INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES
10:00 A.M.
Thursday, September 17, 2020
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The September 17, 2020 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:06 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.
Telephone:	Murray Ufberg, Esq. Dennis A. Watson, Esq.

II. APPROVAL OF THE JULY 16, 2020 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the July 16, 2020 public meeting minutes, as submitted. Chairman Bedwick made the motion and Commissioner Ufberg seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 3235 Department of Health #10-209: Complete Reporting of CD4 T-Lymphocyte, Viral Load and Genotyping Test Results Relating to HIV

Chairman Bedwick announced the Commission received embargoed mail on the Department of Health (Department) regulation and he is going to allow the Commissioners the opportunity to read it. He explained that Commissioners are not allowed to read any mail that comes in within 48 hours of a meeting and can only read it once a meeting begins.

Dr. Godwin Obiri, Director, HIV Surveillance and Epidemiology, and Dr. Sharon Watkins, State Epidemiologist, Department, were present to answer any questions.

Dr. Obiri told the Commissioners the Department is proposing to amend the existing regulations to require the reporting all CD4 T-lymphocyte cell counts relating to HIV infection, as well as to add the required reporting of all viral load test results and genotyping results related to HIV. He noted, "In the reporting of all CD4 T-lymphocyte cell counts, the Department is

joining 46 other states that already required all CD4 counts to be reported and 48 states that require the reporting of all viral load results." Dr. Obiri explained because the Department does not currently require the reporting of all CD4 and viral load test results, reporting is incomplete. According to Dr. Obiri, this severely limits the Department's ability to comply with the standards set by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, accurately report on required core HIV indicators, and monitor and enhance patient outcomes across the continuum of HIV care services. He stated that requiring the reporting of all CD4 T-lymphocyte counts, viral loads and genotyping test results will allow the Department to better track the epidemic in the Commonwealth, focus resources to meet the needs of communities impacted and improve the health of the citizens of the Commonwealth.

Scott Schalles, Regulatory Analyst, reported the Commission did not receive any public comment on the final-form regulation except for the embargoed mail that is before the Commissioners. He said the mail was from the AIDS Free Pittsburgh Initiative and the Southwestern Pennsylvania Ryan White Collaborative in support of the rulemaking. Mr. Schalles also reported that both the House and Senate standing committees deemed the regulation approved on September 16.

Vice Chairman Mizner wanted to know why it took the Department so long to promulgate the regulation. Dr. Obiri explained the Department started the process in 2009 but because they were trying to use the provision within Chapter 27. Dr. Watkins reported that the Department on multiple occasions has tried to update their reporting regulations. She noted Chapter 27 is very large and complex and when putting these amendments for HIV into that larger package it got bogged down more than one time. Dr. Watkins said that knowing how urgent this was the Department made the decision to move it out of the larger package and move this forward as a priority. Vice Chairman Mizner commented, "I think in the future, especially on matters of health, people should keep an eye on the time and do what they need to do to get things here in a timely manner."

Dr. Kathleen Brady, Medical Director/Medical Epidemiologist, AIDS Activities Coordinating Office, Philadelphia Department of Health, expressed support for the final rulemaking. She explained how the collection of data has helped their office's efforts in combatting HIV/AIDS.

Mark Hellman, immediate past Community Co-Chair, Pennsylvania HIV Planning Group, also expressed support for the final rulemaking. He commented, "As a person living with HIV, I am especially thankful for the progress scientists made to help in managing my HIV disease." Mr. Hellman told the Commissioners, "This HIV reporting regulation supports the road map to eradicate HIV in my lifetime."

