

**MINUTES**  
**ENVIRONMENTAL QUALITY BOARD MEETING**  
**September 16, 2008**

**VOTING MEMBERS OR ALTERNATES PRESENT**

John Hanger, Acting Chairman, Acting 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 James H. Cawley, Public Utility Commission  
LeeAnn Murray, alternate for Representative Camille George  
Jonathan Lutz, alternate for Representative Scott E. Hutchinson  
Richard Fox, alternate for Senator Raphael J. Musto  
Patrick Henderson, alternate for Senator Mary Jo White  
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 Barbara Franco, Executive Director, Pennsylvania Historical and Museum Commission  
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning  
Jolene Chinchilli, Citizens Advisory Council  
Gail M. Conner, Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
Cynthia Carrow, 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. 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 Chairman Hanger called the meeting to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business - the August 19, 2008, EQB meeting minutes.

With no corrections or amendments, Acting Chairman Hanger called for a motion to adopt the minutes of the August 19, 2008, EQB meeting.

**Michael Pechart moved to adopt the August 19, 2008, EQB meeting minutes. Cynthia Carrow seconded the motion, which was approved by the Board.**

**FINAL RULEMAKING - TRIENNIAL REVIEW OF WATER QUALITY STANDARDS (25 Pa Code, Chapter 93)**

Cathy Curran Myers, Deputy Secretary for Water Management, provided an overview of the final rulemaking to the Board. Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, and Michelle Moses, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Richard Fox, on behalf of Senator Musto, distributed three amendments to the Board for its consideration. Amendment #1 (see Attachment 1) would modify Section 93.8c of the final rulemaking by removing molybdenum from Table 5, which includes water quality criteria for toxic substances. In support of the amendments, Mr. Fox questioned the necessity of the statewide standard for molybdenum and referred to the Order of the final rulemaking which stated that only 6 facilities in the Commonwealth are most immediately impacted by molybdenum, including 4 facilities that have active permits that require monitoring of molybdenum and 2 facilities that discharge molybdenum. In response to the amendment, John Arway expressed his concern and stated that molybdenum's inclusion in Table 5 is appropriate because it is a toxic metal from which human health, aquatic life and other special protection uses should be protected. Mr. Fox responded by clarifying that it was only through the current Triennial Review proposed rulemaking that molybdenum was proposed to be added to Table 5; therefore, a water quality criterion for molybdenum as a toxic substance does not currently exist in Chapter 93. He further commented that the U.S. EPA does not have a standard for molybdenum, and there is wide variation among states in how or if molybdenum is regulated. As a result, Mr. Fox stated that Pennsylvania may lose companies that choose to relocate to other states that do not regulate molybdenum.

Given the prevalence of gas development in the state's Marcellus Shale region, Mr. Manfredi asked if molybdenum is a toxic substance used in the fracking of oil and gas wells, and if it is, could it increase the number of active permits in the state that include specific molybdenum limits. Mr. Aunkst replied that molybdenum is not a substance that is specifically used in the fracking of oil and gas wells, however, it may appear as a component or constituent of the backflow that is recovered from the water used in fracking operations. Concerning the number of facilities that discharge and monitor for molybdenum in the Commonwealth, Mr. Aunkst clarified to the Board that the Department doesn't typically sample for molybdenum to characterize effluent from waste treatment operations; however, if it did, he is confident the Department would find other facilities that also discharge molybdenum in their effluent.

Patrick Henderson noted for the record that Senator White and Senator Madigan are supportive of the amendments introduced by Mr. Fox on behalf of Senator Musto. In particular, Mr. Henderson noted that Osram Sylvania, a commentator of the rulemaking, is concerned about the competitive disadvantage the statewide molybdenum standard may hold for the Commonwealth. Osram Sylvania currently employs 1,000 individuals and is located within Senator Madigan's district in Towanda, PA.

