

#2954

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

\* \* \* \* \*

IN RE: TRIENNIAL REVIEW OF WATER QUALITY STANDARDS

PUBLIC HEARING

\* \* \* \* \*

BEFORE: JAMIE SERRA, DEP, Member

HEARING: Wednesday, August 8, 2012  
4:05 p.m.

LOCATION: Rachel Carson State Office Building  
400 Market Street  
Conference Room 105  
Harrisburg, PA 17105

WITNESSES: Josie Gaskey, Robert Dorfler

Reporter: Jennifer T. Alves

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IN ATTENDANCE

- 1
- 2
- 3 Thomas Barron, DEP
- 4 Marge Hughes, DEP, Citizen's Advisory
- 5 Sean Gimbel, DEP, Policy
- 6 Michele Tate, DEP
- 7 Rod Kime, DEP
- 8 Dave Spotts, PFBC
- 9 Lee McDonnell, DEP
- 10 Kelly Heffner, DEP
- 11 Duke Adams, DEP
- 12 Michelle Elliott, IRRC
- 13 Denise Hakowski, EPA.R3
- 14 Stephen Frank, EPGA
- 15 Joshua Graybeal, DEP, Intern

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OPENING REMARKS

By Mr. Serra

4 - 6

TESTIMONY

By Ms. Gaskey

6 - 11

By Mr. Dorfler

11 - 16

## P R O C E E D I N G S

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2 -----  
3 MR. SERRA:

4 Good afternoon, everyone. I'd like to  
5 welcome you to the Environmental Quality Board's  
6 public hearing on the proposed Triennial Review of  
7 Water Quality Standards rulemaking. My name is Jamie  
8 Serra. I am a member of the Environmental Quality  
9 Board representing Representative Camille Bud George  
10 and I call this meeting to order at 4:05 p.m.

11 The purpose of this hearing is to  
12 formally accept testimony on the Triennial Review of  
13 Water Quality Standards proposed rulemaking, which was  
14 adopted by the EQB on April 17th of this year.  
15 Section 303(c)(1) of the Federal Clean Water Act  
16 requires that states periodically, but at least once  
17 every three years, review and revise as necessary  
18 their water quality standards. This proposed  
19 rulemaking constitutes Pennsylvania's current  
20 Triennial Review of its water quality standards.

21 In order to give everyone an equal  
22 opportunity to comment on this proposal, I would like  
23 to establish the following the ground rules. First, I  
24 will call upon witnesses who have pre-registered to  
25 testify at the hearing. And after I hear from these

1 witnesses, I will provide other parties the  
2 opportunity to testify as time allows. Testimony will  
3 be limited to ten minutes for each witness.  
4 Organizations are requested to designate one witness  
5 to present testimony on its behalf.

6           Each witness is asked to submit three  
7 written copies of his or her testimony to aid in  
8 transcribing the hearing. Please hand me those prior  
9 to giving your testimony. Please state your name,  
10 address, and affiliation for the record prior to  
11 presenting your testimony. The EQB will appreciate  
12 your help by spelling names and terms that may not be  
13 generally familiar, so that the transcript can be as  
14 accurate as possible.

15           And lastly, because the purpose of this  
16 hearing is to receive comments on the proposal, EQB or  
17 DEP staff cannot address questions about the  
18 rulemaking during the duration of the hearing, but may  
19 address any questions after the conclusion of the  
20 hearing.

21           In addition or in place of oral testimony  
22 presented at today's hearing, interested persons may  
23 also submit written comments on this proposal. And  
24 all comments must be received by the EQB on or before  
25 August 21st, 2012. Comments should be addressed to

1 the Environmental Quality Board, P.O. Box 8477,  
2 Harrisburg, Pennsylvania, 17105. Comments may also be  
3 e-mailed to RegComments@pa.gov.

4 All comments received at this hearing, as  
5 well as written comments received by August 21st,  
6 2012, will be considered by the EQB and will be  
7 included in a comment/response document, which will be  
8 prepared by the Department and reviewed by the EQB  
9 prior to the Board taking its final action on this  
10 regulation. Anyone interested in receiving a copy of  
11 today's transcript hearing may contact the EQB for  
12 further information.

