



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\* \* \* \* \*

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

\* \* \* \* \*

BEFORE: Laura Griffin, Chair  
Darek Jagiela, Member  
Kate Cole, Member  
Jennifer Swan, Member

HEARING: Thursday, January 20, 2022  
6:00 p.m.

LOCATION: Zoom

WITNESSES: Cathy Lodge, Melissa  
Marshall

Reporter: Brian D. O'Hare

Any reproduction of this transcript  
is prohibited without authorization  
by the certifying agency.

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

OPENING REMARKS	
By Laura Griffin	3 - 13
TESTIMONY	
By Cathy Lodge	13 - 19
TESTIMONY	
By Melissa Marshall	19 - 27
DISCUSSION AMONG PARTIES	28 - 30
CERTIFICATE	31

## P R O C E E D I N G S

CHAIR:

Good evening, everyone.

I would like to welcome you to the Environmental Quality Board's public hearing on the Proposed Rulemaking for an Exclusion for Identification and Listing of Hazardous Waste at 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 am representing the Environmental Quality Board or EQB at today's hearing.

Assisting me this evening are Kate Cole, Darek Jagiela and Jennifer Swan. I officially call this hearing to order at 6:00 p.m.

1                   The purpose of this  
2                   hearing is to formally accept  
3                   testimony on the proposed  
4                   rulemaking. This proposed  
5                   rulemaking was adopted by the  
6                   EQB at its meeting on  
7                   September 21st, 2021. The  
8                   proposed rulemaking would  
9                   delist, or remove, the  
10                  wastewater treatment/filter  
11                  cake generated at the MAX  
12                  Bulger and Yukon facilities  
13                  from the list of hazardous  
14                  wastes as long as specific  
15                  conditions are met.

16                  A delisting petition is  
17                  a request to remove waste from  
18                  a particular facility from the  
19                  list of hazardous wastes  
20                  identified under the Resource  
21                  Conservation and Recovery Act  
22                  of 1976.

23                  This proposed rulemaking  
24                  is the result of two delisting  
25                  petitions submitted by MAX

1 Environmental Technologies for  
2 the wastewater treatment/filter  
3 cake currently listed as  
4 hazardous wastes generated at  
5 the MAX Bulger and Yukon  
6 facilities.

7 Wastewater  
8 treatment/filter cake is the  
9 solids that are removed from  
10 wastewater during the treatment  
11 process.

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

25 It is important to

1           emphasize that the delisting  
2           does not exclude a hazardous  
3           waste from hazardous waste  
4           regulation. More accurately a  
5           delisting excludes a waste that  
6           is not hazardous from being  
7           banished as a hazardous waste.

8                     The delisting petition  
9           process and associated analysis  
10          from the department  
11          demonstrated that the  
12          wastewater treatment/filter  
13          cake from both the MAX Bulger  
14          and Yukon facilities did not  
15          meet the criteria for being  
16          listed as hazardous waste, and  
17          did not exhibit any hazardous  
18          waste characteristics.

19                    This proposed rulemaking  
20          would amend the Department's  
21          regulations at Chapter 261A,  
22          appendix 9A Table 1A, to remove  
23          or delist the wastewater  
24          treatment/filter cake at the  
25          MAX Bulger and Yukon facilities

1 from the list of hazardous  
2 wastes, again, as long as  
3 specific conditions are met to  
4 demonstrate the filter cake  
5 does not exhibit any hazardous  
6 waste characteristics.

7 This concludes the  
8 summery of the rulemaking.

9 If you would like to  
10 access a more detailed  
11 explanation of regulatory  
12 amendments included in this  
13 rulemaking, visit Ecomment on  
14 DEP's web page --- regulations.

15 In order to assure  
16 everyone has an equal  
17 opportunity to comment on the  
18 proposal, I would like to  
19 establish the following rules.

20 First I will call upon  
21 the witnesses who have  
22 registered to testify at this  
23 hearing. All who registered  
24 were assigned a number  
25 indicating the order in which

1 witnesses will be called to  
2 speak.

3 Number two, testimony is  
4 limited to five minutes for  
5 each witness. Please note that  
6 written and spoken testimony  
7 both carry the same weight. If  
8 you should run out of time for  
9 your spoken testimony, we will  
10 read the rest of your comments  
11 from your written testimony.

12 As advised in  
13 registration correspondence,  
14 please provide a copy of your  
15 written testimony to  
16 regcomments@pa.gov. So the  
17 e-mail address is  
18 R-E-G-C-O-M-M-E-N-T-S @P.A.  
19 G-O-V. Your e-mail must note  
20 that you are submitting  
21 testimony for proposed  
22 rulemaking, exclusion for  
23 identification and listing  
24 hazardous waste at MAX  
25 Environmental Bulger and Yukon



1 facilities, along with your  
2 first and last name, mailing  
3 address, e-mail address, and if  
4 you are commenting on behalf of  
5 an organization.

