

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
August 19, 2008

VOTING MEMBERS OR ALTERNATES PRESENT

Barbara Sexton, alternate for Joseph R. Powers, Acting 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 Vice Chairman James H. Cawley, Public Utility Commission
LeeAnn Murray, 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
Kevin Mixon, alternate for Executive Director Carl Roe, Pennsylvania Game Commission
Cynthia Carrow, Citizens Advisory Council
David Day, alternate for Dr. Douglas J. Austen, Executive Director, Pennsylvania Fish and Boat Commission
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning
Jolene Chinchilli, Citizens Advisory Council
Bernie Hoffnar, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
David Strong, Citizens Advisory Council
Michael Pechart, 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

Acting Chairperson Sexton called the meeting to order at 9:01 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business - the June 17, 2008, EQB meeting minutes.

With no corrections or amendments, Acting Chairperson Sexton called for a motion to adopt the minutes of the June 17, 2008, EQB meeting.

Walter Heine moved to adopt the June 17, 2008, EQB meeting minutes. Cynthia Carrow seconded the motion, which was approved by the Board. Bernie Hoffnar abstained from voting on the approval of the minutes.

RECIPT OF PETITION TO REDESIGNATE TRIBUTARIES TO SOUTH FORK OF TENMILE CREEK (GREENE COUNTY)

John Hines, Acting Director, Bureau of Watershed Management, provided an overview of the petition to the Board, which was submitted by Foundation Mining L.P. of Waynesburg, PA. The petition requests the EQB redesignate the tributaries of the Southfork of Ten Mile Creek (including House Run, Hoge Run, and McCourtney Run in Greene County) from High Quality – Warm Water Fishes (WWF) to WWF. Based upon the administrative completeness of the petition, including meeting the requirements for acceptability as defined in §23.2 of the EQB's petition policy, Mr. Hines recommended the Board accept the petition for further study. Rick Shertzer, Chief, Water Quality Standards Division, and Michelle Moses, Assistant Counsel, provided assistance with the presentation.

Following the Department's presentation, Mr. Hines introduced Don Bluedorn, Counsel to Foundation Coal Mining, L.P. and Terry Dayton, Environmental Manager for Pennsylvania Services Corporation, an affiliate of Foundation Coal. Mr. Bluedorn provided a presentation to the Board covering details of the petition, including why it was filed and the data collected by the petitioner that substantiates that the High-Quality designation for the petition area no longer exists.

Following Mr. Bluedorn's presentation, David Day requested that if the petition is accepted for further study by the Board that DEP evaluate the initial designation of the petition area to determine if the area was initially properly designated. Mr. Shertzer replied that such an analysis is integral to the Department's study and is conducted for all studies of petitions that are accepted for review by the Board; therefore, such a study would accordingly be done for the petition submitted by Foundation Coal Mining, L.P.

Mr. Strong commented on the petitioner's assertion that the redesignation of the petitioned waterbody is appropriate as the area is no longer used as an intake for drinking water. Mr. Strong commented that while the petitioner's claim may be currently accurate, it cannot be asserted that the waterbody will never be used again in the future as an intake for drinking water. He emphasized the value of water to the Commonwealth and contended that the petitioner's rationale to redesignate the waterbody was not sufficient to change the existing designation of the petition area. Mr. Shertzer responded that a drinking water designation is a statewide protected use, and will not be compromised regardless of whether a drinking water intake facility is currently located in the area. Richard Mather commented that while the questions of the Board are valuable and illustrative of the analysis the Department will conduct of the petition if it is accepted by the Board, he reminded Board members that the question before the Board was to either accept or reject the petition as being administratively complete.

Jolene Chinchilli asked the petitioner if further sampling and monitoring would be scheduled to gather additional data about the petition area. Mr. Bluedorn responded that if the petition is accepted by the Board, the petitioner plans to conduct additional sampling and will split samples with the Department. Mr. Hoffnar asked if the type of mining conducted in the petition area was longwall mining and Mr. Bluedorn responded that it is. Mr. Hoffnar further asked if residents of Greene County were concerned about the petition filed. Mr. Dayton replied that while he believes there will be a few people who are opposed to the petition, he also believes a majority of the people in the county will be supportive of the petition. Mr. Hoffnar further inquired if the mining operations conducted in the petition area would improve the water quality in the watershed. Mr. Bluedorn responded that while he couldn't say with certainty that the operations would improve water quality, he did confirm that Foundation Mining, L.P. would comply with the appropriate mining regulations governing their operations.

