

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, September 15, 2022
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The September 15, 2022 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:10 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 John J. Soroko, Esq.
 Murray Ufberg, Esq.

Telephone: Dennis A. Watson, Esq.

II. APPROVAL OF THE JULY 21, 2022 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the July 21, 2022 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Commissioner Ufberg seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. DEEMED APPROVED

1. No. 3328 Environmental Quality Board #7-564: Municipal Waste Rural Transfer Facility Permit-by-Rule

2. No. 3342 State Board of Cosmetology #16A-4520: Fees

B. ACTION ITEMS

1. No. 3277 State Board of Dentistry #16A-4634: Fees

Corinne Brandt, Regulatory Analyst, explained the regulation provides for graduated application and biennial renewal fee increases for the following licenses and permits issued by the State Board of Dentistry (Board): dentists, dental hygienists, dental assistants, anesthesia, dental education programs, and facilities. Ms. Brandt also noted that it adds graduated application fee increases for a restricted faculty license and rescinds fees for issuance of permits. She indicated there were no public comments received on the regulation.

Ronald Rouse, Counsel, State Board of Dentistry, and Jacqueline Wolfgang, Senior Regulatory Counsel, Department of State, were present to answer any questions. Mr. Rouse stated the Board is in a deficit and is searching for ways to raise revenues. He highlighted how the money provided to the Board is not enough to cover its spending.

Chairman Bedwick inquired if the board has done what it can to reduce its spending. Mr. Rouse affirmed the Board has tried and the regulation is a way to "get in the black."

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

2. No. 3310 Environmental Quality Board #7-561: Additional RACT Requirements for Major Sources of NOx and VOCs for the 2015 Ozone NAAQS

Scott Schalles, Regulatory Analyst, stated the regulation adopts additional presumptive reasonably available control technology (RACT) requirements and RACT emission limitations for certain major stationary sources of nitrogen oxides (NOx) and volatile organic compound (VOC) emissions. He added the regulation will be sent to the Environmental Protection Agency (EPA) to ensure it complies with federal law. He noted U.S. Steel submitted a comment opposing the regulation.

Krishnan Ramamurthy, Deputy Secretary, Office of Waste, Air, Radiation and Remediation, and Jesse Walker, Assistant Counsel, Bureau of Regulatory Counsel, Department of Environmental Protection (DEP) were present to answer any questions.

Mr. Ramamurthy explained the regulation seeks to update the Commonwealth's air quality to comply with EPA standards. He stated when federal standards are promulgated, DEP must re-examine its activities to ensure compliance.

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

Before considering the next regulation, Chairman Bedwick indicated IRRC received an "unprecedented" number of requests from legislators asking IRRC to re-evaluate certain regulations.

He noted the next regulation is controversial but urged the interested parties of the issue to be respectful towards one another.

3. No. 3260 Environmental Quality Board 37-553: Water Quality Standard for Manganese and Implementation

Chairman Bedwick and the other commissioners read letters of correspondence that had been sent to IRRC within the past 48 hours.

Mr. Schalles detailed how the regulation amends the water quality standard for manganese. He explained IRRC received three letters in support of the regulation, one of which was from EPA, and 25 letters opposing the regulation. In addition, a letter opposing the rulemaking was sent by 61 members from both chambers of the General Assembly. He concluded by noting both designated standing committees disapproved of the regulation.

Lisa Daniels, Acting Deputy Secretary, Office of Water Programs, Michelle Moses, Assistant Director, Bureau of Regulatory Counsel, and Michael Lookenbill, Environmental Program Manager, Water Quality Division, DEP, were present to answer any questions.

Ms. Daniels explained Act 40 of 2017 set standards for the Environmental Quality Board (EQB) regarding manganese discharging into the water supply. She underscored how the Commonwealth's water quality standards, developed under the Clean Streams Law, comply with federal water quality standards. Following the passage of Act 40, she continued, DEP comprehensively reviewed manganese as it relates to the Commonwealth.