6 Testimony is not  
7 required to be five minutes  
8 long. If others who provide  
9 testimony before you are making  
10 similar statements to yours,  
11 you're free to abbreviate or  
12 summarize your verbal testimony  
13 and still provide the full  
14 testimony by e-mail.

15 You don't have to  
16 provide verbal testimony to be  
17 included in the public record.  
18 Your written testimony  
19 submitted to [regcomments@pa.gov](mailto:regcomments@pa.gov)  
20 will also be reviewed by the  
21 EQB and Department and included  
22 in the public record.

23 The public comment  
24 period on this proposed  
25 rulemaking closes on

1 February 22nd. Public comments  
2 will not be accepted into the  
3 public record on this proposed  
4 rulemaking after that date.

5 Please state your name,  
6 address and affiliation, if  
7 applicable, for the record  
8 prior to presenting in your  
9 testimony. The EQB would  
10 appreciate your help by  
11 spelling out your name and  
12 terms that may not be generally  
13 familiar, so that the  
14 transcript can be as accurate  
15 as possible.

16 Because the purpose of  
17 the hearing is to receive  
18 comments on the proposal, the  
19 Department staff cannot address  
20 questions about the proposed  
21 rulemaking during the hearing.

22 In addition to, or in  
23 place of, verbal testimony  
24 presented at today's hearing,  
25 interested persons may also

1 submit written comments on the  
2 proposal. Again, written and  
3 verbal comments hold the same  
4 weight when considered in the  
5 finalization of this proposed  
6 rulemaking.

7 All testimony and  
8 written comments provided  
9 become a part of the official  
10 public record. All comments  
11 must be received by the EQB by  
12 or before February 22nd, 2022.

13 There are a few  
14 different ways you can submit  
15 written comments, which is  
16 separate from testimony.  
17 Comments may be submitted  
18 online through e-comment which  
19 is accessible from DEP's  
20 website by going to DEP's home  
21 page [www.dep.pa.gov](http://www.dep.pa.gov) and then  
22 selecting e-comment under the  
23 public participation, which is  
24 at the top of the page. Or  
25 comments may be submitted by

1 email at regcomments@pa.gov.  
2 The subject heading of the  
3 proposed rulemaking and return  
4 name and address must be  
5 included in each e-mail.

6 Comments may also be  
7 submitted by U.S. postal mail  
8 addressed to the Environmental  
9 Quality Board P.O. Box 8477  
10 Harrisburg, Pennsylvania,  
11 17105-8477.

12 All testimony received  
13 at this hearing, as well as  
14 proposed written comments,  
15 should be received by  
16 February 22nd, 2022, will be  
17 considered by the EQB and will  
18 be included in a comment and  
19 response document, which will  
20 be prepared by DEP and reviewed  
21 by the EQB prior to the Board  
22 taking its final action on this  
23 regulation.

24 I would now like to call  
25 for the first commenter. The

1 first person we have signed up  
2 to speak is Cathy Lodge.

3 CATHY LODGE:

4 Hi. C-A-T-H-Y, L-O-D-G-  
5 E, from Bulger. MAX is asking  
6 Pennsylvania to reverse a  
7 decision made in 2011 by EPA to  
8 determine that filter cakes at  
9 MAX's facilities should be  
10 classified hazardous waste  
11 given the type of waste  
12 disposed onsite.

13 Many living near MAX  
14 object to any reversal  
15 petitions which would allow the  
16 landfill to reclassify its  
17 waste from hazardous to  
18 nonhazardous. This action  
19 would remove protective  
20 oversight by the DEP.

21 The majority of MAX's  
22 waste in Bulger comes from  
23 Marcellus Shale gas  
24 development. MAX has fashioned  
25 itself over the years to be a

1 Marcellus Shale gas waste  
2 landfill. There is mounting  
3 evidence that the waste created  
4 by the oil and gas industry is  
5 radioactive and poses a threat  
6 to human health.

7 Given the mounting  
8 evidence, why would the EQB  
9 consider setting precedence by  
10 allowing MAX to delist any part  
11 of its waste stream? Six  
12 months ago the Wolf  
13 Administration announced new  
14 requirements at all landfills,  
15 including MAX, to quarterly  
16 test leachate for radiological  
17 contaminants.

18 We request that EQB  
19 table this delisting decision  
20 until at least a year-long  
21 report of data for radium-226  
22 and 228 from MAX's landfill is  
23 collected, meeting the new  
24 requirements to test leachate  
25 at landfills.

