95 million for the Department to complete all the necessary work to set a drinking water MCL, noting that this is the first time the Department has set an MCL so staff did not have a full understanding initially of what that would entail. Daniels stated that the total included the following: the toxicology contract with Drexel University, sampling plan lab costs, sampling plan travel costs for Department staff, and Department personnel costs for work on the sampling plan, the PFAS MCL work group, and implementation and guidance for the MCLs.

Representative Vitali asked why the MCLs are different than the maximum contaminant level goals (MCLGs) and why New York set its MCLs for PFOS and PFOA lower than Pennsylvania. Lisa Daniels explained that an MCLG is a goal that is calculated by looking solely at health effects, which Drexel calculated for the Department by reviewing the studies, science and reviewed work done by the EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), and by other states that have already set MCLs. Daniels added that an MCLG is defined in federal regulations and is not enforceable because it is strictly based on health effects, but the MCLG is the starting point to develop an MCL by taking other factors into consideration, such as technical limitations, detection limits and reporting limits, and available treatment technologies to remove the contaminant, plus a cost benefit analysis. Daniels then referred to the table in the Department's presentation (slide 12 in the [PowerPoint presentation](#)) that showed the Safe Drinking Water program's assessment of the costs and benefits for a range of possible MCL values that lead to the selection of 14 ppt and 18 ppt MCLs for PFOA and PFOS, because those levels provided public health protection of at least 90% at a more reasonable cost. Daniels then explained that Pennsylvania's MCLs differ from the other states because every state followed different processes to develop their MCLs. Daniels pointed out that some states did not have to follow the same criteria that Pennsylvania did and were given specific MCLs by their legislature, which there for did not require much justification. Daniels concluded by stating that New York's cost information was not as robust, noting that the cost estimates were much lower and as a result New York could justify MCLs of 10 ppt.

Representative Vitali then asked if the Department had sufficient staff to monitor for PFAS, noting that the agency's personnel has been cut by almost 30% since the early 2000s and the most recent budget did not allocate funding for additional staff. Lisa Daniels responded that in 2018, the Bureau of Safe Drinking Water finalized a rulemaking to set a drinking water annual fee, which allowed the Bureau to add 33 new staff and return the program's staffing level to what is needed based on the current workload. Daniels noted that the monitoring program under the Safe Drinking Water Act is a self-monitoring program, so the public water suppliers are responsible for collecting the samples and sending them to an accredited laboratory and the Department's inspection staff only collects a certain percentage of samples for quality assurance and quality control purposes. Daniels concluded by confirming that the Department has sufficient staff to ensure compliance with the PFAS MCLs.

Senator Comitta provided expressed strong support for the rulemaking, reading excerpts from Senator Maria Collett's [comments](#) on the proposed rulemaking. Senator Comitta explained that Senator Collett's comments underscore the personal and the community importance of regulating PFAS in drinking water, as she represents the parts of Montgomery and Bucks Counties that are the epicenter of Pennsylvania's PFAS water contamination crisis. Senator Comitta highlighted that the rulemaking "is a necessary and crucial first step toward holding polluters accountable" and that "setting maximum contaminant levels for these toxic chemicals is long overdue," concluding that the setting MCLs is a "necessary step in protecting our health, our environment, and our future."

Kristen Rodack commented that the Department of Health strongly supports moving forward with the rulemaking as a way to protect the public from adverse health effects from exposure to PFAS, noting the Department of Health's continued participation in the PFAS action team.

Glendon King commented that setting MCLs for PFAS should be handled primarily at the federal level because the EPA has the experience and the resources to do so. King added that having one set of limits at the federal level provides certainty to the regulated community water systems and would prevent having to comply with a state standard first and then potentially have to comply with a lower federal standard, noting the substantial expense for water systems to achieve compliance. King concluded that he would be opposing the regulation for those reasons.

Lisa Daniels responded that the treatment technologies that are used to remove PFAS, specifically granular activated carbon (GAC) and ion exchange, will be the same even if the EPA comes out with MCLs that are lower than Pennsylvania's. Daniels explained that water systems are going to design their treatment based on the concentrations of PFOA and PFOS in their water and those treatment technologies are very effective at getting down to non-detectable levels. Daniels continued that whatever treatment that a water supplier puts in place to comply with Pennsylvania's MCLs will still to be able to remove PFAS to achieve those lower MCLs, but it may require slightly longer run times for the treatment technology. Daniels concluded that the Department does not anticipate increased costs for systems if they would need to comply with lower federal MCLs.