In the absence of an EPA-designated limit for molybdenum, Walter Heine inquired about the research the Department conducted to establish the molybdenum limit in the final rulemaking and the scientific justification for the limit. Deputy Secretary Myers responded by stating that EPA reviewed and approved the standard established by DEP, as well as the studies used by DEP to justify the limit. Rick Shertzer, Chief, Water Quality Standards Division, further expanded on Deputy Secretary Myers' response by stating that the U.S. EPA establishes recommended criteria and methodologies for states to consider when developing parameters, including those for which EPA has not established set criterion. When DEP Central Office staff received multiple requests from DEP regional staff for specific molybdenum effluent limitation criteria to incorporate into active permits, DEP Central Office staff analyzed the most current

information available concerning the health effects of molybdenum and, using EPA's methodology, initially set a concentration limit of 175 ug/L for molybdenum. After review of the Department's assessment, Langeloth Metallurgical Company, another commentator of the proposed rulemaking, suggested DEP use another reference data set in determining its limitation criterion for molybdenum. After consultation with EPA toxicologists, DEP included the additional data set recommended by Langeloth and modified the criterion limitation for molybdenum to 210 ug/L, as included in the final rulemaking. In conclusion, Mr. Shertzer noted that EPA has not recommended ambient surface water quality criteria for molybdenum, but it has placed molybdenum on their candidate list for drinking water so that it can review and monitor the human health effects from ingesting molybdenum through drinking water. The 210 ug/L criterion limitation in the Department's final rulemaking includes human health protection based upon the ingestion of molybdenum in drinking water and consumption of fish tissue.

Gayle Conner commented that while it is prudent to weigh industry concerns in conjunction with concerns for human health, she believes human health considerations should outweigh industry concerns in this particular case, given the results of the Department's research. She further commented that the lack of regulation of molybdenum by other states does not present compelling justification for the Commonwealth to forgo regulations.

Jolene Chinchilli also commented that water quality criteria are intended to be protective and should not be established "after the fact" to resolve a problem. She further commented that water quality criteria should serve as an impetus to individuals to research pre-treatment technologies and pollution prevention techniques as a means to reduce or eliminate discharge. She further commented that she believes it is important to have a state-wide standard for molybdenum so industry has a consistent standard to attain that is protective in nature. Mr. Fox responded by clarifying to the Board that he is not recommending that molybdenum not be regulated. He is merely questioning the current standard, given the lack of a set limit by EPA, as well as the possible lack of treatment technology available to treat molybdenum. In response, Ms. Chinchilli stated that the intent behind the Clean Water Act was to force the development of treatment technology and to provide a market for its use. Mr. Aunkst commented that a number of studies have been completed on various technologies available that can treat molybdenum and that at least 6 or 7 peer-reviewed papers have been published that document the success of these technologies in treating molybdenum. In conclusion, Mr. Henderson stated that while he agrees water quality standards can be effective in forcing technology, he remains concerned about Pennsylvania moving forward with regulations without guidance or direction from EPA. For the record, Acting Chairperson Hanger asked Department staff to identify other states that have adopted molybdenum standards. In response, Mr. Shertzer stated that the following states, to date, have adopted molybdenum standards: Indiana, New Mexico, Ohio, Alaska, North Carolina and Colorado. Mr. Shertzer also clarified to the Board that the 210 ug/L water quality criterion for molybdenum, as included in the final rulemaking, is not a limitation that is applied to a specific facility's effluent or included in a facility's permit. It is a number to be met in-stream.

**Mr. Fox moved to adopt Amendment #1 to the final rulemaking. Mr. Henderson seconded the motion. The motion was defeated by a majority of the Board members, including the following: Kenneth Graham, Danielle Spila, William Hall, Mr. Manfredi, Mr. Arway, Dr. Walter Meshaka, Joanne Denworth, Ms. Chinchilli, Ms. Conner, Cynthia Carrow, Paul Opiyo, Michael Pechart and Dr. James Logue. The following Board members voted to adopt the amendment: Mr. Henderson, Jonathan Lutz, Mr. Heine, and Mr. Fox.**

Following the Board's vote on Amendment #1, Mr. Fox introduced Amendment #2 (see Attachment 1). In response to the introduction of the amendment, Deputy Secretary Myers stated that the Department did not support the amendment, as it is not conducive to sound public policy. She elaborated by stating that the Department is opposed to any measures that would shift the responsibility of treating wastewater from the discharger to a drinking water source. She further commented that only in limited situations – such as those that require treatment of secondary contaminants – has the Department relied upon the drinking water system to ensure a potable water supply.