Joseph Deklinski moved to accept the petition. The motion was seconded by Patrick Henderson. The Board approved the petition for further study, with David Strong voting in opposition.

PROPOSED RULEMAKING – GROUNDWATER RULE (25 PA Code, Chapter 109)

John Hines, Acting Director, Bureau of Watershed Management, provided the Board with a presentation concerning the proposed rulemaking. Jeff Allyger, Geologic Specialist in the Facility Permits Section, John Piekara, Water Program Specialist in the Operations Section, and Marylou Barton, Assistant Counsel assisted with the presentation.

Following the Department's presentation, Mr. Hoffnar inquired what the adequate treatment options are for viruses in water. Mr. Allyger responded that chlorination is the most effective in terms of both treatment and cost. Although UV is also a treatment option, Mr. Allyger commented that some viruses are resistant to UV, so the cost of installing systems that utilize sufficient UV to render the treatment adequate may be cost prohibitive; however, this may change in the future as technology improves.

Mr. Hoffnar further asked about the costs associated with the first year sampling requirements in the rulemaking. Mr. Piekara responded that an e-coli sample costs roughly \$25 - \$35 per sample, therefore, noncommunity water systems affected by this rulemaking would incur at least a few hundred dollars to complete the 10-12 samples required in the first year of the implementation of the rulemaking. Mr. Hoffnar further inquired about the training needs of the Department to educate the regulated community about the regulations. Mr. Hines responded that the Department would be utilizing existing staff to train the regulated community and noted that the Department has an effective training program already in place; therefore, it is not anticipated that the Department would need to hire additional staff to conduct training for this rulemaking. In conclusion, Mr. Hoffnar asked if the Department had consulted with the PA Rural Water Association in the development of this rulemaking. Mr. Piekara responded that the Department did consult with the association and noted that the association is a member of the Technical Assistance Center (TAC) for Small Water Systems advisory committee, which was involved in the review of the proposed rulemaking. Mr. Hines further noted that the PA Rural Water Association is one of the Department's training providers and therefore would be integrally involved in the process.

Joanne Denworth asked the Department to explain to the Board the universe of entities that would be subject to the rulemaking, including community water systems and noncommunity water systems. Mr. Piekara responded that community water systems are those that provide water to residents for their daily consumption and use and provide the highest amount of exposure to water. Noncommunity water systems include restaurants that operate using their own well or other businesses where the population has exposure to water at least 8-hours a day.

Mr. Strong moved to adopt the proposed rulemaking, with a 30-day public comment period. Ms. Chinchilli seconded the motion, which was unanimously approved by the Board.

PROPOSED RULEMAKING – STAGE 2 DISINFECTANTS AND DISINFECTION BYPRODUCTS RULE (25 Pa Code, Chapter 109)

John Hines, Acting Director, Bureau of Watershed Management, provided the Board with an overview of the proposed rulemaking. Kevin McLeary, Chief, Facility Permits Section, Dawn Hissner, Water Program Specialist, Operations Section, and Marylou Barton, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Hoffnar commented that it is ironic that while the Groundwater Rule required additional chlorination to disinfect water, this rulemaking focuses on the additional methods that must be followed to combat the effects of chlorination and other disinfectants. He noted that the Department should be encouraging the use of UV as a disinfectant wherever possible. Ms. Hissner responded by stating that UV light is not as effective in thoroughly disinfecting the microbial pathogens present in water as other disinfection methods; therefore, while UV light is a disinfectant tool that is permissible by DEP, it should only be used as a disinfectant mechanism under certain guidelines and provisions. In conclusion, Ms. Hissner acknowledged Mr. Hoffnar's initial comments by stating that the Department must walk a fine line to balance the benefits disinfectants provide with the effects from those disinfectants. It is for this reason, she noted, that the Department is simultaneously proposing this rulemaking, and the Groundwater Rule and the Long Term 2 Enhanced Surface Water Treatment Rule, so the Department can comprehensively and consistently address the overlapping issues among the packages.

Ms. Denworth moved to adopt the proposed rulemaking, with a 30-day public comment period. Ms. Carrow seconded the motion, which was approved by the Board. Mr. Hoffnar voted in opposition to the motion.

PROPOSED RULEMAKING – LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE (25 Pa Code, Chapter 109)

John Hines, Acting Director, Bureau of Watershed Management, provided the Board with an overview of the proposed rulemaking. Barry Greenawald, Manager, Operations, Monitoring and Training Division, Ed Chescattie, Manager, Filter Plant Programs Section, and Marylou Barton, Assistant Counsel assisted.