Ms. Daniels asserted DEP gathered information and recommendations during the regulation's creation. She noted other states like Alaska have adopted the federally recommended water quality criteria. She indicated the Water Resources Advisory Committee, the Agricultural Advisory Board, the Mining and Reclamation Advisory Board, the Aggregate Advisory Board, and the Public Water System Technical Assistance Center Board were consulted for their opinion on the regulation. Ms. Daniels concluded by stating the regulation should be approved as it maintains the cleanliness of the commonwealth's water supply and achieves compliance with federal standards.

Vice Chairman Mizner wondered if there would be a financial impact related to the regulation. Ms. Daniels agreed there would be a financial impact but added the size of the impact is unknown as manganese discharge would be evaluated on a case-by-case basis. Mr. Lookenbill predicted about 75 percent of mining permits could be impacted. Vice Chairman Mizner asked for the overall cost of the regulation. Mr. Lookenbill replied the regulation's effects are estimated to cost \$137 million to \$143 million in capital costs and \$33 million to \$46 million annually.

Vice Chairman Mizner inquired why 0.3 milligrams per liter (mg/L) is the proposed amount of manganese in water. He asked if aquatic life would be protected from chronic exposures. Mr. Lookenbill responded aquatic life is less sensitive to exposures in water and human health is a major focus. He explained that 0.05 mg/L is the federal limit for aesthetic impacts, such as laundry staining. Vice Chairman Mizner asked why the first alternative for compliance for the regulation was rejected. Mr. Lookenbill replied the first alternative moved the point of compliance downstream to the point where water is taken in by treatment facilities, rather than where pollution enters the water source. Vice Chairman Mizner asked if manganese is present in background levels in water prior to industrial usage. Mr. Lookenbill replied in the affirmative. He contended abandoned mines typically discharge manganese into the water supply at the proposed standard of 0.3 mg/L.

Commissioner Soroko asked which industries would be affected by the regulation. Mr. Lookenbill answered the mining industry is the main industry impacted by the regulation. He added the second-most impacted industry would be drinking water facilities.

Commissioner Soroko asked what is being mined and what it accomplishes. Mr. Lookenbill responded coal is being mined for use in energy production. Commissioner Soroko wondered if the coal industry would have increased costs from the regulation.

Mr. Lookenbill stated he is unsure of a definite answer but conceded the coal industry may encounter higher costs for both mining and energy production. Ms. Daniels expressed she would defer to how the mining industry budgets for an answer. Commissioner Soroko questioned if the industry would pass its costs on to taxpayers. Ms. Daniels replied DEP could expect cost increases but not how the industry would react to the higher costs. Commissioner Soroko inquired if it was fair to say the regulation could possibly increase costs. Ms. Daniels replied in the affirmative.

Commissioner Ufberg asked for the estimated discharge level established by the coal industry. Mr. Lookenbill responded each industry would be regulated and has technology-based limits on how much manganese is discharged. He indicated the drinking water industry has a technology-based limit of 1.0 mg/L. Commissioner Ufberg wondered if the regulation's limit is out of concern for public health. Mr. Lookenbill acknowledged concentrated manganese does affect individuals who ingest it. Commissioner Ufberg asked how many people are affected by manganese discharge from the coal industry. Mr. Lookenbill answered that elevated levels of manganese concentration have been found in about 16 percent of the water's supply.

Commissioner Ufberg questioned if DEP wants to balance public health with costs associated with mining. Mr. Lookenbill responded the water quality standard was based on a no-effects threshold, which is the amount of manganese that can be ingested before human health is impacted. He professed human health is the major reason behind the regulation's development.

Commissioner Soroko noted that sometimes issues require a difficult balance between costs and human health.

Commissioner Watson asked if there are other point of discharge regulations affecting the mining industry. Mr. Lookenbill reiterated all entities that discharge contaminants in the water supply are regulated. He noted water quality standards would be the other regulations.

Chairman Bedwick asked if the standards are based on the point of discharge or the point of intake. Mr. Lookenbill responded human health criteria and aquatic life criteria are applied at the point of discharge. He added there are standards for manganese at the point of intake.