Nick Troutman noted that the legislature is currently considering legislation restricting PFAS in firefighting foam and Senator Yaw has introduced a bill to eliminate PFAS in food packaging as well. Troutman also noted the cost to communities and treatment facilities will be significant, which is primarily why he will be opposing the regulation as well.

Representative Vitali made a motion to adopt the final rulemaking. Senator Comitta seconded the motion, which was approved by the Board (15-3). Nick Troutman (alternate for Senator Gene Yaw), Glendon King (alternate for Representative Daryl Metcalfe) and John St. Clair voted in opposition.

(Adam Walters voted on behalf of the Department of Community and Economic Development.)

Final-Omitted Rulemaking: Control of VOC Emissions from Conventional Oil and Natural Gas Sources (25 Pa. Code Chapter 129)

Krishnan Ramamurthy (Deputy Secretary for Office of Waste, Air, Radiation, and Remediation) provided an overview of the final-omitted rulemaking. Viren Trivedi (Division Chief of Permits for Bureau of Air Quality) and Jennie Demjanick (Assistant Counsel for Bureau of Regulatory Counsel) assisted with the presentation.

Following the Department's presentation, Glendon King questioned why the Board was notified that the regulation would be added to the agenda on Friday, October 7, when the Board normally receives at least two weeks' notice for EQB agenda items to ensure sufficient time for review and asked if there was any way that the Board members could have been given notice sooner, even if the Department did not have all the documents prepared yet. Acting Chairperson Joseph Adams responded that the rulemaking was added late Friday because that was when the rulemaking documents were complete and approved, after very careful review to ensure that the rulemaking met all procedural and regulatory requirements. Adams explained the need to avoid the potential loss of \$450 million or more in federal highway funding meant the rulemaking needed to be on the agenda for this meeting.

Krishnan Ramamurthy added that the federal Control Techniques Guidelines for the Oil and Natural Gas Industry (CTG) does not distinguish between the conventional and unconventional industries, so the earlier rulemaking applied to both conventional and unconventional sources. Ramamurthy explained the Department needed to be careful in preparing the regulation and all the supporting documents to tailor the rulemaking specifically to conventional sources, noting it was a laborious process to ensure the Department did not miss any detail. Ramamurthy noted that aside from adding a couple of definitions to identify conventional and unconventional sources, the substance of the regulatory requirements are identical to the previous final rulemaking that covered both conventional and unconventional sources so the Board was not reviewing any new requirements with this final-omitted rulemaking.

Glendon King asked why the Department took four years to develop the proposed regulation, from 2016 when the federal CTG was published until the end of 2019 when the proposed rulemaking was presented to the Board, when Pennsylvania was required to have the regulation completed within two years of the CTG's publication, which would have avoided the current situation.

Krishnan Ramamurthy responded that the program staff needed to gather a significant amount of data to develop the proposed rulemaking because the Department did not have air emissions data for some of the oil and natural gas sources covered by the CTG. Ramamurthy explained that some sources do not have air permits and are completely exempted from the requirement to submit air emissions data to the Department's air emission inventory. It was a massive effort for staff to gather sufficient information to fill in large data gaps from the other sources they could find. Ramamurthy continued to explain that there was regulatory uncertainty on the federal level during that time, as the EPA temporarily suspended the CTG and proposed to withdraw it. EPA then proposed multiple new source performance standards for oil and natural gas sources, which left the Department waiting to see whether any additional information from the EPA's proposal with associated supporting documentation would be useful to fill the Department's data gaps. Ramamurthy concluded by noting that the Air Quality program has limited staff and has needed to bring several rulemakings to the Board recently to meet Clean Air Act requirements, so the program had to manage a tremendous workload with the available staff.