1                   Declassifying MAX's  
2                   waste from hazardous to  
3                   nonhazardous could  
4                   mischaracterize the leachate  
5                   created from a cocktail of  
6                   residual wastes including  
7                   TENORM.

8                   We feel that MAX does  
9                   not make a plausible rationale  
10                  nor a compelling argument for  
11                  why they're requested change  
12                  should be granted. The reason  
13                  for MAX's request to delist the  
14                  waste is obvious. It's an  
15                  economic decision. It would be  
16                  cheaper for MAX to dispose of  
17                  the waste which they generate  
18                  by placing it onsite mixed with  
19                  the shale gas waste among the  
20                  other residual wastes.

21                  I voiced our concerns  
22                  for this petition to delist in  
23                  September 2020 to the SWAP  
24                  meeting. Please note that MAX  
25                  Environmental has a long

1 history of noncompliance with  
2 the DEP for a variety of permit  
3 violations. MAX may have  
4 changed their name and owner  
5 over the years. They may have  
6 hired former DEP agents to run  
7 the show, but they continue to  
8 have difficulty being in  
9 compliance with state and  
10 federal regulations.

11 DEP issued violations  
12 for both MAX's Yukon and Bulger  
13 facilities as recently as  
14 July 2021. This will change or  
15 serve to make it easier for  
16 this repeat violator to do  
17 business in Pennsylvania, but  
18 does not protect public health  
19 or the environment.

20 Why would MAX --- why  
21 should MAX get a pass of any  
22 kind? Given the alarming  
23 findings in a recent AG report  
24 jury --- I'm sorry, AG grand  
25 jury report, with regard to



1 residential water contamination  
2 from natural gas industry,  
3 combined with MAX's official  
4 last year claiming that 75  
5 percent of their accepted waste  
6 comes from oil and gas  
7 industries, why can people ---?  
8 How can people living near MAX  
9 trust that their water will not  
10 be contaminated?

11 Will this Board require  
12 that water wells near the  
13 Bulger facility be tested for  
14 radiological contaminants prior  
15 to delisting and continuously  
16 to ensure the health and safety  
17 of the residents? Because  
18 there is no requirements in Act  
19 13 for the oil and gas industry  
20 to provide the public with the  
21 names of proprietary chemicals  
22 used in the fracking process.

23 How can members of this  
24 Board be certain that the  
25 leachate data contained within

1 the delisting petition is  
2 comprehensive and includes all  
3 the chemicals, including those  
4 from fracking?

5 Again, given that 75  
6 percent of MAX's client list is  
7 in oil and gas industry, we  
8 find it puzzling that the MAX  
9 delisting petition does not  
10 provide any data on  
11 radioactivity present in the  
12 sludge filter cake.

13 It is critical that DEP  
14 test for radiological  
15 contaminants in MAX's leachate.  
16 MAX's waste should be regulated  
17 under both the RCRA and Atomic  
18 Energy Act as a mixed hazardous  
19 waste if radioactivity is  
20 found.

21 MAX's waste should not  
22 be delisted. EQB should deny  
23 MAX's delisting request or  
24 table the decision until  
25 radiological testing has

1           occurred, as the Wolf  
2           Administration instructed in  
3           July 2021.

4                         And lastly, we request  
5           that the EQB require MAX to  
6           honor a promise made by the way  
7           of a letter in the 1990s to  
8           Bulger residents near the  
9           facility. The letter promised  
10          public water to residents a  
11          half a mile from the landfill.  
12          This includes roughly only ten  
13          homes. Thank you.

14                         CHAIR:

15                         Thank you for your  
16           comments, Cathy.

17                         Our next person to  
18           testify is Melissa Marshall.

19                         Are you with us,  
20          Melissa?

21                         MELISSA MARSHALL:

22                         Hi, yes. Can you hear  
23          me?

24                         CHAIR:

25                         Yes, we can. Please go

1 ahead.

2 MELISSA MARSHALL:

3 All right.

4 It's M-E-L-I-S-S-A,  
5 M-A-R-S-H-A-L-L. I want to  
6 echo a lot of what Cathy  
7 already explained a lot of my  
8 concerns as well.

9 I think, you know, we  
10 understand that theoretically  
11 under this delisting, hazardous  
12 waste would still be treated as  
13 hazardous waste, but that is  
14 assuming that it's sort of like  
15 a proposed plan goes as  
16 planned.

17 And it also assumes that  
18 MAX will be in compliance with  
19 additional responsibilities for  
20 monitoring and reporting, which  
21 they have not been able to do  
22 in the past.

23 So if it doesn't go to  
24 plan and, MAX, you know, fails  
25 to do the monitoring and

1 reporting, the ultimate result  
2 is potentially 80 cubic yards a  
3 year at the Yukon facility,  
4 which can roughly translate to  
5 80 tons. And maybe close to  
6 600 tons a year at the Bulger  
7 facility of hazardous waste  
8 that is not disposed of  
9 properly.