Mr. Arway also noted his concern as the amendment would serve to add molybdenum as a water quality criterion in section 96.3(d), which currently only includes parameters associated with the treatment of conventional pollutants. He further noted that section 96.3(d) was not designed to address toxic substances in potable water and commented that he believes the Department's duty is to protect drinking water not just at the point of intake, but for future drinking water uses downstream of any discharges.

Mr. Manfredi concurred with Mr. Arway's statements on the amendment by questioning the logic of shifting the responsibility of treating molybdenum from the effluent discharger to a municipal water authority or private water company, who then could pass the cost of treatment onto the consumer. Mr. Fox countered Mr. Manfredi's assertion by stating that the 210 ug/L molybdenum limitation in the final rulemaking is an in-stream measurement criterion that can be measured anywhere in the stream, not just at the point of discharge.

To dispel any confusion, Deputy Secretary Myers explained that while Mr. Fox was correct in stating that the final rulemaking calls for a 210 ug/L instream limitation for molybdenum, she emphasized that the discharger still has to meet certain limits at the point of discharge to ensure the molybdenum concentration limit in the stream is no more than 210 ug/L. She further commented that some may have the benefit of discharging into a stream with high dilution, which may impact the overall discharge limitation they must meet.

Ms. Chinchilli inquired if the criterion for molybdenum was based on human health or aquatic life considerations. Deputy Secretary Myers confirmed that the criterion was based on human health considerations, with specific reference to the ingestion of molybdenum contained in drinking water and in fish tissue.

In response to Ms. Chinchilli's question, Mr. Henderson asked the Department if it had ever released a fish advisory for molybdenum. Mr. Aunkst replied that the Department had not issued such an advisory.

**Mr. Fox moved to adopt Amendment #2 to the final rulemaking. Mr. Henderson seconded the motion. The motion was defeated by a vote of a majority of the Board members, including: Kenneth Graham, Danielle Spila, William Hall, Mr. Manfredi, Mr. Arway, Dr. Walter Meshaka, Joanne Denworth, Ms. Chinchilli, Ms. Conner, Cynthia Carrow, Paul Opiyo, Michael Pechart, Dr. James Logue and Walter Heine. The following Board members voted to adopt the amendment: Mr. Henderson, Jonathan Lutz, and Mr. Fox.**

Mr. Fox introduced Amendment #3 (see Attachment 1), which would amend section 93.8c to regulate molybdenum at the point of all existing or planned surface potable water supply withdrawals. In response to the amendment, Deputy Secretary Myers stated that the Department opposed the amendment as it would, like amendment #2, shift responsibility of treating molybdenum from the discharger to a public

water supplier. She further elaborated that it is the Department's firm contention that the discharger should be responsible for the elimination or treatment of molybdenum before it enters a stream.

Walter Meshaka expressed his opposition to the amendment, as he believes it will create unnecessary problems and implications to the food chain. In response, Mr. Fox noted that the Department has not issued a fish advisory for molybdenum. While Mr. Meshaka acknowledged the lack of an issued fish advisory, he emphasized that the Board's responsibility should be to anticipate and plan for problems instead of reacting to them. As such, he felt it is the responsibility of the regulated community to prevent or minimize discharges before they are released to a stream.

In conclusion, Mr. Henderson noted that the amendments introduced by Mr. Fox are a reasonable middle-ground to address the concern over inclusion of molybdenum criterion in the rulemaking and noted that he believes most want to see the Triennial Review rulemaking move forward. He also noted that as part of the regulatory review process, the Standing Committees will also vote to accept or reject the rulemaking, but they must do so by only voting on the rulemaking in its entirety, not on a specific provision within the rulemaking. As a compromise and to assure the finalization of the rulemaking, Mr. Henderson urged the Board to vote for Amendment #3.

