



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: EXCLUSION FOR IDENTIFICATION AND LISTING
HAZARDOUS WASTE AT MAX ENVIRONMENTAL

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BEFORE: Laura Griffin, Chair
 Darek Jagiela, Member
 Kate Cole, Member
 Jennifer Swan, Member
HEARING: Wednesday, January 19, 2022
 6:00 p.m.
LOCATION: Webex
SPEAKER: Stacey Magda

Reporter: Hannah Bartowski

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OPENING REMARKS

By Laura Griffin

4 - 10

TESTIMONY

By Stacey Magda

10 - 15

DISCUSSION AMONG PARTIES

15 - 16

E X H I B I T S

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NONE OFFERED

P R O C E E D I N G S

CHAIR: Good evening, I'd like to welcome you to the Environmental Quality Board Public Hearing on the proposed rulemaking for Exclusion for Identification and Listing Hazardous Waste and MAX Environmental Technologies, Inc., Bulger and Yukon facilities.

My name is Laura Griffin. I'm the Regulatory Coordinator for the Department of Environmental Protection. I'm representing the Environmental Quality Board or EQB at today's hearing. Assisting me today are Kate Cole, Darek Jagiela and Jennifer Swan. I officially call this hearing to order at 6:01 p.m. This public hearing will be recorded in its entirety.

The purpose of this hearing is to formally accept testimony on the proposed rulemaking. This proposed rulemaking was adopted by the EQB at its meeting on September 21st, 2021. A proposed rulemaking would delist or remove the wastewater treatment/filter cake generated at the MAX Bulger and Yukon facilities from the list of hazardous wastes, as long as specific conditions are met.

1 A delisting petition is a request to
2 remove waste from a particular facility from the
3 lists of hazardous waste identified under the
4 Resource Conservation and Recovery Act of 1976.
5 This proposed rulemaking is the result of two
6 Delisting Petitions submitted by MAX Environmental
7 Technologies, Inc., for the wastewater
8 treatment/filter cake currently listed as hazardous
9 waste generated at the MAX Bulger and Yukon
10 facilities. Wastewater treatment/filter cake is the
11 solids that are removed from the wastewater during
12 the treatment process.

13 The petition process required MAX
14 Environmental to show that the wastewater
15 treatment/filter cake generated at the MAX Bulger
16 and Yukon facilities does not meet any of the
17 criteria for which the waste was originally listed
18 as hazardous and does not exhibit any hazardous
19 waste characteristics, which are ignitability,
20 corrosivity, reactivity and toxicity.

21 It is important to emphasize that a
22 delisting does not exclude a hazardous waste from
23 hazardous waste regulation. More accurately, a
24 delisting excludes a waste that is not hazardous
25 from being managed as a hazardous waste. The

1 delisting petition process and associated analysis
2 by the Department demonstrated that the wastewater
3 treatment/filter cake from both the MAX Bulger and
4 Yukon facilities did not meet the criteria for being
5 listed as hazardous wastes and did not exhibit any
6 hazardous waste characteristics. As such, this
7 proposed rulemaking would amend the Department's
8 Regulations under Chapter 261(a), Appendix IX(a),
9 Table 1-A to remove or delist the wastewater
10 treatment/filter cake at the MAX Bulger and Yukon
11 facilities from the list of hazardous wastes as long
12 as specific conditions are met to demonstrate the
13 filter cake does not exhibit any hazardous waste
14 characteristics.

15 This concludes the summary of the
16 rulemaking. If you would like to access a more
17 detailed explanation of regulatory amendments
18 included in this rulemaking, you can visit eComment
19 on DEP's webpage and select Regulations. In order
20 to ensure everyone has an equal opportunity to
21 comment on this proposal, I would like to establish
22 the following rules.

23 I will call upon the witnesses who
24 have registered to testify at this hearing. All who
25 registered were assigned a number indicating the

1 order in which witnesses will be called to speak.
2 Testimony is limited to five minutes for each
3 witness. For those of you who are attending by
4 WebEx online, you'll see a screen on the right-hand
5 side with a five-minute timer.

6 Please note that written and spoken
7 testimony both carry the same weight. If you should
8 run out of time for your spoken testimony, we will
9 read the rest of your comments from your written
10 testimony. As advised in registration
11 correspondence, please provide a copy of your
12 written testimony to regcomments@pa.gov.

13 R-E-G-C-O-M-M-E-N-T-S @pa dot G-O-V. Your email
14 must note that you are submitting testimony for
15 proposed rulemaking, Exclusion for Identification
16 and Listing Hazardous Waste at MAX Environmental
17 Technologies, Inc. Bulger and Yukon facilities,
18 along with your first and last name, mailing
19 address, email address, and if you are commenting on
20 behalf of an organization.

