

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**April 15, 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  
Danielle Spila, alternate for Secretary Allen D. Biehler, Department of Transportation  
William Hall, alternate for Chairman Wendell F. Holland, Public Utility Commission  
Erik Anderson, alternate for Representative Camille George  
Joseph Deklinski, 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  
Cynthia Carrow, Citizens Advisory Council  
Bernie Hoffnar, Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
David Strong, Citizens Advisory Council  
Paul Opiyo, alternate for Secretary Dennis Yablonsky, Department of Community and Economic Development  
Russell Redding, alternate for Secretary Dennis C. Wolff, Department of Agriculture  
Dr. James Logue, 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 9:03 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 February 19, 2008, EQB meeting minutes.

With no corrections or amendments, Chairperson McGinty called for a motion to adopt the minutes of the February 19, 2008, EQB meeting.

**Bill Capouillez moved to adopt the February 19, 2008, EQB meeting minutes. Richard Manfredi seconded the motion, which was unanimously approved by the Board.**

**FINAL RULEMAKING – STREAM REDESIGNATIONS (BIG BROOK, et al.)(25 Pa Code, Chapter 93)**

Deputy Secretary Cathy Curran Myers provided an overview of the final rulemaking to the Board. Rick Shertzer, Chief, Water Quality Standards Division, and Michelle Moses, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Patrick Henderson inquired if the passage of the final rulemaking, with its associated changes in designated uses of certain streams, would affect any outstanding NPDES permits, general permits, or individual permits. Mr. Shertzer replied that the Department's overall process for reviewing general permit applications will not be impacted by the passage of the final rulemaking; however, consideration of site-specific needs, as necessary to protect special protection waters, will continue to be considered by staff for the issuance of General Permits under 25 Pa Code, Chapter 105. Michelle Moses further clarified that relative to the permitting process under 25 Pa Code, including NPDES permits, some activities may not be covered under a general permit if the intended activity impacts an EV or HQ waterbody. Such activities include discharges associated with an NPDES permit renewal if the permit activity impacts an EV or HQ stream that was redesignated as such through this final rulemaking.

**John Arway moved to adopt the final rulemaking. Walter Heine seconded the motion, which was unanimously approved by the Board.**

**FINAL RULEMAKING – SURFACE MINING (25 PA Code, Chapter 209)**

Deputy Secretary J. Scott Roberts introduced himself to the Board and remarked that Joseph Pizarchik, Director, Bureau of Mining and Reclamation, would be presenting the three mining final rulemakings to the Board for its consideration. Marc Roda, Assistant Counsel, assisted with the presentation for the Surface Mining final rulemaking.

Following Mr. Pizarchik's remarks, Bernie Hoffnar inquired if the Department has ample staff available to conduct the safety-related inspections called for in the final rulemaking. Mr. Pizarchik replied that Department staff have already been observing safety-related issues while conducting inspections. Mr. Hoffnar interjected by asking whether the inspection requirements contained in the rulemaking were new and would include additional requirements for inspectors. Mr. Pizarchik responded that the rulemaking is not necessarily establishing additional requirements for inspectors, but is rather clarifying the Department's authority in this area so inspectors are well-equipped to address safety-related issues during inspections. Mr. Hoffnar further inquired if Department staff are currently prepared to conduct safety-related inspections. Deputy Secretary Roberts replied that Department staff will be prepared to conduct safety-related inspections after the completion of additional training, as discussed by Mr. Pizarchik during his presentation. Deputy Secretary Roberts further commented that through this rulemaking the Department is attempting to leverage its presence at mining sites to not only inspect the environmental aspects of an operation, but to give inspectors the tools they need to inspect the safety-related aspects of the site's operations.

**Mr. Hoffnar moved to adopt the final rulemaking. Mr. Heine seconded the motion, which was unanimously approved by the Board.**

**FINAL RULEMAKING – MINE OPENING BLASTING (25 PA CODE, Chapters 77, 87-89, and 210)**

Mr. Pizarchik provided the Board with an overview of the final rulemaking. Mr. Roda, Assistant Counsel, provided assistance with the presentation.