Mr. Manfredi reiterated his concerns to the Board concerning the amendments introduced by Mr. Fox and particularly noted his concerns with amendments #2 and #3 as they would serve to shift the responsibility and expense of treating molybdenum to public water suppliers. In response, Mr. Heine inquired if the molybdenum criterion in the final rulemaking would need to be addressed by municipal sewage treatment facilities. Mr. Aunkst replied that such facilities may only be impacted if they accept industrial waste for treatment.

Mr. Henderson inquired if the Department has a drinking water standard for molybdenum. Deputy Secretary Myers replied that it does not. Mr. Henderson then countered why the Department is not establishing a drinking water standard for molybdenum, if molybdenum is thought to be dangerous and toxic. Deputy Secretary Myers responded that in recognition of the adverse health effects molybdenum causes to humans, the U.S. EPA has added molybdenum to its Contaminant Candidate List for possible future development of a drinking water standard for molybdenum. In response, Mr. Henderson noted the dichotomy of the Department's approach whereas it is moving forward with criterion for molybdenum relative to the protection of surface water, but is waiting for molybdenum criterion to be developed by EPA for the protection of drinking water. Mr. Aunkst responded by clarifying to the Board that two different and succinct federal statutes were being discussed in the conversation. The federal Clean Water Act governs the development of water quality criterion to protect the designated uses within surface waters, while the Safe Drinking Water Act establishes maximum contaminant levels for the safe ingestion of drinking water. Mr. Aunkst emphasized that each are separate Acts and contain separate and different methodologies. For example, you can have an MCL and a water quality standard for the same parameter that are vastly different because they are designed to protect different uses and different pathways of exposure. In conclusion, Deputy Secretary Myers further noted the distinction between federal and state authority by noting that the U.S. EPA, by statute, is the entity primarily responsible for the establishment of standards for major industrial categories and discharges; whereas, the water quality based standards, which are being discussed by the Board relative to the molybdenum criterion, are for the states to establish. Further, whereas the EPA provides guidance to states on the proper development of water quality based standards, it is up to the individual states to address issues of concern respective to their jurisdiction. In response, Mr. Henderson noted that while Pennsylvania has the flexibility through the State Drinking Water Act to establish standards for drinking water, regardless of what is established by

EPA, the Department has not exercised such authority to develop a drinking water standard for molybdenum.

**Mr. Fox moved to adopt Amendment #3 to the final rulemaking. Mr. Henderson seconded the motion. The motion was defeated by a vote of a majority of the Board members, including: Kenneth Graham, Danielle Spila, William Hall, Mr. Manfredi, Mr. Arway, Dr. Meshaka, Joanne Denworth, Ms. Chinchilli, Ms. Conner, Cynthia Carrow, Paul Opiyo, Michael Pechart, Dr. James Logue and Mr. Heine. The following Board members voted to adopt Amendment #3: Mr. Henderson, Jonathan Lutz, and Mr. Fox.**

After the Board voted in opposition to Amendment #3, Mr. Arway inquired about the practical implications to the Department of moving the toxics criteria from Chapter 16, which is a Statement of Policy, into the Chapter 93 regulations. Michelle Moses responded by explaining that if the criteria are included in Chapter 93, the Environmental Hearing Board gives deference to the agency for how the Department developed the criteria; however, if the criteria are contained in Chapter 16, the criteria must be defended on a site specific and case-by-case basis. Deputy Secretary Myers further expanded upon Ms. Moses' reply by stating that when toxics criteria are contained in Chapter 16, each permit reviewer has to decide, based on their professional judgment, whether to include any of the Chapter 16 criteria in the permit. If the criteria are included, and the Department's decision is challenged, the Department must defend the inclusion of the criteria based on the science that substantiated the criteria, as well as site specific characteristics. However, once a criterion is incorporated by regulation, and the body of science supports the establishment of the criterion, the standard becomes a binding norm that is used consistently statewide. In reply, Mr. Arway asked if the Environmental Hearing Board had ever questioned the Department on the establishment of a toxic criterion within Chapter 16. Ms. Moses replied that it had; however, the Department has been successful in defending the standard in a majority of cases.