13 I would like to now call the first  
14 witness. I believe we have Josie Gaskey, the Director  
15 of Regulatory and Technical Affairs from the  
16 Pennsylvania Coal Alliance. Anywhere would be fine.

17 MS. GASKEY:

18 Good afternoon. My name is Josie Gaskey,  
19 G-A-S-K-E-Y. I'm the Director of Regulatory and  
20 Technical Affairs for the Pennsylvania Coal Alliance.  
21 We're located at 212 North Third Street in Harrisburg.

22 PCA represents bituminous coal operators  
23 whose total annual coal production accounts for almost  
24 80 percent of Pennsylvania's yearly output, and  
25 service supply companies whose businesses rely on a

1 thriving coal-based economy. Pennsylvania is the  
2 fourth largest coal producing state, and coal  
3 continues to be, and will continue to be, a major  
4 source of fuel and jobs --- more than 40,000 jobs  
5 across the Commonwealth.

6 PCA strongly opposes the inclusion of  
7 sulfates, chlorides and molybdenum in the proposed  
8 Triennial Review package for the following reasons.

9 Number one, the DEP has failed to  
10 document any pressing threat to aquatic life or human  
11 health that would justify the need for establishing  
12 statewide standards for these three constituents at  
13 this time. We have grave concerns about the lack of  
14 specific scientific evidence to justify the inclusion  
15 of the constituents, and the precedent such an action  
16 sets for the entire Triennial Review process.

17 The Department has conducted no  
18 correlated chemical sampling analysis, biological  
19 surveys and acute bioassays to determine if these  
20 constituents should be in this Triennial Review  
21 package. Additionally, a review of the DEP's  
22 Southwest regional website of chemical analysis data  
23 --- just the data alone provides no support of the  
24 need for statewide standards for chloride and sulfate.

25 In the July 7th Pennsylvania Bulletin

1 notice of the proposed rulemaking, the Department  
2 clearly states that it merely conducted a  
3 review/evaluation of the Iowa/Illinois standard. We  
4 believe extensive Pennsylvania-specific water quality  
5 sampling and analyses, biological surveys and acute  
6 bioassays work should have been completed. Given the  
7 differences in the background ionic makeup of ---  
8 between Iowa's and Pennsylvania's waters, the  
9 statewide impact to regulated industries --- not to  
10 mention the economic costs associated with  
11 implementation of this proposed rulemaking, which, by  
12 the way, are the same as that originally proposed by  
13 the TDS rulemaking.

14           While we acknowledge the amount of work  
15 that such a comprehensive scientific review entails,  
16 there can be no excuse for shortcuts in scientific  
17 approach and decision making.

18           Number two, it is inappropriate to drop  
19 the Iowa/Illinois work into Pennsylvania's water  
20 quality standards. PCA indicated in the TDS  
21 rulemaking, and states again, support for a  
22 hardness-based approach to determining chloride and  
23 sulfate limits, if they are needed.

24           However, the proposed Iowa/Illinois  
25 standard is being inappropriately utilized. It is not



1 appropriate to drop the Iowa work into Pennsylvania as  
2 is, due to the difference in the ionic makeup of our  
3 waters. While the natural ionic makeup of waters in  
4 Iowa and Illinois is sodium based, the natural ionic  
5 makeup of waters in Pennsylvania is calcium based.  
6 One cannot simply transfer studies that were done for  
7 Midwest sodium-based waters to Pennsylvania's  
8 calcium-based waters.

9                   This is reinforced by independent  
10 comments submitted by Dr. David Soucek, Ph.D., from  
11 the Illinois Natural History Survey, who was  
12 contracted to conduct the lab tested toxicity testing  
13 on the Iowa/Illinois work.

14                   Dr. Soucek has submitted public comments  
15 on record regarding Pennsylvania's proposed  
16 rulemaking, expressing concerns that if the ionic  
17 composition used to develop the Illinois sulfate  
18 standard is not reflective of the ionic composition of  
19 Pennsylvania's streams, which it is not, using the  
20 Iowa/Illinois standard as is in Pennsylvania would not  
21 be accurate.

