

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
February 19, 2008

VOTING MEMBERS OR ALTERNATES PRESENT

Kathleen A. McGinty, Chairperson, Secretary, Department of Environmental Protection
Kenneth Graham, alternate for Acting Secretary Sandi Vito, Department of Labor and Industry
William Hall, alternate for Chairman Wendell F. Holland, Public Utility Commission
Mark Brown, alternate for Representative Scott E. Hutchinson
Richard Fox, alternate for Senator Raphael J. Musto
Patrick Henderson, alternate for Senator Mary Jo White
Bill Capouillez, alternate for Carl Roe, Executive Director, Pennsylvania Game Commission
Richard Manfredi, Citizens Advisory Council
John Arway, alternate for Dr. Douglas J. Austen, Executive Director, Pennsylvania Fish and Boat Commission
Dr. Walter Meshaka, alternate for Executive Director Barbara Franco, Pennsylvania Historical and Museum Commission
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Cynthia Carrow, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
Pat Lupo, Citizens Advisory Council
Paul Opiyo, alternate for Secretary Dennis Yablonsky, Department of Community and Economic Development
Michael Pechart, alternate for Secretary Dennis C. Wolff, Department of Agriculture
Dr. Kandiah Sivarajah, alternate for Secretary Calvin B. Johnson, Department of Health

DEPARTMENT STAFF PRESENT

Richard P. Mather, Sr., Deputy Chief Counsel
Kelly J. Heffner, Policy Office Director
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairperson McGinty called the meeting to order at 9:00 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The members introduced themselves and the Board considered its first item of business - the December 18, 2007, EQB meeting minutes.

With no corrections or amendments, Chairperson McGinty called for a motion to adopt the minutes of the December 18, 2007, EQB meeting.

Bill Capouillez moved to adopt the December 18, 2007, EQB meeting minutes. Richard Manfredi seconded the motion, which was unanimously approved by the Board.

RECEIPT OF PETITION TO REDESIGNATE LOYALSOCK CREEK (Lycoming County)

Deputy Secretary Cathy Curran Myers provided an overview of the petition to the Board, which was submitted by the Loyalsock Creek Watershed Association to redesignate the Loyalsock Creek (main stem

from the Sullivan-Lycoming County border to the mouth) from Trout Stocking Fishery to High Quality Trout Stocking Fishery. Deputy Secretary Myers recommended the Board's acceptance of the petition for further study, based upon the Department's determination that the petition is administratively complete, under Section 23.2 of the EQB's Petition Policy. Rick Shertzer, Chief, Water Quality Standards Division, and Michelle Moses, Assistant Counsel, provided assistance with the presentation.

Following the Department's presentation, Carol Kafer, President of the Loyalsock Creek Watershed Association, made a brief presentation to the Board. Following Ms. Kafer's remarks, Patrick Henderson inquired about the total length of the main stem of Loyalsock Creek. Tony Shaw, Water Quality Standards Division, advised that he was uncertain of the exact length of the main stem, but would confirm that detail and provide that information to Mr. Henderson. Mr. Henderson further inquired if, through the Loyalsock Creek petition process, it would be possible to upgrade certain sections of the petitioned waterbody, while retaining other sections of the stream at its current designation. Mr. Shaw responded that the Department does have the discretion to redesignate in whole or in part the petitioned waterbody, based upon a thorough study of the stream.

John Arway moved to accept the petition for further study by the Department. Mr. Manfredi seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING - NO_x EMISSION STANDARDS FOR CEMENT KILNS

Deputy Secretary Thomas Fidler provided an overview of the proposed rulemaking to the Board. Robert Reiley, Assistant Counsel, and Jane Mahinske, Air Quality Program Specialist, assisted with the presentation.

The Board did not have any comments or questions following Deputy Secretary Fidler's presentation.

Walter Heine moved to adopt the proposed rulemaking with a 60-day public comment period and three public hearings. Michael Pechart seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING - NO_x EMISSIONS STANDARDS FOR GLASS MELTING FURNACES:

Deputy Secretary Thomas Fidler provided the Board with an overview of the proposed rulemaking. Robert Reiley and Jane Mahinske assisted.

Following Deputy Secretary Fidler's presentation, Mr. Henderson asked the Department to provide further clarification concerning the system-wide averaging provisions in the proposed rulemaking and to clarify if the rulemaking was only applicable to glass melting furnaces where multiple facilities were operated under common ownership. Deputy Secretary Fidler responded that compliance with the rulemaking could be demonstrated on a "furnace-by-furnace" basis; through facility-wide emissions averaging; or through system-wide emissions averaging where compliance would be determined based on the performance of multiple glass melting furnaces in Pennsylvania operating under common control or the same owner. Mr. Henderson further inquired if, under system-wide averaging, the proposed regulations specified the proximity that must exist within the fleet of facilities. Deputy Secretary Fidler responded that there is a fair distribution of glass furnaces across the Commonwealth and that the proposed regulations did not specify a proximity requirement.

In conclusion, William Hall asked the Department what type of fuel is used at glass furnaces. Ms. Mahinske replied that predominantly glass melting furnaces are operated from natural gas. Mr. Hall

further inquired if the Department knew of other sources of fuel, beyond natural gas, that are used at glass melting furnaces. Ms. Mahinske replied that she was unaware of any facilities that did not use natural gas, but she would research the question and provide further clarification to Mr. Hall.