Before the Board voted on the motion concerning the Triennial Review final rulemaking, Mr. Fox thanked the Board for its consideration of the amendments he presented and mentioned that the amendments generated a good discussion and substantial input. However, given his outstanding reservations concerning the inclusion of Molybdenum criterion in the rulemaking, he would be voting against the final rulemaking.

**Mr. Manfredi moved to adopt the final rulemaking. Ms. Denworth seconded the motion. The motion was approved by a majority of Board members including: Kenneth Graham, Danielle Spila, William Hall, Mr. Manfredi, Lee Ann Murray, Mr. Arway, Dr. Meshaka, Joanne Denworth, Ms. Chinchilli, Ms. Conner, Cynthia Carrow, Paul Opiyo, Michael Pechart, Dr. James Logue and Mr. Heine. The following individuals voted in opposition to the motion: Jonathan Lutz, Mr. Henderson, and Mr. Fox.**

**FINAL RULEMAKING – HAZARDOUS WASTE AMENDMENTS (25 Pa Code, Chapters 260a-266a, 266b, 267a, 269a and 270a)**

Ken Reisinger, Director, Bureau of Waste Management, provided the Board with an overview of the final rulemaking. Rick Shipman, Manager, Hazardous Waste Management Division, and Kurt Klappkowski, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Fox noted the appreciation of Senator Musto and Senator White regarding the Department's amendments to the final rulemaking, which included retention of the financial test and corporate guarantee for closure.

**Ms. Denworth moved to adopt the final rulemaking. Michael Pechart seconded the motion, which was approved unanimously by the Board.**

**FINAL RULEMAKING – DIESEL VEHICLE IDLING (25 Pa Code, Chapters 121 and 126)**

Dean Van Orden, Assistant Director, Bureau of Air Quality, provided an overview of the final rulemaking. Arleen Shulman, Manager, Air Resource Management Division, and Kristen Furlan, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Henderson inquired if the Department needs to further clarify the standards in Section 126.612 of the final rulemaking, where the Department specifies when the idling of a bus or school bus is permissible. He further elaborated by stating that for example, in Section 126.612 (a)(2), the regulations specify that a bus may idle for a total of 15 minutes to provide heating or air conditioning when nondriver passengers are onboard, but school buses occupied by students with special needs may idle for any amount of time necessary. For that specific provision, Mr. Henderson inquired if the Department needed to clarify that the idling exemptions applicable to school buses carrying special needs students are not applicable to school buses that are not carrying special needs students. Ms. Furlan responded that she didn't believe further clarification was warranted in the rulemaking, as Section 126.611 of the final rulemaking provided the overall prohibition of idling in excess of 5 minutes, and that Section 126.612 only provided limited exemptions from the overall rule. In reply, Mr. Henderson asked the Department to clarify if school buses at an athletic event would be subject to idling prohibitions in the rulemaking. Ms. Furlan responded that they would be subject to the idling limitations provided in Section 126.611 of the rulemaking.

In conclusion Mr. Henderson provided a statement by Senator White concerning the Senator's support of the regulation. Given the approval by the State Senate of similar idling prohibitions in legislation, Senator White does not want her support of the final rulemaking to be construed or portrayed as indication that she is not supportive of the need for state legislation on this issue, particularly provisions that would preempt local municipalities from enacting their own ordinances on idling, which the final rulemaking cannot include. Mr. Henderson spoke of the benefits that could be realized, as confirmed by the trucking industry, of one consistent state-wide idling rule, instead of a multitude of individual ordinances, and stated that Senator White may address this specific issue through legislation.

In conclusion, Acting Chairman Hanger personally congratulated the Clean Air Board of Central Pennsylvania for initiating the rulemaking through a petition to the EQB and thanked the Clean Air Board for their exemplary involvement in protecting the public health of all citizens of the Commonwealth.

