

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, April 15, 2021

Virtual Meeting

I. CALL OF THE MEETING

The April 15, 2021 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:14 a.m.

Commissioners virtual: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 John J. Soroko, Esq.
 Murray Ufberg, Esq.
 Dennis A. Watson, Esq.

II. APPROVAL OF THE MARCH 18, 2021 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the March 18, 2021 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Commissioner Ufberg seconded, and the motion passed 5-0.

III. NEW BUSINESS

David Sumner, Executive Director, reported there were no public speakers at today's meeting. He also reported the Commission has embargoed mail which was emailed to each of the Commissioners. Mr. Sumner explained that embargoed mail is written comments that arrive within 48 hours of the start of the meeting. He said the embargoed mail was in regard to the regulation pertaining to No. 3226 Environmental Quality Board #7-548: Water Quality Standards; Class A Stream Redesignations.

A. ACTION ITEMS

1. No. 3226 Environmental Quality Board #7-548: Water Quality Standards; Class A Stream Redesignations

Scott Schalles, Regulatory Analyst, explained that this final-form rulemaking will amend the water quality designations of 41 streams or stream segments totaling 222 miles. He said the changes are a result of stream evaluations conducted by the Department of Environmental Protection (DEP) in response to data submitted from the Pennsylvania Fish and Boat Commission. Mr. Schalles reported the Commission received written comments from the Clean Air Council and the Pennsylvania Campaign for Clean Water as well as embargoed mail from the Theodore Roosevelt Conservation Partnership. He said all three groups expressed support

for the rulemaking and urged the Commission to approve it. Mr. Schalles added that both the House and Senate Committees deemed the regulation approved.

Laura Griffin, Regulatory Coordinator, Aneca Atkinson, Deputy Secretary for Water Programs, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, DEP, were present virtually to answer any questions.

Ms. Atkinson provided an overview of the final-form rulemaking. According to Ms. Atkinson, the 41 streams are located in Lehigh, Schuylkill, Lackawanna, Allegheny, and Clarion Counties plus the west branch of the Susquehanna River. Ms. Atkinson outlined the steps taken in making changes to a stream's designation. She also outlined the notification and public comment periods for proposed changes in designations.

Commissioner Watson wanted to know if there will be additional recommendations for redesignations at some point down the road. Ms. Atkinson said yes. She explained DEP consistently evaluates the water quality throughout the Commonwealth and if there are indicators that result in needed changes, DEP goes to the Environmental Quality Board in order to make changes to the regulations to reflect the water quality standards that they are seeing. Ms. Atkinson said that is in conjunction with regulations from the federal government or as a result of petitions from others who want DEP to evaluate certain stream segments for applicable water quality standards.

Commissioner Watson made a motion for approval. Chairman Bedwick seconded, and the motion passed 4-0, with Commissioner Soroko recusing.

2. No. 3245 Environmental Quality Board #7-545: Water Supply Replacement for Coal Surface Mining

Laura Campbell, Regulatory Analyst, explained the final-form rulemaking addressed inconsistencies between the Commonwealth's surface coal mining program and federal requirements relating to water supply replacement for surface coal mining operations. She further explained the rulemaking aligns the language regarding water supply replacement for surface mining with underground coal mining to the extent allowed by statute. Ms. Campbell pointed out no comments have been received on the final-form regulation and both the House and Senate Committees deemed the regulation approved.

John Stefanko, Deputy Secretary for Active and Abandoned Mine Operations, Chris Minott, Assistant Counsel, Bureau of Regulatory Counsel, William Allen, Director, Bureau of Mining Programs, DEP, were present virtually to answer any questions.