Following the Department's presentation, Mr. Hoffnar inquired about the factors that may cause high levels of cryptosporidium in surface water. Mr. Chescattie first explained that cryptosporidium is a pathogenic organism, therefore, the hosts for cryptosporidium are any warm-blooded animal. He further expanded that several studies have concluded that the primary carriers of cryptosporidium are infant cattle who shed the organisms through their excrement. In addition, Mr. Chescattie mentioned that point source discharges as well as agriculture discharges can also contribute to levels of cryptosporidium in surface water. Mr. Chescattie confirmed that a study linking specific factors to the occurrence of high level readings of cryptosporidium in surface water has not been completed; however, it is consistently theorized that higher levels of cryptosporidium are found in those watersheds that have concentrated development and populations living upstream from a filter plant intake. He also mentioned that higher levels of cryptosporidium may be apparent in higher order streams where more tributaries converge. In conclusion, Mr. Hoffnar inquired whether cryptosporidium is a problem in groundwater water. Mr. Chescattie responded that cryptosporidium is not typically found in groundwater.

LeeAnn Murray moved to adopt the proposed rulemaking, with a 30-day public comment period. Mr. Heine seconded the motion, which was unanimously approved by the Board.

FINAL RULEMAKING – WATER RESOURCES PLANNING (25 Pa Code, Chapter 110)

John Hines, Acting Director, Bureau of Watershed Management, provided the Board with an overview of the final rulemaking. Susan Weaver, Manager, Water Use Planning Division, and Pam Bishop, Assistant Counsel, assisted with the presentation.

Prior to beginning his presentation, Mr. Hines introduced Don Bluedorn who is the Chairman of the Statewide Water Resources Committee. As authorized by Act 220 of 2002, Mr. Bluedorn addressed the Board and thanked the Department for its leadership and hard work in the development of the final rulemaking. In particular, he acknowledged the leadership of Deputy Secretary Cathy Myers, John Hines, and Susan Weaver, and noted they were instrumental in the development of the regulations. He also thanked a number of additional staff including former Department employee Bill Gast, and Pam Bishop, Dave Jostenski, and Abdolhossain Liaghat. Mr. Bluedorn briefly discussed the public comments that were received on the proposed rulemaking and stated that those comments were either directly incorporated into the rulemaking or addressed to the satisfaction of the Statewide Water Resources Committee. In conclusion, Mr. Bluedorn encouraged the Board to approve the final-form rulemaking.

Following Mr. Hines presentation, Acting Chairperson Sexton extended her thanks to Don Bluedorn for his work as Chairman of the Statewide Water Resources Committee, in particular his efforts in leading the Committee in the review and development of the rulemaking.

William Hall inquired how the Department would calculate water usage at hydroelectric dams. Dave Jostenski, manager of the Water Use Assessment Section, replied that such calculations would be determined through the turbines.

Mr. Strong, in referring to the Order of the rulemaking, inquired how the regulations would promote pollution prevention, including water conservation. Mr. Hines responded that the regulations require the Department to establish the Water Conservation Technical Assistance Center. In establishing the center, Mr. Hines said that the Department will be working with the regulated community to encourage more integrated water use planning and large scale water conservation.

In conclusion, Mr. Henderson commended the Rendell Administration for developing the Water Resources Planning regulations. He expanded by stating that the rulemaking fulfills the intent of Act 220, which was passed in 2002 under the Schweiker Administration. He noted for the record that when the legislation was deliberated, several groups, including PennFuture, overwhelmingly opposed the legislation and claimed it established big loopholes for industry to undercut the Clean Streams Law. Mr. Henderson provided that he disagreed with those assertions. In conclusion, he extended his congratulations to the Department and noted the leadership of Deputy Secretary Cathy Myers, as well as John Hines, Don Bluedorn and the State wide and Regional Water Resources Committees in crafting the regulations that so closely mirror the intent of Act 220.

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

FINAL RULEMAKING – RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES (25 Pa Code, Chapters 218 and 240)

Deputy Secretary Thomas Fidler provided an overview of the final rulemaking to the Board. He was assisted by Louis Urciuolo, Manager, Radiation Control Division, and Michael Pyles, Manager, Radon Division.

Following Deputy Secretary Fidler's presentation, the Board did not pose any questions.

Michael Pechart moved to adopt the final rulemaking. Mr. Strong seconded the motion, which was unanimously approved by the Board.

ADJOURN:

Acting Chairperson Sexton announced that the next meeting of the EQB would occur on Tuesday, September 16, 2008, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

With no other business before the Board, the meeting was adjourned at 10:55 a.m.