21 Testimony is not required to be five
22 minutes long. If others who provide testimony
23 before you are making similar statements to yours,
24 you are free to abbreviate or summarize your verbal
25 testimony and still provide the full testimony via

1 email. Also, you do not have to provide verbal
2 testimony in order to be included in the public
3 record. All written testimony submitted to
4 regcomments@pa.gov will also be reviewed by the EQB
5 and the Department and included in the public
6 record. The public comment period on this proposed
7 rulemaking closes on February 22nd. Public comments
8 will not be accepted for the public record on this
9 proposed rulemaking after that date.

10 Please state your name, address and
11 affiliation, if applicable, for the record, prior to
12 presenting your testimony. The EQB would appreciate
13 your help by spelling out your name and terms that
14 may not be generally familiar, so that the
15 transcript can be as accurate as possible. Because
16 the purpose of a hearing is to receive comments on
17 the proposal, Department staff cannot address
18 questions about the proposed rulemaking during the
19 hearing.

20 In addition to or in place of verbal
21 testimony presented at today's hearing, interested
22 persons may also submit written comments on this
23 proposal. Again, written and verbal comments hold
24 the same weight when considered in the finalization
25 of this proposed rulemaking. All testimony and

1 written comments provided become a part of the
2 official public record. All comments - all comments
3 must be received by the EQB on or before
4 February 22nd, 2022.

5 There are a few different ways to
6 submit written comments, which is separate from
7 testimony. Comments may be submitted online through
8 eComment, which is accessible from DEP's website.
9 If you click on the eComment link on DEP's homepage,
10 which can be reached from the top at www.dep.pa.gov,
11 and at the top, you go to public participation and
12 scroll down, you'll see eComment, or comments may be
13 submitted by email at regcomment@pa.gov. A subject
14 heading of the proposed rulemaking and a return name
15 and address must be included in each email.

16 Comments may also be sent through
17 U.S. postal mail and addressed to the Environmental
18 Quality Board, P.O. Box 8477, Harrisburg, PA,
19 17105-8477.

20 All testimony received at this
21 hearing, as well as written comments received by
22 February 22nd, 2022, will be considered by the EQB
23 and will be included in a comment and response
24 document, which will be prepared by DEP and reviewed
25 by the EQB prior to the Board taking its final

1 action on this regulation.

2 I would now like to call for the
3 first commenter. And we also only had one person
4 sign up, so this is our commenter that I know of.
5 That first person is Stacey Magda.

6 MS. MAGDA: Good evening, my name is
7 Stacey Magda, pronounced She/Hers. I am joining
8 this evening to share my comment on behalf of the
9 Mountain Watershed Association. Address is 1414
10 Indian Creek Valley Road, Melcroft, Pennsylvania.
11 Ahead of my comment, I'll ask for some grace. I'm
12 working from home with my two-year old and we both
13 have COVID, but I do not want to miss the
14 opportunity to show my concerns regarding this -
15 this delisting request.

16 As I mentioned, my name is Stacey
17 Magda, and I'm here presenting a comment on behalf
18 of Mountain Watershed Association and the concerned
19 community members of Yukon. Over the past year
20 and a half I've had the opportunity to observe the
21 operation at MAX Environmental's Yukon facility and
22 connect very closely with nearby residents, as well
23 as those that have long since moved away, many due
24 to impacts from MAX, the facility.

25 The stories I have heard are both

1 shocking and frightening. Many in Yukon feel widely
2 betrayed by industry and regulatory agencies of the
3 outfall of this facility continues to plague their
4 daily lives, with not just smells, tongue-numbing
5 sensations, polluted water and hard air quality.
6 Many complained of an ongoing fugitive dust that
7 starves their - their ability to safely breathe in
8 dry weather, often citing the only time they feel
9 the air is safe is when it rains.

10 Regarding MAX's request to reclassify
11 the sludge generated from the treatment system as
12 nonhazardous, the Mountain Watershed Association
13 strongly opposes this rulemaking, in large part
14 because MAX's history of noncompliance indicates
15 that MAX cannot be trusted to engage in the
16 monitoring and reporting activities necessary to
17 ensure sludge waste continues to be safely treated
18 and stored. MAX's compliant history paints a clear
19 picture of chronic failure to comply with existing
20 requirements. Allowing them to have fewer
21 requirements does not seem like it will result in a
22 safer study.

23 Secondly, MAX's --- residual waste
24 shown to be highly radioactive from oil and gas
25 operations. While that waste is not currently

1 classified as radioactive or hazardous, there is
2 pending legislation that would change that
3 classification. If that legislation is passed and
4 the oil and gas waste is considered to be
5 radioactive, then the DEP's existing delisting
6 evaluation would be inaccurate.

7 A new independent evaluation would be
8 needed to verify that the sludge does not also show
9 evidence of elevated radiation. As it is highly
10 unlikely that high radiation would not be
11 discovered, the sludge would likely then evidence
12 characteristic to the hazardous waste and the
13 delisting would be rendered moot.