22                   Number three; there is no national water  
23 quality criteria standard for sulfates. EPA's May  
24 15th letter to the Department with their initial input  
25 on the proposed Triennial Review indicated the EPA is

1 working on a national standard for sulfate. If indeed  
2 EPA is working on a standard --- and their website  
3 indicates no such action --- we question why the  
4 Department is taking unilateral action in setting such  
5 a standard, the result of which puts Pennsylvania  
6 industries at a competitive disadvantage.

7           Number four, there have been no new  
8 scientific studies which would justify imposing a  
9 water quality standard for molybdenum and the  
10 Department has offered no evidence that molybdenum is  
11 a problem in the Commonwealth waters.

12           As part of the rationale for proposing  
13 statewide water quality standards for molybdenum, the  
14 Department indicated a review of available stream  
15 sampling data maintained in its statewide stream  
16 sampling --- stream monitoring system.

17           However, a review of that data, which was  
18 obtained through a FOIA request, shows that the moly  
19 rarely exceeded the proposed statewide standards. And  
20 in the handful of instances where this did occur, it  
21 occurred almost exclusively in one location in the  
22 Commonwealth.

23           The Department also claims that this same  
24 data shows that historic and current coal mining  
25 activities are the source of a statewide moly problem.

1 This is completely inaccurate, as the data shows that  
2 moly was not present at levels anywhere near the  
3 proposed standards, and certainly not at levels that  
4 exceeded the proposed standards in areas where coal  
5 mining is or has historically been conducted.

6           Given the lack of federal requirements  
7 for moly and the absence of any evidence that moly is  
8 a human health or aquatic life challenge, there is no  
9 need for a statewide standard.

10           PCA will be submitting their complete set  
11 of written comments by August 21. Thank you for the  
12 opportunity.

13           MR. SERRA:

14           Thank you. Next person testifying is Bob  
15 Dorfler from Langeloth Metallurgical Company.

16           MR. DORFLER:

17           Thank you. Good afternoon, my name is  
18 Bob Dorfler. I am the manager of the Langeloth  
19 Metallurgical Company's, Langeloth, Washington County,  
20 Pennsylvania. We process molybdenum and we employ  
21 over 170 individuals. My testimony today will focus  
22 on LMC's opposition to the proposed adoption of a  
23 statewide human health and aquatic life standards for  
24 molybdenum.

25           Molybdenum is not a toxic substance.

1 First, let me give you a little background on moly.  
2 Molybdenum is not a toxic substance. Neither EPA nor  
3 any other state classifies molybdenum as a toxin.  
4 Instead, moly is recognized as an essential  
5 micro-nutrient necessary for the proper development of  
6 humans, plants and animals. It is present in milk,  
7 dried beans, peas, nuts, seeds, and a variety of  
8 vegetables and meats. For example, one cup of navy  
9 beans can contain up about a fifth of a milligram of  
10 molybdenum. I reference that in my text.

11 Moly is also not classified as a human  
12 carcinogen and the EPA has never seen the need to  
13 establish drinking water standards for molybdenum. In  
14 addition, recently published studies on the effects of  
15 molybdenum on aquatic life confirm that the chronic  
16 standard proposed by the Commonwealth of 1.9  
17 milligrams per liter is far, far too low. And in  
18 fact, there's --- and in fact, no statewide standard  
19 is needed based on available stream monitoring data  
20 collected by the Department.

21 There is no federal requirement that a  
22 statewide water quality standard for moly be  
23 developed, and there is no evidence that moly is  
24 present on a statewide basis in waters of the  
25 Commonwealth. The secretary of the Department has on

1 numerous occasions made the statement that  
2 Pennsylvania should not impose environmental  
3 regulatory standards which are not otherwise required  
4 by federal law or regulation unless there is a clear  
5 need to protect a unique Pennsylvania interest.

6           There are no federal water quality  
7 standards for molybdenum. Furthermore, there is no  
8 evidence that molybdenum in the waters of the  
9 Commonwealth is a statewide concern.

10           Indeed, the evidence purportedly relied  
11 upon by the Department to study that molybdenum is a  
12 statewide concern confirms just the opposite. What it  
13 does confirm is that molybdenum is rarely found in  
14 waters of the Commonwealth. And when detectable  
15 levels were found, they were present in only a handful  
16 of isolated locations.

