

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, May 20, 2021

Virtual Meeting

**I. CALL OF THE MEETING**

The May 20, 2021 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:06 a.m.

Commissioners virtual:           George D. Bedwick, Chairman  
  John F. Mizner, Esq., Vice Chairman, joined 10:35  
  John J. Soroko, Esq.  
  Murray Ufberg, Esq.  
  Dennis A. Watson, Esq., joined 10:10

**II. APPROVAL OF THE APRIL 15, 2021 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the April 15, 2021 public meeting minutes, as submitted. Commissioner Ufberg made the motion and Vice Chairman Bedwick seconded, and the motion passed 3-0.

**III. NEW BUSINESS**

**A. ACTION ITEMS**

**1. No. 3227 Environmental Quality Board #7-533: Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees**

Scott Schalles, Regulatory Analyst, reported the final-form rulemaking increases fees for water quality management permit applications and National Pollution Discharge Elimination System (NPDES) permit applications and annual fees. He explained that the proposed rulemaking intended to raise \$8 million annually to support the Department of Environmental Protection's (DEP) clean water program. Mr. Schalles added the proposal also included mechanisms to increase the fees annually. He pointed out that in response to opposition from certain segments of the regulated community, the Environmental Quality Board (EQB) eliminated the mechanisms to automatically raise fees. Mr. Schalles reported the EQB also reduced some fees and the total amount of annual revenue that is projected to be raised is now \$6.5 million compared to \$8 million. According to Mr. Schalles, the Commission received ten letters from small businesses representing the automotive parts and recycling industry, a letter from the Pennsylvania State Association of Township Supervisors and a letter signed by 45 members of the Pennsylvania House of Representatives. He noted all of the letters were in opposition to the rulemaking. Mr. Schalles also reported the House Environmental Resources and Energy Committee disapproved the regulation on May 4,

2021, and the Senate Environmental Resources and Energy Committee deemed it approved as of May 19, 2021.

Aneca Atkinson, Deputy Secretary for Water Programs, Sean Furjanic, NPDES Permitting Manager, Bureau of Clean Water, and Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, DEP, were present to answer any questions.

Ms. Atkinson explained that the Clean Streams Law charges DEP with the duty to administer a comprehensive program of watershed management and control and not only to prevent further pollution but to reclaim and restore Pennsylvania's waters. She further explained that the law also authorizes DEP to assess fees for permits. Ms. Atkinson told Commissioners, "Today's rulemaking is essential to ensuring the department has adequate resources to properly execute its duty." She observed, "Fee increases are never well-received and this rulemaking has been no exception." Ms. Atkinson said, "The department has carefully reviewed the concerns of stakeholders and has taken steps to address those concerns." She asserted, "The department must meet its statutory obligations. Doing nothing is not an option."

According to Ms. Atkinson, chapter 91 has been in effect for 50 years and the fees have only been increased once. She explained chapter 92 has been in effect for 40 years and there has only been two fee increases, one in 1980 and one in 2010. Ms. Atkinson said in the meantime the department's workload and its expenses have increased. She noted the federal Environmental Protection Agency has identified DEP's lack of resources as a major concern. Ms. Atkinson warned that the department may be in jeopardy of losing its federal delegation for administration of the NPDES program in Pennsylvania. She explained that if this occurs the NPDES permit program will revert to the federal government and Pennsylvanians may be subject to policies and procedures which lack local innovation. She added dischargers will also be required to obtain two permits for the same activities. Ms. Atkinson commented, "The department maintains that it is in the best position to oversee and assist the regulated community in Pennsylvania but it needs sufficient resources to do so."

Kay Klos, Executive Administrator, Pennsylvania Automotive Recycling Trade Society, expressed her members' concerns with the increase in fees for general permits. Ms. Klos said her members are also concerned that the municipalities are now sending them specific invoices to pay those increases because the municipalities are also upgrading their equipment so it has become "a huge hardship for our members." Ms. Klos stated that since EQB explained that the fees affecting her industry are no longer being increased, her organization no longer opposes the rulemaking.

The meeting was paused to allow IRRC staff to contact Sandy Blalock, Executive Director of the Automotive Recyclers Association, who had signed up to provide comments on this regulation. Ms. Blalock did not participate in the meeting.