Following Mr. Pizarchik's presentation, Mr. Capouillez asked whether the rulemaking amended any of the operator's regulatory requirements relative to pre-blast surveys. Mr. Pizarchik responded that they did not and that the requirements are still valid and consistent with Federal requirements.

**Joanne Denworth moved to adopt the final rulemaking. Cynthia Carrow seconded the motion, which was unanimously approved by the Board.**

**FINAL RULEMAKING – COAL MINE RECLAMATION FEES AND RECLAMATION OF BOND FORFEITED SITES (25 Pa Code, Chapter 86)**

Mr. Pizarchik provided an overview of the final-form rulemaking to the Board. Richard Morrison, Assistant Counsel, provided assistance with the presentation.

Following Mr. Pizarchik's presentation, John Arway inquired whether the Department can predict with any certainty when the ABS Legacy Account will be actuarially sound. Mr. Pizarchik replied that there are too many variables relative to the funding streams for the account to determine with any accuracy when the account will be actuarially sound. Based only on the sum of forfeited bonds and the accumulation of interest generated on those bonds, Mr. Pizarchik believed it would take several decades for the account to be actuarially sound. Mr. Arway further asked if the Department should adjust the per acre reclamation fee now instead of waiting to adjust the fee in 2011, especially if the Department knows that the \$100/acre reclamation fee is not sufficient to maintain at least a \$3 million balance in the ABS Legacy Account. Mr. Pizarchik clarified that the ABS previously in place was found to be insufficient to address the problems associated with sites forfeited under that system. However, since that time, a number of changes have occurred that has given the Department confidence that it will not have to adjust the per acre fee in the next two years. For example, the General Assembly appropriated \$5.5 million for the Department to complete land reclamation on forfeited sites. The Department also believes it has sufficient cash reserves to construct treatment facilities to address ongoing operations and maintenance costs at these sites.

Mr. Arway further asked if the Department is confident that the \$3 million reserve balance in the ABS Legacy Account will be sufficient to cover future expenses, given the scope of problems with forfeited sites in the Commonwealth. Mr. Pizarchik replied that the Department is confident for several reasons that the \$3 million reserve is sufficient. First, he mentioned that the number of sites that have inadequate bonds has drastically reduced. For example, in the 1990s, the Commonwealth had approximately 270 facilities that did not carry adequate bonds. Since that time, the Department has diligently worked with operators to secure additional bond coverage at these sites. Currently, there are 42 sites that need additional bond coverage and the Department is working with these site operators to secure additional bond coverage. Furthermore, Mr. Pizarchik mentioned that the \$3 million reserve balance is to be maintained to cover unexpected expenses associated with sites where bonds are forfeited. To that end, the Department has analyzed potential "worse case scenarios" and has concluded that for those sites, \$3 million is more than adequate for the Commonwealth to cover operation and maintenance expenses of existing treatment facilities. As other sites continue to gain full-cost bond coverage, the number of forfeitures will decrease, resulting in less reliance on the \$3 million reserve balance. Mr. Pizarchik concluded that the Department's goal is to have all sites converted to full cost bonding within the next several years, which will dramatically decrease the number of sites where unexpected expenditures may arise.