Glendon King then asked why the Department took nearly two years to finalize the rulemaking after it was published as proposed. Viren Trivedi responded that Department received over 4,500 comments during the 66-day comment period that closed in July 2020 and then IRRC's comments were received in August 2020. Trivedi explained that staff needed to review and respond to all the comments and then make revisions to the proposed regulation in response to those extensive comments. Before the Department could bring the final rulemaking to the EQB it needed to be presented to the Air Quality Technical Advisory Committee, the Small Business Compliance Advisory Committee and the Citizens Advisory Council. Trivedi concluded that Department staff needed the time to ensure all comments were

addressed appropriately, all changes were made to the regulation, and the technical analysis and support documents for the rulemaking were accurate and sufficient.

Glendon King referenced Act 52 of 2016 (regarding regulation of conventional oil and natural gas wells) and asked why the Department waited until 2022 to separate the regulations for conventional and unconventional sources instead of doing so for the proposed rulemaking or after the House and Senate Environmental Resources and Energy Committees raised the issue. Jennie Demjanick responded that the Department still maintains that Act 52 does not apply to air regulations, which is why the Department did not separate this rulemaking initially. Demjanick explained that as a last resort to ensure the regulations were submitted in time to prevent the loss of hundreds of millions of dollars in federal funding, the Department separated unconventional and conventional sources into two rulemakings earlier this year. The Department did so to prevent a legislative disapproval resolution (under the Regulatory Review Act) that could delay the rulemaking past the December 16, 2022 sanctions deadline. Krishnan Ramamurthy added that in addition to the Department's legal interpretation that Act 52 is not applicable, it did not make sense to separate the rulemakings because the CTG does not distinguish between conventional and unconventional sources, so the regulations must be the same substantively for both industries.

Glendon King asked why the rulemaking is being submitted as a final-omitted regulation, which is a process that skips the proposed stage of the regulation and public's opportunity to provide comment. Jennie Demjanick responded that under the Commonwealth Documents Law, an agency has an option to do a final-omitted rulemaking if it provides a good cause finding that the regulatory procedure requirements, like accepting public comment and holding public hearings, are impractical and contrary to public interest. Demjanick said the Department determined that is the case for this rulemaking for several reasons, including the need to meet stringent federal deadlines to avoid sanctions and the Department having already conducted an extremely extensive comment process on the requirements in this rulemaking. Demjanick explained that the requirements in this rulemaking for conventional sources are identical to the requirements in the previous final rulemaking that covered both conventional and unconventional sources, and that the combined final rulemaking was based upon the comments received on the combined proposed rulemaking. Demjanick noted that the comment and response document contains revised responses specific to this particular rulemaking, even though the document is not required for a final-omitted rulemaking. Demjanick concluded by noting the Department already went through an extremely extensive process to solicit public comment, since this regulation was proposed to EQB in 2019, which is why the proposed stage is unnecessary in this case.

Glendon King then asked why a comment and response document was included with the rulemaking since the comment stage is skipped for a final-omitted regulation and if the Department is aware of any other regulation that has gone through the proposed stage but then submitted a substantially similar regulation as a final-omitted document. Jennie Demjanick responded that the comment and response document is necessary because the regulation is also a revision to the Commonwealth's State Implementation Plan and the EPA requires a comment and response document for state implementation plan revisions. Bo Reiley said the Department is not aware of any other regulations that had followed a similar procedure.

Glendon King asked if there was any new information in the regulatory analysis form (RAF) since the Department separated the conventional and unconventional pieces of this regulation but the regulatory requirements remain the same. Krishnan Ramamurthy responded that there is no new information in the RAF; the revisions reflect the separating of the data to apply only to conventional sources and the information is essentially the same.

Glendon King asked if the Department provided the conventional industry and the public an opportunity to comment on the final-omitted regulation. Krishnan Ramamurthy reiterated that the Department already solicited comments from the general public as well as all source operators, including conventional sources, during the earlier rulemaking and addressed all the comments in a comprehensive document. Ramamurthy added that if the Department had changed the substantive provisions from the earlier combined rulemaking additional comment would have been necessary, but that is not the case here because the regulation is the same as before. Ramamurthy noted that when the Department was developing the proposed rulemaking, he personally reached out to the Pennsylvania Independent Oil & Gas Association (PIOGA) to get data on the conventional industry and was told that PIOGA hired a consultant to survey its membership, but the Department received no data from that survey effort. Ramamurthy concluded that PIOGA did provide some quantitative information during the comment period, which the Department used.