Commissioner Watson made a motion for approval. Commissioner Ufberg seconded, and the motion passed 3-2, with Vice Chairman Mizner and Commissioner Soroko dissenting.

**2. No. 3302 Department of Banking and Securities #3-57: Repeal or Amendment of Assorted Sections**

Mr. Schalles explained that the final rulemaking repeals or amends sections of the Department of Banking and Securities' regulations that are obsolete or inaccurate due to recent statutory amendments. He reported the department indicates the rulemaking will not affect any group or entity and there is no fiscal impact associated with it. Mr. Schalles also reported the Commission received no written comments from the public and both of the standing legislative committees have deemed it approved.

Gerard Mackarevich, Assistant Counsel, Department of Banking and Securities, was present to answer any questions.

Commissioner Watson commented that it appeared that some of the regulations have been obsolete for some time. He said that as a practicing attorney it is difficult to research issues and try to figure out what regulations are in effect and which ones are not. Mr. Mackarevich explained that they are in the process of cleaning up items like this that are overdue. He said, "We do apologize for that."

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

**3. No. 3248 Pennsylvania Gaming Control Board #125-226: Casino Simulcasting; Fantasy Contests**

Mr. Schalles explained that Act 42 of 2017 amended Title 4 to extend gaming opportunities in the Commonwealth. He further explained as it relates to this rulemaking it provides Category two, three, and four casinos with the option to provide live simulcasting of horse racing at their facilities. Mr. Schalles said it also provides for regulatory oversight for the structure of fantasy contests in the Commonwealth. He also said that in order to implement these gaming opportunities the board promulgated temporary regulations in 2018. According to Mr. Schalles, this rulemaking converts the temporary regulations to permanent regulations. He reported no comments were received on the proposed or final regulation and both standing legislative committees deemed them approved.

Doug Sherman, Chief Counsel, Pennsylvania Gaming Control Board (PGCB), was present to answer any questions.

Chairman Bedwick wanted to know if PGCB worked with the Horse Racing Commission in developing the regulations relating to the simulcasting of horse racing. Mr. Sherman said yes. He pointed out a representative from the Department of Agriculture representing horsemen serves as an ex officio member of PGCB.

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

#### **4. No. 3261 Pennsylvania Gaming Control Board #125-229: Interactive Gaming**

Michelle Elliott, Regulatory Analyst, reported that this regulation is also the result of the Act 42 of 2017 expansion of gaming providing the authorized Category one, two and three slot machine licensees the opportunity to offer three categories of interactive gaming: non-peer-to-peer interactive games which simulate slot machines; non-peer-to-peer table games; and peer-to-peer interactive games which simulate poker. She explained the PGCB promulgated temporary regulations in 2018 in order to implement these gaming opportunities. Ms. Elliott said this final regulation converts the temporary regulations to permanent regulations. She said that no comments were received on the proposed or final regulation and both standing legislative committees deemed them approved.

Mr. Sherman was present to answer any questions.

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

#### **5. No. 3259 Department of Labor and Industry #12-111: Unemployment Compensation; Employee Provisions**

Laura Campbell, Regulatory Analyst, explained that the regulation is needed to implement the forthcoming Pennsylvania Unemployment Compensation Claims System which will replace the current legacy system. She further explained the regulation will allow claimants to file weekly or bi-weekly based upon eligibility and clarifies the number of dependence allowance payments. Ms. Campbell said it also removes the requirement that claimants whose labor markets are outside of Pennsylvania must register with the Pennsylvania CareerLink System. She said that no comments were received on the proposed or final regulations and both standing legislative committees deemed the regulation approved.

Susan Dickinson, Director, Office of Unemployment Compensation Benefits Policy, Carla Arias, Assistant Counsel, Office of Chief Counsel, and Nick Marsilio, Assistant Counsel, Office of Chief Counsel, Department of Labor and Industry, were present to answer any questions.

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

### **IV. OTHER BUSINESS**

#### **Approval of Vouchers**

Vice Chairman Mizner made motions to approve vouchers and expenses for the period March 19, 2021 through April 15, 2021. Chairman Bedwick 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, June 17, 2021, at 10:00 a.m. in the 14<sup>th</sup> 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 10:55 a.m.