**William Hall moved to adopt the final rulemaking. Paul Opiyo seconded the motion, which was approved by a majority of Board members. Jonathan Lutz voted in opposition to the motion.**

**FINAL RULEMAKING (with notice of Proposed Rulemaking Omitted) – CLEAN AIR INTERSTATE RULE (CAIR) – REPEAL (25 Pa Code, Chapters 121, 129 and 145)**

Dean Van Orden, Assistant Director, Bureau of Air Quality, provided an overview of the final rulemaking. Arleen Shulman, Manager, Air Resource Management Division, and Kristen Furlan, Assistant Counsel, assisted with the presentation.

At the conclusion of the Department's presentation, Mr. Fox asked if there were any concerns that the Department may be moving too quickly to repeal the CAIR rulemaking, given the potential for parties to challenge the decision of the U.S. Court of Appeals for the District of Columbia Circuit to vacate the CAIR rulemaking. Mr. Mather emphasized that in response to the federal court's decision to vacate CAIR, the Department is obligated to quickly reinstate its NOx Budget Trading Program, which was scheduled to terminate at the end of 2008. He further elaborated that the necessity of moving so quickly is due in part to the lack of developments at the federal level on CAIR, as well as the need by the Department and industry to be prepared to implement the NOx Budget Trading Program in January 2009. He stressed that the Department is closely tracking actions at the federal level to address CAIR, including potential Congressional action to codify the CAIR program in whole or in part; however, once the mandate from the CAIR decision is issued, the Department will be responsible for having the NOx Budget Trading Program in place. Mr. Mather further noted that if developments evolve on CAIR later this year, in particular, if the federal CAIR program is reinstated, the Department may have to revisit the CAIR-Repeal rulemaking with the EQB.

Mr. Fox inquired about the impact the CAIR vacatur would have on two proposed EQB regulations, namely NOx Emission Standards for Cement Kilns and NOx Emission Standards for Glass Melting Furnaces, both of which reference CAIR allowances. Mr. Van Orden replied that the public comment periods for both rulemakings have ended and the Department is working on revisions to the regulations, including substituting all CAIR references in the rulemakings with provisions for NOx trading allowances.

Mr. Henderson inquired, in light of the CAIR vacatur decision, if the repeal of the CAIR rulemaking was necessary by the Commonwealth as a matter of law or if the intent of the repeal is to reinstate the NOx trading allowances. Mr. Mather replied that the CAIR repeal rulemaking is more than a simple housekeeping measure, as we need to remove the CAIR provisions from the PA Code to dispel any confusion by industry. He also noted that it was imperative to move forward with the CAIR repeal as it would enable the Department to reinsert provisions of the NOx Budget Trading Program. Under that program, the Department issued allowances to the regulated community that were to be effective until 2013. As the Department transitioned from the NOx Allowance Program to the CAIR program, those NOx allowances were to terminate at the end of 2008. To ensure the NOx allowances are reinstated and valid after 2008, a repeal of the CAIR rulemaking is necessary.

Mr. Henderson, on behalf of Senator White, expressed the Senator's disappointment that EPA has chosen not to or has not made the decision to appeal the federal court's decision on CAIR. He suggested that DEP take a leadership position in supporting the federal CAIR rule or at a minimum encourage EPA to appeal the federal court's decision. In response, Acting Chairman Hanger stated that the decision by the federal court is highly unfortunate as it will serve to further delay progress in improving public health protection. He also mentioned that the Department has been closely monitoring when the federal court will issue its mandate of the CAIR vacatur in order to consider its most immediate options. Ms. Furlan explained to the Board that the issuance of a mandate by the court is the court's final action on the vacatur. She mentioned that the mandate to date had not been issued, and will not be issued until 7 days after the expiration of the time the losing party has to petition the court for rehearing. EPA filed a request to have the time period extended for which they may petition the court for rehearing. The deadline for EPA to request such a rehearing is September 24, 2008. If EPA files a petition for rehearing,



issuance of the mandate will be suspended until the court rules upon the petition. Ms. Furlan noted that in her estimation the court will move quickly if such a petition is filed by EPA. Finally, relating to appellate options, Ms. Furlan noted that if the court denies the petition for rehearing, EPA may request the Supreme Court to hear the case. In conclusion, Acting Chairperson Hanger noted that he shared Mr. Henderson's disappointment about the vacatur and noted that as the legal implications of the vacatur become more clear and final, the Department will solidify any potential role it can play in advocating a reasonable solution for the CAIR vacatur. Mr. Henderson replied that notwithstanding any legal obligations the Department may have, he would be satisfied to see the Department issue a strongly worded press release to publicly advocate for EPA to appeal the vacatur decision or to call upon Congress to take action to resolve the situation.