Commissioner Watson asked why DEP chose to receive reports from Drexel University and Penn State University on the issue. Mr. Lookenbill stated getting cost estimates and analyzing the information required assistance from a third party. He added the communications with the universities resulted from studying the toxicity effects of manganese. He noted the Department of Health was also contacted. Commissioner Watson asked about the cost estimates

for points of compliance being set at the point of discharge. Mr. Lookenbill repeated the cost estimates for the point of compliance at the point of discharge would cost \$137 million to \$143 million in capital costs and \$33 million to \$46 million annually.

Commissioner Watson inquired if 280 out of 340 water treatment plants use surface water that must be treated for manganese. Mr. Lookenbill noted water treatment facilities do acquire water that must be treated before use. He added facilities still treat the water for surface waters with manganese amounts less than 0.3 mg/L. Ms. Daniels explained water treatment plants encounter costs when manganese must be removed from the water. Commissioner Watson asked if the effects of manganese in children are permanent. Mr. Lookenbill replied in the affirmative.

Vice Chairman Mizner questioned if the mining industry includes entities like steel and metal manufacturers. Mr. Lookenbill responded that mining permits are specific to the extraction of minerals. He indicated about 60 facilities discharge manganese in addition to the 706 mining permits. Vice Chairman Mizner asked if there is a cost the 60 facilities have to address. Mr. Lookenbill replied costs are usually consistent with the estimates provided by Penn State University, which are specific to the mining industry. Vice Chairman Mizner inquired if a more specific cost estimate is available. Mr. Lookenbill replied in the negative.

Commissioner Ufberg asked whether either university pushed back on the manganese limit set by EQB. Mr. Lookenbill stated they did not. He outlined how other health-based estimates utilize different variables. He continued Drexel University considered other variables and decided 0.3 mg/L was the limit.

Chairman Bedwick questioned why the standards were not re-evaluated since 1979 if the regulation is important. Mr. Lookenbill attributed the lack of resources and staff in state departments and the increase in the number of pollutants to why the standards were not reviewed. Chairman Bedwick asked if EQB is using recommendations that are not mandated. Ms. Moses stated that federal government has oversight over states but states must choose to adopt them. Chairman Bedwick inquired if there are any mandated standards for water quality in the Commonwealth. Ms. Moses replied in the negative. Ms. Daniels noted DEP could propose a number that the EPA disagrees with, then EPA would just set a new number.

Chairman Bedwick wondered what occurs if the regulation is disapproved. Ms. Moses responded the existing regulation has a 1.0 mg/L limit near the point of discharge as its standard. Chairman Bedwick stated he understands DEP's argument but contended the point of compliance for measuring manganese would be altered. He argued DEP put forth a regulation without considering alternatives. He asserted if state government only wanted DEP to propose a regulation, there would be no need for legislation. He affirmed IRRC's obligation is to determine if DEP has the authority to propose the regulation. Ms. Moses replied the intent of Act 40 is "not entirely clear." She claimed the regulation satisfied EQB's requirements but the law is still not specific.

Chairman Bedwick suggested the legislature mandates something every time they pass a law. Ms. Moses continued by stating EQB was directed by the General Assembly to determine

the ramifications of the regulation. She argued EQB would not evaluate the regulation without allowing public comments and other regulatory procedures. Chairman Bedwick contended that when the legislature makes policy it empowers an entity to assure the legislation is proper and reviewed. He questioned what the actual costs of the regulation would entail if costs were evaluated on a case-by-case basis. He wondered what DEP is doing with legacy wells across the state. Mr. Lookenbill responded DEP has no obligation to address abandoned mines and wells.

Chairman Bedwick asked if active mines are required to clean their worksites but abandoned mines are not regulated. Mr. Lookenbill answered mine cleanup funding is received through federal programs. Chairman Bedwick inquired if there will not be a standard for abandoned mines if the regulation is passed. Mr. Lookenbill replied in the affirmative. Chairman Bedwick asked if the mining industry also has an issue with acquiring funding. Mr. Lookenbill illustrated the difference is between mines operated by an entity against unmanned abandoned mines. He added abandoned mines could use technology-based standards instead of the current regulations.