Mr. Arway further asked, relative to the obligations of the Department spelled out in the U.S. Third Circuit Court of Appeals case, if the Department could estimate the revenue needed to treat ongoing pollutional discharges at the current 45 ABS sites, which collectively have 85 post-mining discharges, but do not have full cost financial guarantees. Mr. Pizarchik replied that while the Department has not evaluated the specific situations associated with every site, the Department is focusing its efforts on addressing those sites with the most risk and securing additional full-cost bond coverage at those sites. He further noted that the Department has not evaluated the total risk associated with all ABS sites because it's the Department's view that the U.S. Third Circuit Court of Appeals rulemaking did not require the Department to address the totality of risk associated with all ABS sites that may be forfeited in the future, but to ensure that the Department has the needed revenue to address those sites that have already been forfeited. Mr. Pizarchik acknowledged that the Court did indicate in its ruling that the Department will need to address the revenue needs of sites forfeited in the future; however, the Department believes it has crafted a final rulemaking that if adopted establishes mechanisms that not only respond to legacy ABS sites, but addresses the revenue needs of sites that may be forfeited in the future.

Mr. Arway responded by asking if it is reasonable for the Department to have some perspective on what the costs may be to cover sites that forfeit their bonds in the future. Mr. Pizarchik replied that there is no reasonable way to predict which operators will forfeit their bonds and those who will post additional full-cost bonds.

Mr. Capouillez inquired if the revenue from bond forfeitures is specifically applied to treat discharges at the site where the bond was forfeited, or if the revenue is escrowed into a larger account where the Department selects where the money will be spent. Mr. Pizarchik replied that revenue from a bond forfeiture is legally required to be spent on reclamation at the specific site for which the bond was forfeited or until such money is not needed for reclamation. Mr. Pizarchik further commented that historically the Department has used the money from forfeited bonds to complete land reclamation on the specific site, and has retained and restricted the remaining balance of funds to cover treatment of discharges at the specific site. However, in this final rulemaking, the Department is recommending that it continue to hold money from the forfeited bonds in reserve to allow it to compound with interest so at a future date the revenue will be used to provide ongoing treatment at those sites. In the interim, the final rulemaking also establishes the per acre reclamation fee as a "pay as you go" fee to generate the money the Department needs to pay the annual operation and maintenance costs at all of those sites until the ABS Legacy Sites Account becomes actuarially sound.

To clarify his understanding of the rulemaking, Mr. Capouillez asked Mr. Pizarchik's if the rulemaking is proposing to hold money in reserve for sites forfeited in the future, until such time when the money accumulates enough interest to be able to support the active or passive treatment of the discharges from the site. Mr. Pizarchik replied yes, that the scenario just highlighted reflected the Department's long-term strategy to address forfeitures, and reiterated that the Department's short-term strategy is to adjust the per acre reclamation fee to provide the income needed for operation and maintenance costs at the sites until the Department has enough money to treat all the discharges.

Mr. Capouillez further inquired if the Department is conducting a cost analysis relative to chemical treatment versus passive treatment, and if the Department would forgo treating a discharge if there were insufficient funds to treat it passively. Mr. Pizarchik replied that the Department is examining both passive and chemical treatment systems in place at approximately 30 sites in the state in order to evaluate their effectiveness both from a cost and treatment perspective. Mr. Pizarchik acknowledged that there are some discharges that cannot be treated passively, and therefore will need to be treated chemically. But regardless of the specific method selected, Mr. Pizarchik emphasized that the Department's goal is to have some type

of treatment system in place at all sites as soon as possible. He also noted that through this rulemaking, the Department will have the tools in place to ensure not only that needed treatment facilities are constructed, but that appropriate operation and maintenance activities are also funded.

Mr. Hoffnar inquired why the Department did not include in its presentation how local watershed groups may be able to partner with the Department to address the problems associated with forfeited mine sites. Mr. Pizarchik replied that not all aspects of the mine forfeiture problem were addressed in the presentation, as the Department tried to narrow the focus of the presentation to the final rulemaking only. However, Mr. Pizarchik noted that the Department considers all options in addressing the problem and welcomes the opportunity to partner with local watershed groups to build, operate and maintain treatment facilities to address discharges associated from forfeited mine sites. Mr. Capouillez inquired whether grant funding allocated under Growing Greener II can be used for costs associated with the operation and maintenance of treatment facilities at abandoned mine sites. Mr. Pizarchik replied no, that as a part of this final rulemaking package, the Department is not planning to utilize Growing Greener II funds, but he did acknowledge that there may be some discharges in the state that may be potentially using Growing Greener funds to address abandoned mine discharge, but he is not aware of any specific details concerning those projects. Chairperson McGinty clarified that money allocated under Growing Greener II can only be utilized for capital expenditures; therefore, operation and maintenance expenses could not be supported with Growing Greener II dollars. However, she also noted that in the last round of grants allocated under the Growing Greener program, a new account was set up with \$2 million from the Environmental Stewardship Fund to be solely dedicated to supporting operation and maintenance costs.