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

2. No. 3231 Environmental Quality Board #7-536: Air Quality Fee Schedule Amendments

Corinne Brandt, Regulatory Analyst, explained that this final-form rulemaking amends the existing air quality plan approval and operating permit fee schedules and establishes new fees for plantwide applicability limits; ambient air impact modeling of certain plan approval applications; risk assessments; asbestos abatement or demolition or renovation project notifications; and requests for determinations. She further explained the regulation also provides for the Department of Environmental Protection (DEP) to establish application fees for the use of general plan approvals and general operating permits under Chapter 127, Subchapter H for stationary or portable sources. Ms. Brandt also said DEP adjusted the name of the annual operating permit administration fee to an annual operating permit maintenance fee. She reported the Commission received public comments in support of the final rulemaking from the Group Against Smog & Pollution (GASP), the Clean Air Council, Earth Justice, Penn Environment Research and Policy Center, and the Breath Project. Ms. Brandt also reported a letter signed by 21 Republican House members expressing their opposition to the rulemaking was also received. She noted that on September 15, 2020, the House Environmental Resources and Energy Committee disapproved the regulation by a vote of 16-9. Ms. Brandt added the Senate Environmental Resources and Energy Committee deemed the regulation approved on September 16.

Krishnan Ramamurthy, Deputy Secretary, Waste, Air, Radiation and Remediation, and Jennie Demjanick, Assistant Counsel, DEP, were present to answer any questions.

Chairman Bedwick noted the letter received by the Commission from the House Environmental Resources and Energy Committee requested that DEP withdraw the regulation. He asked Mr. Ramamurthy and Ms. Demjanick if they wished to continue or wished to withdraw the regulation. Mr. Ramamurthy responded, "We wish to continue."

Mr. Ramamurthy explained that the fee schedule amendments ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by the federal Clean Air Act (CAA) and Pennsylvania's Air Pollution Control Act (APCA). He reported the final-form rulemaking once approved by the Commission will be submitted to the Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan. Mr. Ramamurthy said that the new and increased fees are needed to cover DEP's costs to implement the air pollution control plan approval program and operating permit program activities required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. He told the Commissioners, "Since the last fee increase in 2005, DEP has tried to maintain parity between its revenue and expenditures by reducing costs associated with administering the air quality program." Mr. Ramamurthy pointed out, "In addition to streamlining the air permitting program through the Permit Decision Guarantee policy, creating the online RFD form, developing general plan approvals and general operating permits for 19 source categories, and establishing electronic emissions reporting, DEP has reduced the number of air quality staff since 2005 by 84 positions from 349 to 265, or by 24 percent."

Chairman Bedwick commented, "For me this has been a somewhat difficult regulation in looking at the objections from the legislature which I believe have some merit. At the same time, I understand the need for the revenue." He asked about DEP's views on the issue of statutory authority raised by the legislature. Ms. Demjanick responded that section 6.3(a) of the APCA provides the general authority for the fees to cover the direct and indirect costs of administering the air pollution control plan approval process, the operating permit program required by Title V of the CAA, other requirement of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the Small Business Compliance Advisory Committee, and the Office of Small Business Ombudsman. She said section 6.3(a) also authorizes the Environmental Quality Board by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA.

Chairman Bedwick spoke about how all agencies delay increasing fees until they have absolutely no choice and rather than doing them when they see the problem developing and phasing the increases in people get hit with sticker shock when they see the huge increases all at one time.

Chairman Bedwick also commented that the letter from the House of Representatives indicates willingness on their part to sit down and discuss with DEP the fee structure and increasing their appropriation. He wanted to know if DEP would be willing to make a commitment to at least work with the legislature to see if something could be done to increase the appropriation. Mr. Ramamurthy said they would be willing to work with them.

Commissioner Soroko told the Commissioners he would be a "no" vote and commented that he shared many of the same concerns expressed by members of the House of Representatives especially the fact the changes may well represent a fundamental policy shift in how fees are assessed under the act that are best left to the legislature. He also expressed concern with the economic consequences of the fees on industry particularly at this time.

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

IV. OTHER BUSINESS

Approval of Vouchers

Commissioner Ufberg made motions to approve vouchers and expenses for the period June 19, 2020 through July 16, 2020. 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, October 15, 2020, 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 11:23 a.m.