Chairman Bedwick focused on the lack of regulations for abandoned mines and wells over financial concerns. Ms. Daniels responded the Commonwealth inherited the abandoned mines after companies left. She explained if the regulation is passed, DEP would review to see if manganese is discharged from abandoned mines and wells at dangerous levels. Chairman Bedwick professed support for manganese caps in baby formula and wondered why such a cap does not exist. Ms. Daniels stated EPA is active with drinking water but indicated she is unsure of why another federal agency is not examining baby formula.

Vice Chairman Mizner stated that the problem cannot be seen as important since the government is blaming financial costs on the lack of standards. He expressed concern that the standards should be established for every entity to ensure government is not "picking winners and losers."

Commissioner Ufberg voiced his support for earlier comments from the commissioners. He highlighted the impact of increasing costs for taxpayers. He encouraged passing legislation on the issue to ensure adequate funding and authority is secured.

Glendon King, Executive Director of the House Environmental Resources and Energy Committee (HEREC), asserted EQB misunderstood their obligation and erroneously conducted the regulatory review process for the proposed regulation. He stated if the regulation is passed, the public comment process could be eschewed for future regulations.

Chairman Bedwick asked how many of the House committee members were around in 2017. Mr. King estimated two-thirds to three-quarters of the committee were still there at that time.

The following members of the public spoke in opposition of the regulation:

1. Duane Feagley, Executive Director, PA Anthracite Council
2. Peter Vlahos, Executive Director, PA Aggregate and Concrete Association

3. Jaret Gibbons, Executive Director, ARRIPA
4. Rachel Gleason, Executive Director, PA Coal Alliance
5. Dave Osikowicz, Origin Fuels
6. Brian Benson, CONSOL Energy
7. John St. Clair, Manager of Permitting, Rosebud Mining
8. Ben Gardner, Mining Engineer, Corsa Coal Co.
9. Jason Kelso, General Counsel, Reading Anthracite Company

Mr. Feagley claimed the manganese limit proposed in the regulation is too restrictive. He explained DEP's standards for manganese are based on a mine found in Laos and are unsuitable for Pennsylvania. He praised DEP for its transparency and staff but contended they have not provided sufficient justification for the proposed regulation.

Mr. Vlahos asserted the regulation is not useable. He pondered how the regulation would keep manganese out of the water supply when there are abandoned sites expelling the mineral into nearby water sources. He argued DEP "shielded itself" from its obligation to protect all Pennsylvanians. He urged IRRC to disapprove of the regulation.

Chairman Bedwick inquired if Mr. Vlahos had cost estimates for the mining industry. Mr. Vlahos replied he does not have estimates as it requires technology and time investment.

Mr. Gibbons commented current regulations allow manganese into water that is used for consumption. He repeated earlier sentiments that capital costs for equipment would overwhelm several industries still recovering from the COVID-19 pandemic. He claimed the regulation is contradictory and should not be approved.

Ms. Gleason clarified coal mining has a standard of 2 mg/L at the point of discharge and a 1 mg/L limit for the end of the water pipe. She noted the federal standard of 0.05 mg/L is for finished water and is not enforceable. She indicated foods and household items contain manganese and that manganese is needed in early childhood for development. Ms. Gleason stated that DEP did not adequately consider increases in capital costs and the costs of goods and services that would result from the regulation. She argued more abandoned mines and well sites would appear as companies shut down due to higher costs. She criticized DEP for not incorporating all input provided to them on the issue.

Commissioner Soroko requested details on the relationship between the Commonwealth's mining industry and the state's reputation as an energy producer. Ms. Gleason replied Pennsylvania has significant deposits of bituminous coal for energy production, and the energy and coal are provided to other states.

Mr. Osikowicz outlined his history in the coal mining industry. He reiterated earlier sentiments opposing the regulation. He criticized DEP for not responding to inquiries even after several months.

Vice Chairman Mizner questioned how miners would be affected in the field. Mr. Osikowicz answered the proposed regulation would be impossible to implement due to the

complexity of treating a mine's output. He repeated an earlier comment that aquatic life would not be as affected by manganese discharge.

Mr. Benson asserted his company would be heavily impacted by the regulation. He maintained the proposed regulation is too stringent to uphold without raising costs or further examining water quality standards for the industrial sector. He concluded by insisting the state's economy would be hampered by the regulation.

