

In the Matter Of:

Department of Natural Resources & Environmental Control

SURFACE WATER QUALITY HEARING

April 20, 2022



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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Surface Water Quality Standards
Triennial Review
Docket Number 2021-R-WS-0015

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Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 2332 836 9040

Wednesday, April 20, 2022
6:00 p.m.

..

BEFORE: Lisa Vest, Hearing Officer

FOR THE DIVISION: David Wolanski, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
Registered Professional Reporters
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1 MS. VEST: Good evening. I believe
2 that everyone that needs to be here is
3 connected and ready, so we are going to go
4 ahead and begin tonight's proceedings.

5 I want to thank everybody for
6 taking the time out of their busy schedules
7 to be here. The date is Wednesday, April 20,
8 2022.

9 And we are here this evening to
10 provide the virtual platform for DNREC to
11 conduct its virtual public hearing on the
12 pending regulatory action regarding Surface
13 Water Quality Standards Proposed Reg
14 Amendments, also known as the triennial
15 review.

16 For those that may not know me, my
17 name is Lisa Vest, and Secretary Garvin has
18 designated me to serve as the hearing officer
19 for tonight's proceedings.

20 Pursuant to DNREC's standard
21 hearing protocols, this hearing is being
22 conducted virtually. No one is together in
23 the same room, and everyone is participating
24 independently at their own respective

1 locations.

2 While there are no physical sign-in
3 sheets to document attendance tonight, WebEx
4 does generate a list of those that are
5 virtually attending tonight, so the
6 Department still has a record of those who
7 have electronically attended. And, again, I
8 thank everyone for coming.

9 At the conclusion of these
10 introductory remarks, I will be turning the
11 hearing over to Dave Wolanski for the
12 Department so that he may make a brief
13 presentation for the record being generated
14 in this matter.

15 There is still a court reporter who
16 is present also at her own respective
17 location, and she will prepare a verbatim
18 transcript of the proceedings that happen
19 tonight pursuant to the statutory requirement
20 for DNREC to do so.

21 And as always, that transcript will
22 be posted on the hearing webpage dedicated to
23 this matter as soon as it has been received.

24 Also pursuant to DNREC standard

1 hearing protocols, we do have preregistration
2 required for members of the public, should
3 they wish to offer live comment during the
4 course of these hearings. Let the record
5 reflect that no members of the public signed
6 up and preregistered to do so tonight for
7 this particular regulatory matter, so the
8 hearing will consist of these basic parameter
9 introductory remarks and then the
10 Department's presentation.

11 For the record, and for those who
12 may view this transcript later following
13 these proceedings tonight, I would encourage
14 them to check out DNREC's webpage under the
15 Administrative Law Section of DNREC's website
16 for all the detail concerning this pending
17 regulatory action.

18 The presentation that Mr. Wolanski
19 will be giving tonight, along with the
20 exhibits and all other documentation related
21 to this regulatory action, are posted on that
22 hearing webpage, and the public may gain a
23 wealth of information by reviewing the same.

24 Of course, all mechanisms

1 previously available by which to offer
2 comment remain in effect. There is an
3 electronic link, there is e-mail and, of
4 course, standard USPS regular United States
5 Postal Service.

6 Also for the record, please note
7 that the following hearing protocols remain
8 in place for all DNREC public hearings:

9 1. All comment received must be
10 limited solely to the subject matter of
11 tonight's hearing. All comments pertinent to
12 that subject matter will be incorporated into
13 the record that is being generated in this
14 regulatory action.

15 2. In order to ensure that
16 everyone who wishes to offer comment for the
17 Secretary's consideration is accommodated,
18 the record in this matter will not close
19 following the proceedings tonight but,
20 rather, remain open through May 5, 2022.

21 By the way, all of our DNREC
22 hearings remain open subsequent to the
23 proceeding itself for at least 15 days. So
24 persons wishing to comment, if they do not

1 have the opportunity to attend virtually
2 tonight, they have until May 5th to send in
3 written comment, which will be incorporated
4 into the record upon its receipt.