Mr. Pechart moved to adopt the proposed rulemaking with a 60-day public comment period and three public hearings. Cynthia Carrow seconded the motion, which was unanimously approved by the Board.

FINAL RULEMAKING – AIR QUALITY PERMIT STREAMLINING:

Deputy Secretary Thomas Fidler provided the Board with an overview of the final rulemaking. Robert Reiley and Krishnan Ramamurthy, Chief, Division of Compliance and Enforcement, Bureau of Air Quality, assisted with the presentation.

Following Deputy Secretary Fidler's presentation, Mr. Manfredi commented on the "vagueness" that permeated the previous permitting process and the inordinate amount of time the Department previously expended by working with permit applicants who submitted incomplete applications. Deputy Secretary Fidler responded that the rulemaking will improve the permitting process through the addition of new Section 127.12d, which outlines the steps that will be taken if an applicant submits an incomplete application to the Department. The rulemaking, as a result, will enable the Department to "get away from hand holding" by establishing a clear process that will promote the submission of complete permit applications to the Department.

Joanne Denworth moved to adopt the final rulemaking. Mr. Manfredi seconded the motion, which was unanimously approved by the Board.

OTHER BUSINESS:

Extension of Public Comment Period – Triennial Review of Water Quality Standards Proposed Rulemaking: Chairperson McGinty informed the Board that the Department had received a request on January 30, 2008, from Timothy Bytner with Babst, Calland, Clements, & Zomnir, P.C. of Pittsburgh requesting that the Department extend the public comment period for the proposed Triennial Review of Water Quality Standards rulemaking by 30 days. Upon consideration of the request, Chairperson McGinty informed the Board that the Department granted the request, therefore the public comment period for the proposed rulemaking will now be extended to March 27, 2008.

Advance Notice of Final Rulemaking (ANFR): Coal Mine Reclamation Fees and Reclamation of Bond Forfeited Sites: Chairperson McGinty informed the Board of the Department's publication of the Advance Notice of Final Rulemaking for the Coal Mine Reclamation Fees and Reclamation of Bond Forfeited Sites, which occurred in the January 5, 2008, edition of the *Pennsylvania Bulletin*. She then turned the floor over to Joseph Pizarchik, Director, Bureau of Mine Reclamation, who provided the Board with an overview of the draft final rulemaking, including the ANFR and the public comments that were received in response to the ANFR. Mr. Pizarchik concluded that it is the Department's intention to present the final rulemaking to the Board for its consideration at their April 15, 2008, meeting.

Update on Federal Clean Air Mercury Rule (CAMR): California Greenhouse Gas Waiver; and California Clean Vehicles Regulation: In response to a request by Mr. Henderson, Richard Mather, Sr., Deputy Chief Counsel, Department of Environmental Protection, and legal counsel to the EQB, updated the Board on the following topics:

Federal Clean Air Mercury Rule: Mr. Mather provided an overview of the February 8, 2008, DC Circuit Court of Appeals decision, which vacated and remanded the federal Clean Air Mercury Rule (CAMR) to EPA. He also discussed the impacts of the court's decision on Pennsylvania's current mercury rulemaking. Despite the uncertainty of the federal CAMR rule, Mr. Mather stressed that Pennsylvania's mercury regulation remains in effect. Mr. Henderson questioned if the Department knew whether EPA intends to appeal the DC Circuit Court of Appeals decision. Mr. Mather replied that he was not aware of EPA's intentions, but clarified that EPA has until March 26, 2008, to decide whether to appeal the decision. Mr. Henderson further inquired about the authority for which the state-specific mercury rulemaking was adopted. Mr. Mather responded that the authority for the rulemaking is the Pennsylvania Air Pollution Control Act (APCA). Mr. Henderson asked about the potential impact a new EPA mercury rulemaking may have on Pennsylvania's regulations if EPA were to propose maximum achievable control technology standards (MACT) under Section 112 of the federal Clean Air Act. Mr. Mather replied that such an action would not affect the Commonwealth's existing mercury rulemaking. Mr. Henderson in conclusion asked if the DC Circuit Court of Appeals took a position on the merits of cap and trading. Mr. Mather responded that they did not, as the court only looked at the improper process employed by EPA to delist mercury.

California Greenhouse Gas Waiver: Mr. Mather provided the Board with an update about EPA's recent announcement concerning its intentions to deny California's request for a waiver that would have allowed it to implement stricter greenhouse gas emissions standards for cars than the federal government's standards. Mr. Mather stated that to date, EPA has not published its final decision in the Federal Register. However, when it does, Pennsylvania will join with 14 other states to intervene in California's petition to the Ninth Circuit Court of Appeals for review of EPA's waiver denial. Mr. Henderson inquired if the Commonwealth needed the Greenhouse Gas Waiver provision to achieve the ozone standards contained in its Clean Vehicles regulations. Mr. Mather confirmed that Pennsylvania does not need the Greenhouse Gas Waiver to support the ozone attainment demonstrations in the rulemaking and that Pennsylvania's Clean Vehicles program is still in full force.

California Vehicle Regulations: Mr. Henderson inquired whether the Department was aware of any proposed changes to the California motor vehicle emission regulations. Mr. Mather responded that the Department is not aware of any proposed changes at this time.

ADJOURN:

Chairperson McGinty announced that the next meeting of the EQB would occur on Tuesday, April 15, 2008 at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

With no other business before the Board, Mr. Arway motioned to adjourn the meeting. The motion was seconded by Mr. Pechart. The meeting was adjourned at 10:08 a.m.