14 According to the DEP's website, a
15 conditional delisting means MAX is required to test
16 its sludge regularly and the results should not show
17 any characteristics of hazardous waste. As long as
18 MAX's test show there is not a significant amount of
19 hazardous waste, this sludge can be treated as
20 nonhazardous waste. If the results do reflect
21 characteristics of hazardous waste, then the
22 delisting does not apply and MAX must treat the
23 sludge as hazardous waste.

24 If the delisting petition is granted,
25 MAX will not be required to report the results of

1 its sampling and monitoring of leachate sludge with
2 DEP. MAX must share their analysis only if
3 monitoring reveals that certain hazardous wastes are
4 present in levels that exceed the permitted limit.
5 If that does occur, MAX must report any information
6 relevant to that exceedance within ten days of
7 discovery.

8 A review of MAX's compliance history
9 shows a failure to monitor and report a large swath
10 of activities in the past. There's little reason to
11 think this monitoring and reporting would be any
12 different and the consequences would be dire if MAX
13 incorrectly or inaccurately sampled and failed to
14 report. If hazardous sludge is treated as
15 nonhazardous, it would be buried on the site,
16 irrevocably leaching into the soil and water, and
17 further damaging the surrounding environment and
18 community, a community in which people are literally
19 suffering at the hands of this facility.

20 A note on the compliance history.
21 MAX has shown either a lack of ability or intent to
22 consistently comply with the regulatory schemes in
23 which it operates. For example, the Bulger and
24 Yukon facilities have incurred over 110 violation by
25 DEP and EPA since 2009. I have a long bulleted

1 list, but for the sake of time, I'll name a few.

2 The following are highlights from
3 that long list. Hazardous waste containers leaking
4 onto to the ground; failure to maintain leak
5 detection; open burning on the site; improperly
6 labeling waste or failing to label it at all; not
7 properly closing containers; failing to provide DEP
8 with required reporting on water pollution
9 discharges, chemical releases and compliances - and
10 compliance histories. That list goes on.

11 Many of the violations were issued so
12 gregarious (sic) that DEP also issued civil
13 penalties and fines, but those penalties failed to
14 have the desired deterrent effect. Instead, it
15 seems they are treated as a regular cost of doing
16 business. Penalties have been issued at least once
17 a year every single year from 2012 to the present,
18 with the most recent one issued just one month ago
19 for \$28,500. Since 2009, MAX has been fined at
20 least 25 times for a total of \$850,000 in penalties.

21 MAX is slated in its regulatory
22 analysis forum that should the delisting petition be
23 approved, it would save them an estimated \$950,000
24 annually in transport and disposal costs. To reward
25 MAX by delisting hazardous waste, knowing the

1 facility's history of noncompliance seems
2 counterproductive to the interest of environmental
3 protection and the protection of human life.

4 MAX's inability or unwillingness to
5 regularly comply with DEP's environmental standards
6 should not be answered with the delisting of
7 hazardous waste it processes, effectively loosening
8 DEP's oversight. We urge you, please do not destroy
9 this community, Sewickley Creek or the Youghiogheny
10 River Watershed. We urge you to deny this request.

11 And thank you for your time. I am
12 certainly hopeful that there'll be more
13 participation tomorrow and next week.

14 CHAIR: Thank you, Stacey.

15 Is there anyone else - since we only
16 had one person sign up, is there anyone else who is
17 listening who had the intention - who has not signed
18 up, either tomorrow or next Wednesday, we do have
19 two more hearings. Like Stacey mentioned, we have a
20 hearing tomorrow evening at 6:00, a virtual hearing,
21 and then next Wednesday, the 26th.

22 But if there happened to be someone
23 who hopped on this evening who has not signed up, is
24 - please message us in the chat box if you would
25 like to participate, or of course, as we've

1 mentioned before, written - written comments will be
2 accepted through February 22nd.

3 We'll give it a second to see if
4 there's -.

5

6 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

7

8 CHAIR: Have we heard from anyone who
9 would like to speak, Darek or Kate?

10 MR. JAGIELA: I have not received any
11 messages in the chat.

12 CHAIR: Okay.

13 Well, hopefully we'll have some more
14 people signing up, then.

15 So thank you again, Stacey, for
16 providing your testimony. Thank you to anyone else
17 who was listening in this evening. With no other
18 commenters present, on behalf of the EQB, I hereby
19 adjourn this hearing at 6:18 p.m. And thank you,
20 Hannah.

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VIDEOCONFERENCE HEARING CONCLUDED AT 6:18 P.M.

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing was held before Chair Griffin, was reported by me on January 19, 2022 and that I, Hannah Bartkowski, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Date the 8 day of February, 2022



Hannah Bartkowski,
Court Reporter