5 3. There is only one authentic
6 record of the hearing tonight, and it is the
7 official court reporter's verbatim
8 transcript.

9 4: The statutory purpose of
10 tonight's hearing is to build the record with
11 regard to the Department's proposed actions.
12 The record, which consists of the transcript
13 tonight, all written comments that may be
14 received between now and May 5th, all
15 exhibits of the Department, and eventually
16 the Hearing Officer's Report, will all be
17 bundled together and reviewed by Secretary
18 Garvin.

19 The Secretary will ultimately issue
20 an order following his review process, and
21 that order will contain his decision on the
22 matter and his reasoning therefor.

23 Lastly, it is important to note
24 that no decision has already been made by the

1 Department, nor will any decision be made at
2 tonight's hearing, with regard to this
3 pending regulatory action.

4 With regard to written comments,
5 they may be submitted through the comment
6 form link on the hearing webpage, via e-mail
7 to DNRECHearingComments@Delaware.gov, or via
8 the United States Postal Service at the
9 physical address for DNREC indicated on
10 either the hearing page and the public
11 notices that have previously been issued in
12 this matter.

13 It should be noted that written
14 comment to DNREC may not be submitted using
15 social media platforms such as Twitter,
16 Facebook, YouTube, or standardized text
17 messaging.

18 Please remember that all comment,
19 whether it is received through the United
20 States Postal Service or via any of the
21 electronic mechanisms noted just now, as long
22 as it is received by the Department on or
23 before May 5, 2022, will all bear the exact
24 same weight, and all will be considered

1 equally by Secretary Garvin prior to his
2 making a final decision in this matter.

3 The ultimate decision regarding
4 this regulatory action is, again, made by
5 Secretary Garvin. And this hearing tonight
6 acts as a formal mechanism to enable the
7 Department to thoroughly vet this proposed
8 matter to the public and then to let the
9 public know the various ways by which comment
10 can be submitted for the Secretary's
11 consideration, should the public wish to do
12 so.

13 That being said, I am going to turn
14 the microphone over to Dave Wolanski, who is
15 the Department's representative. And, Dave,
16 I believe you have a brief presentation, so
17 you may proceed when ready.

18 MR. WOLANSKI: Thank you, Lisa. I
19 do have a presentation. The agenda is on the
20 screen now. I'm going to introduce myself.
21 I'm David Wolanski. I'm an Environmental
22 Scientist with DNREC. I'm a Water Quality
23 Standards Coordinator.

24 I will briefly cover the

1 promulgation schedule as we expect it to go
2 currently. That's subject to change based on
3 any possible comments or changes the
4 Department needs.

5 We will talk about the current
6 water quality standards, the proposed
7 standards.

8 There are 13 exhibits that we will
9 want to put into the record. And we will be
10 taking public comments.

11 So the promulgation schedule: We
12 published the proposed regulation March 1st
13 in the Delaware Register. We did legal
14 notice on March 9th. We are doing the public
15 hearing tonight. As Lisa said, the record
16 closes on May 5th of 2022.

17 If everything goes as anticipated
18 and there aren't significant delays, we
19 expect to or we anticipate final regulations
20 to be published in the July 1st register, and
21 then the new regulations would take place --
22 they would be effective July 11th of 2022.

23 The current water quality standards
24 were last updated in 2017. And to match the

1 Clean Water Act goals, our water quality
2 standards are established to restore and
3 maintain the chemical, physical, and
4 biological integrity of Delaware waters.

5 The standards set designated uses,
6 and they have the criteria to protect them.
7 There are anti-degradation requirements, and
8 then there are some general policies within
9 the regulation.

10 The proposed regulation has
11 significant updates for human health
12 criteria. It's based on updated
13 recommendations by EPA.

14 So a new table of 116 pollutants
15 has been offered. Criteria were reduced for
16 64 pollutants in alignment with EPA
17 recommendations. They were higher for 13
18 pollutants and unchanged for 20 pollutants.