Glendon King asked how using the final-omitted rulemaking process complies with Act 52's directive that regulations concerning conventional wells be undertaken separately and independently of those regarding unconventional wells, particularly when there is no public comment period specifically for this conventional regulation. Jennie Demjanick reiterated the Department's position that Act 52 does not apply to air regulations; however, Demjanick said the language in Act 52 that King was referring to requires the Board to undertake a separate independent rulemaking, including a separate RAF, which is what is included in the final-omitted regulatory package.

Senator Comitta commented that the rulemaking follows Governor Wolf's 2016 guidelines on methane and it is clear that anyone who opposes this rulemaking is not acting in the public interest and is really way out of step with leading practices for the industry. Comitta concluded by expressing full support and a "yes" vote for the rulemaking.

Representative Vitali made a motion to adopt the final-omitted rulemaking. Senator Comitta seconded the motion. (The Board's vote on the motion is recorded on the next page.)

Glendon King commented on the motion to adopt the rulemaking that he would be voting "no" for several reasons. King listed the reasons for voting against the rulemaking, including: the Board's shortened review time for the regulation before voting; the inappropriateness of using the final-omitted rulemaking process and skipping the proposed stage and the public comment period; concern that Act 52's requirement for separate and independent rulemaking packages for the conventional industry does not appear to be met because the standards in the final-omitted rulemaking for the conventional industry are the same standards as those in the combined rulemaking package, which applies to the unconventional industry. King concluded that the Department should have considered whether the standards in the rulemaking are appropriate for the conventional industry and provided an opportunity specifically to comment on this sole piece, and for those reasons King would be voting "no."

Representative Vitali commented that arguments against the rulemaking process used for the final-omitted regulation are unjustified because the regulations are identical to the combined rulemaking that underwent an extensive public process and have been commented on and fully vetted. Vitali noted that King questioned why the Department did not finalize the rulemaking more quickly yet King is also against adopting the final-omitted rulemaking, which would cause further delay and risk losing \$500 million in highway funds. Vitali concluded that he would be a "yes" vote.

Nathan Walker added that the \$500 million is just the first year of sanctions for PennDOT and if the sanctions continued, they could impact the next federal fiscal year.

The Board approved the motion to adopt the final-omitted rulemaking (15-3). Nick Troutman, Glendon King and John St. Clair voted in opposition.

(Adam Walters voted on behalf of the Department of Community and Economic Development.)

OTHER BUSINESS

Laura Griffin provided the following regulatory updates.

- The Coal Refuse Disposal Revisions final rulemaking was published in the *Pennsylvania Bulletin* on September 10, 2022.
- On September 15, 2022, the Independent Regulatory Review Commission (IRRC) approved the Municipal Waste Rural Transfer Facility Permit-By-Rule final rulemaking and the Additional RACT Requirements for Major Sources of NO_x and for the 2015 Ozone NAAQS VOCs final rulemaking. IRRC disapproved the Water Quality Standards for Manganese and Implementation final rulemaking.
- The public comment period for the Administration of the Land Recycling Program Vanadium MSC proposed rulemaking closed on August 29, 2022. One comment was received and IRRC had no comments.
- The public comment period for the Radiological Health Fees proposed rulemaking closed on September 26, 2022. Two comments were received. IRRC's comments are due October 26.

Nick Troutman asked what the Department's next steps are for the Water Quality Standards for Manganese and Implementation final rulemaking. Acting Chairperson Adams responded that the Department just received IRRC's order and is reviewing it, so no determination has been made yet for next steps. Glendon King asked if the Department would bring the rulemaking back before the Board for a vote if it was revised or resubmitted to IRRC without revision. Laura Griffin responded that the Department is required to submit any change to the regulation (annex) to the Board for a vote but is not required to bring the rulemaking back to the Board if there are no revisions to the actual regulation.

NEXT MEETING

The next meeting of the EQB is scheduled for Tuesday, November 15, 2022.

ADJOURN

With no further business before the Board, Representative Vitali moved to adjourn the meeting. Gladys Dutrieuille seconded the motion, which was unanimously approved by the Board. The October 12, 2022, meeting of the Board was adjourned at 11:31 a.m.