Mr. St. Clair voiced his belief that the regulation would not lead to less manganese contamination in the water supply or products within the Commonwealth. He highlighted how the 0.3 mg/L standards would add increased costs and labor to mine companies. He stated 95 percent of the sites affected by the regulation have not met the water quality standards. He added other states would have an economic advantage over Pennsylvania. He concluded by noting there are more comprehensive studies on manganese contamination that DEP has not incorporated.

Vice Chairman Mizner questioned how much it would cost Rosebud Mining Company to comply with the proposed regulation. Mr. St. Clair replied it would take millions of dollars and the treatment process needed to meet the proposed water quality standards is too intensive.

Mr. Gardner related how Maryland has a water quality standard set at 2 mg/L and a whole effluent toxicity test revealed the effects of manganese at that level would not affect humans. Vice Chairman Mizner questioned how much it would cost to comply with the proposed regulation. Mr. Gardner responded the chemical needed to treat the water would cost \$1 million per year, with additional costs related to labor.

Mr. Kelso encouraged IRRC to disapprove the regulation. He noted landlocked mines would not be able to utilize water treatment facilities and the Pennsylvanian mining industry would have to cut workers to meet costs. He highlighted the possibility of the Commonwealth needing to rely on foreign states like Russia to meet its energy needs. He concluded by arguing the proposed regulation should be disapproved.

Ms. Moses stated Act 40 required DEP to promulgate a regulation but did not suspend requirements for EQB to put forth the regulation. She explained the federal Clean Water Act, the Pennsylvania Clean Streams Law and the Pennsylvania Safe Drinking Water Act contain provisions requiring compliance with national water quality standards. She stated EQB and its duties were not suspended for the regulation's development.

Ms. Daniels specified the manganese limit is a mandatory standard. She indicated EQB is given authority to issue directives or act when contaminants are identified as risks to public health. She noted the trigger levels used for identifying problematic manganese concentrations are also used for other contaminants. She claimed DEP signaled a move towards reviewing their guidelines and standards. She concluded by claiming water companies would not know the true amount of costs associated with the regulation, but the levels of manganese could cost the public money if the water supply is contaminated.

Mr. Lookenbill asserted other industries in the Commonwealth are implementing regulations successfully. He contended the mining industry is technologically delayed, which is why it has had issues with the proposed regulation. He indicated pollutants could affect water supplies outside of stream contamination.

Vice Chairman Mizner thanked the public for their efforts but professed he would vote against the regulation, citing its contradictions with other legislation, including the Regulatory Review Act, and its failure to consider the financial impact on the mining industry and the public.

Commissioner Watson stated he would vote for the regulation as he believes the argument is well-founded. He added excess manganese in children could negatively affect their physical and neurological development. He asserted the potential costs would not be shifted from those polluting water sources to the taxpayer and DEP has proper authority over polluters.

Commissioner Soroko asserted the regulation contradicts state law. He said the regulation is not in the public interest as the direct and indirect costs to the private sector could negatively affect Pennsylvanians. He commented the regulation would have an impact on Pennsylvania's energy production during an energy crisis and an inflated economy. He stated EQB misunderstood Act 40's language.

Commissioner Ufberg shared his praise for the panel and DEP for their work on the regulation. He communicated his disagreement that the regulation is in the public interest. He raised concerns about the efficacy of the proposed regulation. He asserted the coal industry has been hurt by various factors that threaten its existence and DEP has not adequately addressed this situation. Though he agreed with the regulation in theory, he indicated he would vote to disapprove it.

Chairman Bedwick explained he would vote to disapprove the regulation due to the ambiguity of the language of Act 40. He thanked the panel for their work and presence at the meeting.

Vice Chairman Mizner made a motion for disapproval. Commissioner Soroko seconded, and the motion passed 4-1, with Commissioner Watson dissenting.

IV. OTHER BUSINESS

Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period June 17, 2022 through July 21, 2022. 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, October 20, 2022, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

Chairman Bedwick announced an additional IRRC meeting would be held on October 28, 2022 to consider a four-regulation package related to nursing homes.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 1:19 p.m.