Mr. Henderson inquired about the Department's existing funding sources to pay for the required reclamation of primacy ABS forfeiture discharge sites, including revenue generated from civil penalties assessed under the Pennsylvania Surface Mining Conservation and Reclamation Act. Mr. Henderson inquired where the \$300,000 in annual civil penalty assessments was currently being directed and what percentage the funding would represent in all funding needed to address the ABS sites. Mr. Pizarchik replied that the money collected in civil penalty assessments is currently directed to a general operation fund within the Surface Mining Fund to cover personnel costs associated with completing reclamation work on bond forfeited sites, fact finding, and attorney fees associated with litigation work. Concerning the percentage the fees would represent in addressing the full scope of the problem, Mr. Pizarchik replied that the current overall need is \$1.44 million annually, therefore, revenue collected from penalties assessed would represent approximately 20% of the needed revenue.

In conclusion of the Board's discussion, Ms. Denworth commended the Department for its work on this very complex final rulemaking, including the Department's thorough response to the U.S. Third Circuit Court of Appeals rulemaking.

**Paul Opiyo moved to adopt the final rulemaking. Russell Redding seconded the motion, which was unanimously approved by the Board.**

#### **OTHER BUSINESS:**

Under Other Business, Chairperson McGinty brought to the Board's attention correspondence it was copied on to Foundation Mining, LP concerning its petition to redesignate the South Fork of Tenmile Creek in Greene County from HQ-WWF to WWF. In that correspondence, the Department identified a number of areas in the petition that are considered to be administratively incomplete. In addition, Chairperson McGinty updated the Board on a number of rulemakings that were recently published as final in the Pennsylvania Bulletin, including the Notification of Proximity to Airports rulemaking (March 22, 2008) and

the Clean Air Interstate Rule (CAIR) (April 12, 2008). She also informed the Board that the Independent Regulatory Review Commission (IRRC) will meet on April 17, 2008, to consider the Air Quality Permit Streamlining final rulemaking, and that the two Proposed Rulemakings – NOx Emission Standards for Cement Kilns and NOx Emission Standards for Glass Melting Furnaces – will be published as proposed in the April 19, 2008, Pennsylvania Bulletin, commencing a 65-day public comment period. Hearings for the proposals will occur on May 19 in Harrisburg, May 21 in Wilkes-Barre, and May 23 in Pittsburgh, where Board members are encouraged to serve as Hearing Chairpersons. Chairperson McGinty also informed the Board that the Department was asked to testify before the House Transportation Committee on April 10, 2008, regarding pending legislation that would establish statewide idling restrictions similar to proposed regulations the EQB adopted late last year.

In conclusion, Chairperson McGinty recognized the important contributions Dr. Paul Hess made to the EQB, including service on the Board for over 15 years, as well as service to the Department through his active involvement and participation on the Solid Waste Advisory Committee, the Air Quality Technical Advisory Committee, and the Water Resources Advisory Committee. Dr. Hess passed away at the age of 84 on March 11, 2008.

**ADJOURN:**

Chairperson McGinty announced that the next meeting of the EQB would occur on Tuesday, June 17, 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. Heine motioned to adjourn the meeting. The motion was seconded by Mr. Manfredi. The meeting was adjourned at 10:25 a.m.