Chairman Bedwick had questions about the surety bond for the increased operating and maintenance costs. He stated that it is his understanding that the obligation to pay for increased operating and maintenance costs goes on in perpetuity. Chairman Bedwick said that in looking at the formulas for the surety bond it appeared to him that they covered a period that went to one year beyond the term of the permit and not through perpetuity. Mr. Stefanko explained DEP does calculate that to cover the cost of the permit, which is five years, but the bond amount is

evaluated every five years since the permit term is five years. He said that each renewal requires the recalculation of the bond amount. Chairman Bedwick asked about the situation where the operator of a mine can cover multi-permitted areas in one bond. He said it appears if the operator does not carry out their responsibilities on one of the multiple permitted areas in terms of operational cost and maintenance then the bond is forfeited. Chairman Bedwick asked if that is forfeited for all of the permitted areas. Mr. Stefanko responded yes and explained that the failure of an operator to provide for the costs is a violation which through a systematic process can lead to the forfeiture of the bond and the bond forfeiture results in the prohibition of a mine operator to continue to mine.

Chairman Bedwick made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

3. No. 3239 Pennsylvania Gaming Control Board #125-223: Table Game Rules of Play; Over/Under, DJ Wild Stud Poker, Face Up Pai Gow Poker

Michelle Elliott, Regulatory Analyst, told Commissioners that the regulation adds three more table games, Over/Under, DJ Wild Stud Poker, and Face Up Pai Grow Poker, to the complement available for play in the Commonwealth. She noted the Pennsylvania Gaming Control Board (PGCB) received a comment from Bally's following the close of the public comment period. According to Ms. Elliott, although the PGCB did not address Bally's comment in the preamble to the final-form regulation, it was the impetus for changes made by the PGCB to the final regulation. She reported that both the House and Senate Committees deemed the regulation approved.

Chad Zimmermann, Assistant Chief Counsel, PGCB, was present virtually to answer any questions.

Mr. Zimmerman explained the PGCB found the comment from Bally's to be relevant and the PGCB made a change to the game rules for Face Up Pai Grow Poker. He acknowledged the failure to include the Bally's comment in the preamble and expressed his willingness to make revisions to the preamble prior to sending the paperwork to the Attorney General's office for review and prior to it being published in the *Pennsylvania Bulletin*.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 3-0, with Commissioner Soroko and Commissioner Ufberg recusing.

4. No. 3246 Pennsylvania Gaming Control Board #125-225: Slot Machine Licenses; Accounting and Internal Controls; Compulsive and Problem Gambling Requirements; Casino Self-Exclusion; Table Game Equipment; Credit

Corinne Brandt, Regulatory Analyst, explained that this final-form rulemaking amends the PGCB's existing regulations to provide for casino and retail sports wagering self-exclusion. She said the regulation also provides an individual who self-excludes for a lifetime the ability to seek removal from the list under certain parameters established by the PGCB. Ms. Brandt

reported there were no comments received on the final-form regulation and both the House and Senate Committees deemed the regulation approved.

Mr. Zimmermann and Elizabeth Lanza, Director, Office of Compulsive and Problem Gambling, PGCB, were present virtually to answer any questions. He provided an overview of the regulation.

Chairman Bedwick made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 4-0, with Commissioner Ufberg recusing.

5. No. 3243 Milk Marketing Board #47-20: Transactions Between Dealers and Producers; Payment

Ms. Elliott explained that the regulation would require cooperatives to provide a line item on monthly statements to members disclosing the amount of over-order premium being paid to the members. She reported that both the House and Senate Committees deemed the regulation approved.

Robert Barley, Chairman, Milk Marketing Board, was present virtually to answer any questions.

Mr. Barley provided some background on the final-form rulemaking. He said the PGCB requires an over-order premium to be paid to Pennsylvania dairy farmers based on milk produced, processed and sold as a Class I fluid milk in Pennsylvania. According to Mr. Barley, the over-order premium was established in the early 1980s and came out of an emergency situation that has become part of the fabric of the way milk is paid for in Pennsylvania. He pointed out the Milk Marketing Board requires Pennsylvania milk dealers to provide a line item on their monthly statements.

