

Independent Regulatory Review Commission
4/15/21, 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 regulations.

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

Minutes from the March 18, 2021, meeting were unanimously **approved**.

David Sumner, IRRC executive director, reported there were no public speakers at today's meeting. He also reported the commission has embargoed mail which was emailed to each of the commissioners. Sumner explained that embargoed mail is written comments that arrive within 48 hours of the start of the meeting. He said the embargoed mail was in regard to the regulation pertaining to stream redesignations.

3226 Environmental Quality Board #7-548: Water Quality Standards; Class A Stream Redesignations was unanimously **approved**. Commissioner Soroko recused.

Regulatory Analyst Scott Schalles explained that this final-form rulemaking will amend the water quality designations of 41 streams or stream segments totaling 222 miles. He said the changes are a result of stream evaluations conducted by the Department of Environmental Protection (DEP) in response to data submitted from the Pennsylvania Fish and Boat Commission. Schalles reported the commission received written comments from the Clean Air Council and the Pennsylvania Campaign for Clean Water as well as embargoed mail from the Theodore Roosevelt Conservation Partnership. He said all three groups expressed support for the rulemaking and urged the commission to approve it. Schalles added that both the House and Senate Committees deemed the regulation approved.

Aneca Atkinson, DEP deputy secretary for water programs, provided an overview of the final-form rulemaking. According to Atkinson, the 41 streams are located in Lehigh, Schuylkill, Lackawanna, Allegheny, and Clarion Counties plus the west branch of the Susquehanna River. Atkinson outlined the steps taken in making changes to a stream's designation. She also outlined the notification and public comment periods for proposed changes in designations.

Commissioner Watson wanted to know if there will be additional recommendations for redesignations at some point down the road. Atkinson said yes. She explained the department consistently evaluates the water quality throughout the commonwealth and if there are indicators that result in needed changes, the department goes to the Environmental Quality Board in order to make changes to the regulations to reflect the water quality standards that they are seeing. Atkinson said that is in conjunction with regulations from the federal government or as a result of petitions from others who want the department to evaluate certain stream segments for applicable water quality standards.

3245 Environmental Quality Board #7-545: Water Supply Replacement for Coal Surface Mining was unanimously **approved**.

Regulatory Analyst Laura Campbell explained the final-form rulemaking addressed inconsistencies between the commonwealth's surface coal mining program and federal requirements relating to water supply replacement for surface coal mining operations. She further explained the rulemaking aligns the language regarding water supply replacement for surface mining with underground coal mining to the extent allowed by statute. Campbell pointed out no comments have been received on the final-form regulation and both the House and Senate Committees deemed the regulation approved.

Chairman Bedwick had questions about the surety bond for the increased operating and maintenance costs. He stated that it is his understanding that the obligation to pay for increased operating and maintenance costs goes on in perpetuity. Chairman Bedwick said that in looking at the formulas for the surety bond it appeared to him that they covered a period that went to one year beyond the term of the

permit and not through perpetuity. John Stefanko, DEP deputy secretary of active and abandoned mine operations, explained the department does calculate that to cover the cost of the permit, which is five years, but the bond amount is evaluated every five years since the permit term is five years. He said that each renewal requires the recalculation of the bond amount. Chairman Bedwick asked about the situation where the operator of a mine can cover multi-permitted areas in one bond. He said it appears if the operator does not carry out their responsibilities on one of the multiple permitted areas in terms of operational cost and maintenance then the bond is forfeited. Chairman Bedwick asked if that is forfeited for all of the permitted areas. Stefanko responded yes and explained that the failure of an operator to provide for the costs is a violation which through a systematic process can lead to the forfeiture of the bond and the bond forfeiture results in the prohibition of a mine operator to continue to mine.

3224 Pennsylvania Liquor Control Board #54-93: Proof of Recycling was **approved**. Chairman Bedwick voted in the negative.

Brandt told the commission members that section 491, paragraph 5 of the Liquor Code requires restaurant, hotel and club liquor licensees to break, within 24 hours, any package that contained liquors and has not been emptied unless the board has determined the decanter to be decorative or the licensee participates in a municipal or voluntary recycling program. She said the purpose of the regulation is it establishes what constitutes proof in writing of a licensee's participation in a recycling program. Brandt stated that, specifically, the regulation establishes recordkeeping requirements for licensees that pay for municipal or private recycling services and those who voluntarily recycle by utilizing drop-off locations. She reported IRRC received one comment from a member of the Pennsylvania House of Representatives opposing the final-form rulemaking. Brandt said that both the House and Senate Committees deemed the regulation approved.

Commissioner Ufberg asked if the requirements are different in terms of the detail required for maintenance of records for licensees who pay someone to pick up their recycling and those who voluntarily participate in a recycling program utilizing drop-off locations. Norina Foster, assistant counsel, Pennsylvania Liquor Control Board (PLCB), explained that the regulation provides if the licensee pays for a municipal or private entity to pick up its recycling, the licensee must retain a copy of the receipts, bills or invoices paid by the licensee to the municipal or private entity as proof in writing. She added all licensees would have to keep written proof that the type of material they are recycling is accepted by the county.

Chairman Bedwick expressed concern that the requirements for those who, he termed, "self-recycle" are substantially more than the requirements for curbside paid recycling.

Certain vouchers were unanimously **approved**.

Tentatively, the next IRRC meeting will be Thursday, May 20, 2021, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.