**Danielle Spila moved to adopt the final rulemaking. Ms. Conner seconded the motion, which was unanimously approved by the Board.**

### **OTHER BUSINESS:**

Under Other Business, Acting Chairperson Hanger updated the Board on several regulations. He noted that the following final rulemakings were published in the *Pennsylvania Bulletin* on August 9, 2008: Coal Mines (25 Pa Code, Chapter 127), Mine Opening Blasting (25 Pa Code, Chapters 77, 87-89, and 210), and Stream Redesignations (Big Brook, et al) (25 Pa Code, Chapter 93). He also mentioned that the Coal Mine Reclamation Fees and Reclamation of Bond Forfeited Sites final rulemaking (25 Pa Code, Chapter 86) was published as final in the *Pennsylvania Bulletin* on August 30, 2008. He also reminded the Board that the Bluff Recession and Setback proposed rulemaking was published in the August 23, 2008, edition of the *Pennsylvania Bulletin* and that the public comment period for the rulemaking would run to October 22, 2008, with one public hearing in Erie scheduled for September 23, 2008, at 10:00 a.m. at the Tom Ridge Environmental Center in Erie.

In addition to an update on regulations, Acting Chairperson Hanger noted to the Board that it was copied on correspondence from the Department to Senators Mary Jo White and Raphael Musto concerning the Senators' concerns over the Department's implementation of the mercury reduction rulemaking.

### **ADJOURN:**

Acting Chairman Hanger announced that the next meeting of the EQB would occur on Tuesday, December 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, Acting Chairman Hanger asked for a motion to adjourn the meeting. The motion to adjourn was made by Mr. Pechart, and seconded by Mr. Arway. The meeting was adjourned at 10:50 a.m.

**ATTACHMENT 1**

**Amendments to Triennial Review of Water Quality Standards**

**25 Pa Code, Chapter 93**

**Amendment #1**

Amend section 93.8c. Human health and aquatic life criteria for toxic substances, by deleting the following in Table 5.

**TABLE 5**

**WATER QUALITY CRITERIA FOR TOXIC SUBSTANCES**

[ <u><b>MOLYBDENUM</b></u>	<u><b>07439987</b></u>	<u><b>NA</b></u>	<u><b>NA</b></u>	<u><b>210</b></u>	<u><b>H</b></u> ]
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**Amendment #2**

Amend section 96.3. Water quality protection requirements.

- (a) Existing and designated surface water uses shall be protected.
- (b) Antidegradation requirements in § § 93.4a – 93.4d and 105.1, 105.15, 105.17, 105.18a, 105.20a and 105.451 shall apply to surface waters.
- (c) To protect existing and designated surface water uses, the water quality criteria described in Chapter 93 (relating to water quality standards), including the criteria in § § 93.7 and 93.8a(b) (relating to specific water quality criteria; and toxic substances) shall be achieved in all surface waters at least 99% of the time, unless otherwise specified in this title. The general water quality criteria in § 93.6 (relating to general water quality criteria) shall be achieved in surface waters at all times at design conditions.
- (d) As an exception to subsection (c), the water quality criteria for total dissolved solid, nitrite-nitrate nitrogen, phenolics, chloride, sulfate, **[and] fluoride and molybdenum** established for the protection of potable water supply shall be met at least 99% of the time at the point of all existing or planned surface potable water supply withdrawals unless otherwise specified in this title.

**Amendment #3**

Amend section 93.8c. Human health and aquatic life criteria for toxic substances.

By adding:

**(c) In the case of the water quality criteria established for molybdenum, the criteria shall be met at least 99% of the time at the point of all existing or planned surface potable water supply withdrawals and not at the point of discharge.**