Commissioner Watson wanted to know what the federal order is. Mr. Barley explained that the federal order sets the price for milk and the Milk Marketing Board cannot go below that. He said the over-order is in addition to that federal order and it is the requirement the dealers have in addition to the federal minimum order price. Commissioner Watson asked if this premium is only applicable to milk sold within Pennsylvania. Mr. Barley said it applies to milk produced, processed and sold within the Commonwealth of Pennsylvania.

Commissioner Watson made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

6. No. 3224 Pennsylvania Liquor Control Board #54-93: Proof of Recycling

Ms. Brandt told the Commissioners that section 491, paragraph 5 of the Liquor Code requires restaurant, hotel and club liquor licensees to break, within 24 hours, any package that contained liquors and has not been emptied unless the Pennsylvania Liquor Control Board (LCB) has determined the decanter to be decorative or the licensee participates in a municipal or voluntary recycling program. She said the purpose of the regulation is to establish what

constitutes proof in writing of a licensee's participation in a recycling program. Ms. Brandt stated that, specifically, the regulation establishes recordkeeping requirements for licensees that pay for municipal or private recycling services and those who voluntarily recycle by utilizing drop-off locations. She reported the Commission received one comment from a member of the Pennsylvania House of Representatives opposing the final-form rulemaking. Ms. Brandt said that both the House and Senate Committees deemed the regulation approved.

Norina Foster, Assistant Counsel, LCB, was present virtually to answer any questions.

Commissioner Ufberg asked if the requirements are different in terms of the detail required for maintenance of records for licensees who pay someone to pick up their recycling and those who voluntarily participate in a recycling program utilizing drop-off locations. Ms. Foster explained that the regulation provides if the licensee pays for a municipal or private entity to pick up its recycling, the licensee must retain a copy of the receipts, bills or invoices paid by the licensee to the municipal or private entity as proof in writing. She added all licensees would have to keep written proof that the type of material they are recycling is accepted by the county.

Chairman Bedwick expressed concern that the requirements for those who, he termed, "self-recycle" are substantially more than the requirements for curbside paid recycling.

Commissioner Ufberg made a motion for approval. Chairman Bedwick seconded, and the motion passed 4-1, with Chairman Bedwick dissenting.

7. No. 3223 State Board of Optometry #16A-5213: General Revisions

Ms. Campbell explained that the final-form regulation adds reporting, auditing, enforcement and course requirements for the continuing education provisions and adds requirements for reciprocal licenses, fees related to continuing education, and a definition of the term "contact lenses." She said no comments have been received on the final-form regulation and both the House and Senate Committees deemed the regulation approved.

Ariel O'Malley, Board Counsel, and Jacqueline Wolfgang, Acting Senior Regulatory Coordinator, Department of State, were present virtually to answer any questions.

Ms. O'Malley told Commissioners the regulation primarily focuses on the continuing education requirements for the State Board of Optometry. She said the State Board of Optometry wanted to make it clear that a licensee who fails to complete the continuing education requirement is not going to get a renewed license if they can't complete that education at the expiration of the renewal period.

Chairman Bedwick commented that he is voting for the regulation only because of the provision on contact lenses which he thinks is critical to get into place. He said if that provision was not in the regulation he would have opposed it. Chairman Bedwick explained that since he has been a member of the Commission he has consistently opposed how the licensing boards handle continuing education through the self-certification process in which they describe their inability if they discover through audit that the person has not in fact completed the education.

He argued the current process invites people to falsify their certifications. Chairman Bedwick said he is not singling out this particular board because most of the boards do the same thing.

Commissioner Ufberg said he shares Chairman Bedwick's concerns on how continuing education is done. Ms. O'Malley pointed out that when a licensee is certifying they have completed their education they are certifying that to the best of their knowledge, under penalty of law, that they are complying with the requirement.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

IV. OTHER BUSINESS

Approval of Vouchers

Chairman Bedwick made motions to approve vouchers and expenses for the period January 22, 2021 through March 18, 2021. Commissioner Watson seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, May 20, 2021, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 12:11 p.m.