

Independent Regulatory Review Commission

5/20/21, 10:00 a.m., 333 Market Street, 14th Floor Conference Room

By Jeff Cox, Pennsylvania Legislative Services

The Independent Regulatory Review Commission (IRRC) met to consider five regulations.

Chairman George Bedwick, Vice Chairman John Mizner and Commissioners John Soroko, Murray Ufberg and Dennis Watson participated virtually.

Chairman Bedwick thanked IRRC staff for putting together the virtual meeting. He then offered a brief overview of the process the commission follows when reviewing regulations.

Minutes from the April 15, 2021, meeting were unanimously **approved**.

3227 Environmental Quality Board #7-533: Water Quality Management and National Pollution Discharge Elimination System Permit Application and Annual Fees was **approved** with Chairman Bedwick and Commissioners Ufberg and Watson voting in the affirmative and Vice Chairman Mizner and Commissioner Soroko voting in the negative.

Research Analyst Scott Schalles reported the final-form rulemaking increases fees for water quality management (WQM) 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. 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. 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 Schalles, IRRC received 10 letters from small businesses representing the automotive parts and recycling industry, a letter from the Pennsylvania State Association of Township Supervisors (PSATS) 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. 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, DEP, explained that the Clean Streams Law charges the department 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 the department to assess fees for permits. Atkinson told commission members, "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." 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 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. Atkinson said in the meantime the department's workload and its expenses have increased. She noted the federal Environmental Protection Agency (EPA) has identified the department's lack of resources as a major concern. 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. Atkinson commented, "The department maintains that it is in the best position to oversee and assist the regulated community in Pennsylvania but it needs efficient resources to do so."

Kay Klos, executive administrator, Pennsylvania Automotive Recycling Trade Society (PARTS), expressed her members' concerns with the increase in fees for general permits. She reported they had not been notified that those fees are not going up until today. 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." She added, "It will help to know that the permit fees are not going to go up."

3302 Department of Banking and Securities #3057: Repeal or Amendment of Assorted Sections (Final Omit) was unanimously **approved**.

Schalles explained that the final rulemaking repeals or amends sections of the department's 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. Schalles also reported IRRRC received no written comments from the public and both of the standing legislative committees have deemed it approved.

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. Commissioner Watson opined that some of the regulation could have come before

IRRC several years before. Gerard Mackarevich, assistant counsel, Department of Banking and Securities, explained that the department is in the process of cleaning up items like this that are overdue. He said, "We do apologize for that."

3248 Pennsylvania Gaming Control Board #125-226: *Casino Simulcasting; Fantasy Contests* was unanimously **approved**. Commissioner Ufberg recused.

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. 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 Schalles, this rulemaking converts the temporary regulations to permanent regulations. He reported no comments were received on the proposed or final regulations and both standing legislative committees deemed them approved.

Doug Sherman, chief counsel, Pennsylvania Gaming Control Board (PGCB) provided a brief explanation of the final rulemaking.

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

3261 Pennsylvania Gaming Control Board #125-229: *Interactive Gaming* was unanimously **approved**. Commissioner Ufberg recused.

Research Analyst Michelle Elliott reported that this regulation is also the result of the Act 42 of 2017 expansion of gaming providing the authorize 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. Elliott said this final regulation converts the temporary regulations to permanent regulations. She said that no comments were received on the proposed or final regulations and both standing legislative committees deemed them approved.

3259 Department of Labor and Industry #12-111: *Unemployment Compensation; Employee Provisions* was unanimously **approved**.

Regulatory Analyst Laura Campbell explained that the regulation is needed to implement the forthcoming Pennsylvania Unemployment Compensation (UC) 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. Campbell said it also removes the requirement that claimants outside the Pennsylvania labor market to 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.

Certain vouchers were unanimously **approved**.

Tentatively, the next IRRC meeting will be Thursday, June 17, 2021, at 10: 00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg. Chairman Bedwick commented that it is his goal to have it as an "in-person meeting." He said it will depend on any changes to the emergency order the commission is currently working under.

For more information on IRRC and the regulations, please visit IRRC's [website](#).