19 And, additionally, the Department
20 has anticipated adding ten new pollutants in
21 accordance with EPA recommended criteria.

22 There are other ways that we try to
23 align the criteria to more closely match EPA
24 recommended criteria. We have proposed

1 changing some of the names for chemicals that
2 have multiple names to match the EPA
3 recommended criteria.

4 And we have dropped some human
5 health criteria that are not an EPA
6 recommended criteria currently, or we propose
7 doing that.

8 We are proposing to adopt the
9 recommended aquatic life criteria for
10 Ammonia, Cadmium, and Nonyphenol that would
11 match EPA recommendations.

12 There is a difference between the
13 proposed regulation in the March 1st register
14 than what we will propose as a final
15 regulation. There is seven instances where
16 there was a clerical error, and the incorrect
17 sections were referenced. We consider that a
18 minor change.

19 We have 13 exhibits. I will not
20 read them out.

21 For the proposed changes, basically
22 we are matching the legal requirements for
23 EPA and DNREC and showing the history of what
24 the Department has done to outreach to our

1 stakeholders.

2 We have some copies of the EPA
3 recommended criteria. There is a copy of
4 this presentation and then affidavits for
5 legal ads.

6 MS. VEST: Okay. Does that
7 conclude the Department's presentation?

8 MR. WOLANSKI: That does. Thank
9 you.

10 MS. VEST: Okay. Thank you, Dave.

11 Just a little bookkeeping to ensure
12 that the record is clear: The Department is
13 proposing 13 exhibits to be entered into the
14 formal hearing record being generated. Are
15 the 13 exhibits the same as those proposed
16 and posted on the hearing webpage, Dave?

17 MR. WOLANSKI: Yes, ma'am.

18 MS. VEST: And with the exception
19 of the correction of the clerical error,
20 which has already been done on the webpage,
21 have any other changes been made or have the
22 exhibits been altered in any way, other than
23 what's been mentioned, since their posting?

24 MR. WOLANSKI: No, ma'am.

1 MS. VEST: Okay. Let the record
2 reflect that DNREC proposed Exhibits 1
3 through 13 are hereby entered into the formal
4 hearing record generated in this matter.

5 I assume the Department has no
6 further comments it wishes to make at this
7 time?

8 MR. WOLANSKI: That's correct.

9 MS. VEST: Okay. Thank you, Dave.

10 At this point in our hearings we
11 would normally now turn to any members of the
12 public who had preregistered and wish to
13 comment.

14 As I noted at the beginning of
15 these proceedings, we did not have any
16 persons preregistered for tonight's event, so
17 we are going to now move to conclude these
18 proceedings at this time.

19 As previously noted, the hearing
20 record will remain open through May 5, 2022
21 so that any members of the public who wish to
22 offer comment for the Secretary's
23 consideration may certainly be able to do so
24 over the next 15 days.

1 Again, whether comments come in
2 writing, by the United States Postal Service,
3 whether they come electronically by the
4 mechanisms I mentioned before, or if they had
5 come in live tonight during the course and
6 scope of tonight's hearing, all comments
7 received bear the same weight, and all will
8 be incorporated into the hearing record
9 generated.

10 Again, I want to thank everybody
11 for taking their time to join us tonight.
12 This meeting is adjourned. Thank you.

13 (Concluded at 6:10 p.m.)
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CERTIFICATE

1
2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the foregoing is an accurate and complete
5 transcription of the proceeding held at the time and
6 place stated herein, and that the said proceeding
7 was recorded by me and then reduced to typewriting
8 under my direction, and constitutes a true record of
9 the testimony given by said witnesses.

10 I further certify that I am not a relative,
11 employee, or attorney of any of the parties or a
12 relative or employee of either counsel, and that I
13 am in no way interested directly or indirectly in
14 this action.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 25th day
17 of April 2022.

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23 Lorena J. Hartnett
24 Registered Professional Reporter

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