

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, September 23, 2021
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The September 23, 2021 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:08 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 SEPTEMBER 1, 2021 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the September 1, 2021 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Chairman Bedwick seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 3251 Environmental Quality Board #7-552: Administration of the Land Recycling Programs

Laura Campbell, Regulatory Analyst, explained that this final-form rulemaking amends the Land Recycling Program regulations by revising definitions; clarifying administrative requirements; updating citations to guidance models, databases and publications; and updating statewide health standard medium-specific concentrations. She reported the Pennsylvania Chamber of Business and Industry submitted a comment encouraging approval of the final-form regulation and both the House and Senate committees have deemed the regulation approved.

Krishnan Ramamurthy, Deputy Secretary, Office of Waste, Air, Radiation and Remediation, Nikolina Smith, Assistant Counsel, Bureau of Regulatory Counsel, Troy Conrad, Bureau Director, Environmental Cleanup and Brownfields, and Michael Maddigan, Assistant Counsel, Bureau of Regulatory Counsel, Department of Environmental Protection (DEP), were present to answer any questions.

Mr. Ramamurthy explained that the Land Recycling and Environmental Remediation Standards Act (Act) directs the Environmental Quality Board (EQB) to provide a uniform framework for cleanup of contaminated commercial and industrial sites in Pennsylvania. He said that the standards established under the act are used for both mandatory and voluntary cleanup conducted in the Commonwealth. He noted DEP worked with the Cleanup Standards Scientific Advisory Board (CSSAB) during the development of the rulemaking.

Mr. Ramamurthy briefly explained that the purpose of the CSSAB is to assist DEP and the EQB in developing statewide health standards, to determine the appropriate statistically valid procedures and risk factors to be used, and to provide other technical advice as needed to implement the act. He noted the CSSAB members were given the opportunity to review and provide feedback on draft regulatory amendments and to review and provide feedback on the final rulemaking. Mr. Ramamurthy added that DEP also worked with the CSSAB to resolve concerns and agreed to evaluate additional suggestions during the next review cycle for this rulemaking. He said that in response to the extensive public comments DEP recommended removing the proposed lead model provisions from the final rulemaking to evaluate potentially lowering the target lead level. According to Mr. Ramamurthy, DEP plans to address the lead modeling changes in the upcoming proposed rulemaking.

Chairman Bedwick asked whether meeting the voluntary remediation standard in the statute and the regulation would resolve him of liability. Mr. Maddigan responded, "That is correct." He explained, "If you meet all of the requirements of one of the three or a combination of the three standards then the Act grants liability relief for that site."

Kevin Sunday, Director of Government Affairs, Pennsylvania Chamber of Business and Industry, described the Land Recycling and Environmental Remediation Standards Act as "one of the most progressive and thoughtful environmental statutes that, for the past 25 years has encouraged cleanup of brownfields sites and has spurred economic revitalization." He encouraged the Commission to approve the final rulemaking.

Chairman Bedwick commended the EQB for their willingness to work with the regulated community on the two outstanding issues and urged them to follow through on it.

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

2. No. 3273 Bureau of Professional and Occupational Affairs #16A-7103: Schedule of Civil Penalties - Crane Operators

Corinne Brandt, Regulatory Analyst, reported that this regulation was disapproved at the Commission's June 17 meeting. She said the Bureau of Professional and Occupational Affairs (BPOA) resubmitted amendments on August 17, 2021. Ms. Brandt explained that the resubmitted final rulemaking implements a schedule of civil penalties for the following six enumerated offenses: operating a crane without a license, employing an unlicensed individual to operate a crane, holding oneself out as a crane operator or using the title licensed crane operator

without holding a license, operating a crane on a lapsed or expired (unregistered) license, failing to notify the State Board of Crane Operators (Board) in writing within 10 days of criminal proceedings in a court case against a licensed crane operator, and failing to maintain certification or to submit evidence of renewal of certification before the expiration date of certification. She said no comments were received on the resubmitted final-form regulation and the initial final-form regulation was deemed approved by the standing committees on June 16, 2021. According to Ms. Brandt, whether the Commission approves or disapproves the regulation today, the standing committees will have an additional 14 calendar days to review after receiving the Commission's order. She said that during that time period BPOA may not promulgate the regulation.

Dean Picarella, Senior Counsel, and Cynthia Montgomery, Deputy Chief Counsel, Department of State, were present to answer any questions.

Mr. Picarella explained that based on the Commission's disapproval order, he took the rulemaking back to the Board and the BPOA Commissioner. He said changes have been made. Mr. Picarella noted the first reason for the disapproval was a lack of clarity specifically regarding any offenses that the Board is citing for operating a crane without a license, employing an unlicensed individual to operate a crane, or operating a crane after a license is expired. He reported the Board added language that any such citation for these violations will only be issued provided that no bodily injury or property damage was involved in the matter.

Mr. Picarella said it was suggested that a monetary limit be placed upon that but the Board and the BPOA Commissioner decided that, to avoid any confusion or any future litigation, any citation that is issued can only be issued if there is no bodily injury or property injury involved. He noted that the second concern of the Commission was whether the citations would protect public safety based upon the fact that certain crane licenses, due to the biennial period, would lapse during that biennial period. Mr. Picarella told the Commission that the Board has agreed it would be in the interest of public safety to include a citation for any crane operator whose certification lapses during the two-year biennial period for failure to renew the certification or failure to notify the Board that the certification has lapsed.

Chairman Bedwick made a motion for approval. Vice Chairman Mizner 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 July 16, 2021 through September 1, 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, October 21, 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 10:38 a.m.