

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
December 18, 2007

VOTING MEMBERS OR ALTERNATES PRESENT

Kathleen A. McGinty, Chairperson, Secretary, Department of Environmental Protection
Eric Madden, 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
Walter Heine, Citizens Advisory Council
David Strong, 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

Chairperson McGinty called the meeting to order at 9:04 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 October 16, 2007, EQB meeting minutes.

With no corrections or additions, Chairperson McGinty called for a motion to adopt the minutes of the October 16, 2007, EQB meeting.

**Bill Capouillez moved to adopt the October 16, 2007, EQB meeting minutes.
Richard Manfredi seconded the motion, which was unanimously approved by the Board.**

FINAL RULEMAKING – RADIOLOGICAL HEALTH AMENDMENTS:

Dave Allard, Director, Bureau of Radiation Protection, provided a presentation to the Board on the Department's Radiological Health Amendments final rulemaking. Louis Ray Urcioulo, Chief, Division of Radiation Control, Michael Pyles, Chief, Radon Division, and Richard Morrison, Assistant Counsel, assisted with the presentation.

Board members did not pose any questions to the Department following Mr. Allard's presentation.

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

PROPOSED RULEMAKING – RADIOLOGICAL HEALTH AND RADON CERTIFICATION FEES:

Dave Allard, Director, Bureau of Radiation Protection, provided a presentation to the Board on the Department's proposed Radiological Health and Radon Certification Fees rulemaking. Ray Urcioulo, Chief, Division of Radiation Control, Michael Pyles, Chief, Radon Division, and Richard Morrison, Assistant Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Manfredi inquired whether, with respect to section 218.11(h)(1) of the proposed rulemaking which requires the Department to review the adequacy of the fees at least once every three years, if the Department had proposed fees at a level that will cover future three-year costs and therefore will not need to be immediately readjusted in three years to avoid "falling behind the curve". Mr. Allard replied that with respect to the fee increases in the proposed rulemaking, the Department completed a detailed workload analysis and determined the associated costs involved in administering the program over the next four years. Those costs were factored into the proposed fees schedule so that both current and projected four-year program costs will be covered by the associated fees.

In response, Mr. Manfredi inquired if the proposed fee schedules would still be sufficient to cover program costs in the likelihood EPA would cut grant funding to the Department. Mr. Allard clarified that EPA provides grant funding to the Department on a 50-50 match ratio to predominantly support outreach activities associated with the Department's Radon Program. If EPA would cut or eliminate grant funding to the Department, Mr. Allard noted that the Department would have to readjust its budget request to the General Assembly in order to secure additional funding to meet program costs. If budget readjustments were not approved, the Department would have to absorb some costs and forgo the radon protection outreach activities supported by the grant funding. Mr. Allard emphasized that through the proposed fee package, the Department is attempting to secure adequate funding to support the regulatory activities of the radon program, including the certification of radon testers, radon mitigators, and radon laboratories.

Mr. Manfredi in response asked if the Radon Certification Act provided the Department with any authority with respect to funding, given the apparent unpredictability of both Federal and State allocations. Mr. Allard replied that the Act does not provide the Department with authority to address any disparities in funding that may result from cuts from EPA or the General Assembly, but he emphasized that the Radon Certification Act only provides authority to the Department for the certification of radon testers, mitigators and laboratories and does not address outreach activities relative to radon awareness, which the grant from EPA specifically covers. He also emphasized that over the past 9 years, grant funding from EPA has remained consistent.

Given the concerns of the Board over a dedicated funding mechanism for radon certification and outreach activities, Chairperson McGinty asked the program to reexamine the Act to verify what provisions may need to be in place to enable the Department to address any shortcomings in funding. Mr. Allard replied that he and his staff would be happy to conduct that analysis and report its conclusions to the Board.

Patrick Henderson inquired about the Department's expressed interest in expediting the rulemaking, with an effective target date of January 1, 2009, or before. Specifically, he asked when the Board should expect to receive the final rulemaking for consideration. Mr. Allard acknowledged that the target implementation date is ambitious, but that he is hoping to present the final rulemaking to the EQB by the end of summer 2008 or early fall 2008. Mr. Henderson further inquired when the final rulemaking would need to be published in the *Pennsylvania Bulletin* to give proper notice to the regulated community of the impending January 1, 2009, effective date. Richard Morrison replied that pending approval of the final rulemaking by the EQB, the Department would work expeditiously to finalize the regulation and have it published in the *Pennsylvania Bulletin* as soon as possible. Richard Mather also noted to the Board that 2008 is a legislative sine die year under the regulatory review calendar; therefore, the Department would need to deliver the final-form rulemaking to IRRC and the Standing Legislative Committees before early-to-mid Fall in order to avoid sine die implications. If the Department could make such delivery in that timeframe, Mr. Mather noted that it would be feasible to have the approved final regulation published in the *Pennsylvania Bulletin* and be effective by January 1, 2009. In conclusion, Mr. Mather also acknowledged that the January 1, 2009, target implementation date of the regulation is ambitious, but noted that it is do-able.

David Strong moved to adopt the proposed rulemaking, with a 30-day public comment period. Mr. Manfredi seconded the motion. The motion was approved, with Joseph Deklinski voting against the motion.

FINAL RULEMAKING – CLEAN AIR INTERSTATE RULE (CAIR):

Joyce Epps, Director, Bureau of Air Quality, presented an overview of the final rulemaking to the Board. Kristen Campfield, Assistant Counsel, and James Stoner, Chief, Stationary Sources Section, assisted with the presentation.

Following Ms. Epps' presentation, Mr. Manfredi asked how many waste coal facilities in Pennsylvania are exempt from the Clean Air Act Title IV requirements. Ms. Epps responded that there are 16 facilities. Mr. Manfredi further asked if these 16 facilities will obtain extra NO_x allowances under the final rulemaking in order to purchase CAIR SO₂ allowances. Ms. Epps responded in the affirmative and further added that EPA is supportive of the approach the Commonwealth has provided in the final CAIR rulemaking for the allocation of supplemental NO_x allowances to waste coal units.

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

ADJOURN:

Chairperson McGinty announced that the next meeting of the EQB will occur on Tuesday, January 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, Walter Heine moved to adjourn the meeting. The motion was seconded by John Arway. The meeting was adjourned at 10:09 a.m.