17           A statewide human health water standard  
18 for moly cannot be justified by the Department,  
19 because there is no new evidence that it presents a  
20 risk of harm to humans. The proposed human health  
21 standard for moly of .210 milligrams per liter is not  
22 a new proposal. It was first proposed for adoption in  
23 2008 during the last Triennial Review.

24           However, that proposal was not codified,  
25 because after it was approved by the EQB, the

1 Independent Regulatory Review Commission issued an  
2 order --- and I have a direct quote from IRRC. But in  
3 essence what they say is that there's not sufficient  
4 scientific data to support the recommendation. And if  
5 the recommendation of .210 milligrams per liter were  
6 accepted, there is no technology to get moly levels  
7 down that low in the water.

8           Recent data confirms that there is also  
9 no need for a statewide moly aquatic life standard.  
10 The proposed statewide aquatic life water quality  
11 standards for moly were based upon a study done  
12 several years ago for the State of Nevada. Tetra  
13 Tech, Incorporated did this in, I think, 2008. Since  
14 the Tetra Tech study, new scientific data has been  
15 published and the Department has failed to recognize  
16 that data --- or at least did not consider it.

17           The principal author of the 2008 Nevada  
18 study, Henry Latimer, was recently asked to review  
19 this data and to advise LMC whether in light of this  
20 data, the proposed statewide aquatic water quality  
21 standards for moly were still justifiable.

22           In a recent report provided to LMC, which  
23 will be submitted to the EQB with LMC's formal written  
24 comments, Tetra Tech concluded, after reviewing both  
25 the new data on the aquatic life impacts of moly, and

1 the statewide water quality monitoring data gathered  
2 by the Department relating to the presence of moly in  
3 the waters of the Commonwealth states as follows. And  
4 this is a quote of Henry Latimer, the principal author  
5 of the Tetra Tech study.

6           Thus the data released by Pennsylvania  
7 shows that in general, samples analyzed for molybdenum  
8 are unlikely to contain detectable concentrations.  
9 Although ten percent of the samples did contain  
10 detectable concentrations of molybdenum, 95 percent of  
11 the samples containing elevated levels were associated  
12 with a single industrial facility, which, by the way,  
13 was not LMC.

14           Finally, all samples presented in the  
15 state monitoring data were well below the recalculated  
16 criterion presented in this report. And the vast  
17 majority of samples were orders of magnitude lower  
18 than the suggested chronic criterion, 30.8 milligrams  
19 per liter.

20           Given Tetra Tech's conclusions, which  
21 were provided to the Department earlier this year in a  
22 tentative format, the Department should withdraw its  
23 current proposal to establish statewide aquatic life  
24 moly standards and undertake a thorough and complete  
25 review both of Tetra Tech's more recent work and the

1 data which Tetra Tech reviewed and which the  
2 Department has yet to fully consider.

3           In conclusion, I urge you to reject the  
4 adoption of a statewide human health standard for moly  
5 in 2012, because it's the same exactly as when it was  
6 proposed in 2008. And it's based on questionable  
7 science. It was rejected by the Independent  
8 Regulatory Review Commission, and because the  
9 Department's own statewide stream monitoring data did  
10 not document the statewide presence of moly in the  
11 waters of the Commonwealth.

12           I further urge you to reject the adoption  
13 of statewide aquatic life standards for moly, because  
14 the proposal is based on a 2008 study, which is no  
15 longer current. And the principal author of which has  
16 said in light of more recent data does not justify the  
17 standards being proposed by the Department. Thank  
18 you.

19           MR. SERRA:

20           Thank you. Is there anybody else that is  
21 interested in testifying? No? With no other  
22 witnesses present, on behalf of the EQB, I hereby  
23 adjourn this meeting at 4:20 p.m. Thank you.

24                           \* \* \* \* \*

25                           HEARING CONCLUDED AT 4:20 P.M.



CERTIFICATE

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I hereby certify that the foregoing proceedings, hearing held before Jamie Serra, was reported by me on 08/08/2012 and that I Jennifer T. Alves read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

Jennifer T. Alves  
Court Reporter