10 So there's like real  
11 dire consequences here. And  
12 the delisting petition needs to  
13 be taken really very seriously.

14 MAX's compliance history  
15 is abhorrent. They have shown  
16 really little will to comply or  
17 care to comply. They're issued  
18 fines almost constantly. Every  
19 single year since 2012 they've  
20 been issued fines from the DEP.

21 The most recent one was  
22 just last month, in December,  
23 for \$28,000 for consistently  
24 violating its NPDES permit.

25 So I wanted to give some

1 examples of how MAX has failed  
2 to do almost everything they  
3 would be asked of under this  
4 delisting petition. So MAX  
5 would be required to take  
6 samples of the waste, of the  
7 sludge, about one sample, I  
8 think it is, every 20 cubic  
9 yards. And they would have to  
10 do that in accordance with a  
11 sampling analysis plan.

12 But in the past given  
13 citations or violations that  
14 they themselves have included  
15 in their own compliance history  
16 that they have submitted to the  
17 Department, they said they have  
18 been cited for not following  
19 waste-testing procedures in  
20 their own waste analysis plan.

21 They also failed to ---  
22 for the correct constituents at  
23 various points. So they were  
24 given a violation for accepting  
25 14,000 tons of waste, but

1 failing to test it at all for  
2 benzene and other geochemical  
3 parameters that were required.

4 And MAX has also been  
5 cited for just failing to  
6 monitor altogether.

7 So DEP found that MAX  
8 was just simply not performing  
9 radiation source checks every  
10 day like they were required to.  
11 So it's really hard for us in  
12 the community to believe that  
13 MAX is going to accurately take  
14 these samples, do it properly  
15 and do it in accordance with  
16 the plan that would be proposed  
17 here.

18 Another thing MAX would  
19 have to do is report any issues  
20 that they found within ten days  
21 to the DEP. Which, again, is  
22 all well and good in theory,  
23 but MAX has had a history of  
24 not reporting to DEP either  
25 properly or at all.

1                   So for example, they  
2                   were cited and fined by DEP for  
3                   not submitting their monthly  
4                   EMDRs, which is water pollution  
5                   discharge reports, and doing so  
6                   late, meaning beyond the 28th  
7                   day of the following month, and  
8                   failing to comply with their  
9                   effluent limitations, so, you  
10                  know, well beyond the ten days.

11                  They spent years not  
12                  reporting their EMDRs. MAX was  
13                  also fined for failing to  
14                  submit chemical release reports  
15                  on time. They were fined for  
16                  failing to submit complete  
17                  compliance histories for  
18                  applying for Act 90 sticker  
19                  renewals, and also cited for  
20                  failing to submit bond increase  
21                  worksheets on time.

22                  So we're really  
23                  skeptical that they're going to  
24                  manage to not only monitor  
25                  appropriately, but then report



1           since they've had such  
2           difficulty in the past. And we  
3           want to know what will be  
4           different going forward if they  
5           are granted this delisting?

6                       MAX also has shown in  
7           the past that they do not  
8           disclose their own  
9           noncompliance, which is what we  
10          would be asking them to do  
11          under this delisting petition.

12                      So you know, even in the  
13          list of noncompliance issues  
14          that they have reported to DEP  
15          at one point is incomplete as  
16          well, but they cite that they  
17          failed to notify DEP of  
18          unlawful discharges of  
19          wastewater.

20                      So you know, they're not  
21          disclosing their recordkeeping  
22          and they're not disclosing  
23          their own violations. So you  
24          know, why would they do that?  
25          Also MAX has had a history of

1            simply not telling DEP what  
2            they're doing on the ground  
3            altogether. So they've been  
4            cited for violations for  
5            installing a ground-water  
6            monitoring network completely  
7            without DEP approval.

8                        They've been given  
9            violations for completely  
10           disposing of solid waste  
11           without obtaining any permits  
12           from DEP. And also they  
13           installed stormwater and  
14           downstream drain-pipe  
15           discharges without DEPs  
16           knowledge or approval.

17                        So you know, it seems  
18           like they're really in a do  
19           whatever they want and ask for  
20           forgiveness later kind of mode.  
21           And DEP and EQB should not be  
22           rewarding this behavior and  
23           noncompliance by allowing them  
24           to even further self-oversight.

25                        They've had over a

1           hundred violations in the last  
2           ten or so years of operation.  
3           In total they have been fined  
4           over \$850,000 by DEP.

5                        They have said that this  
6           proposal, annually, would save  
7           them close to \$950,000, so I  
8           don't think they're going to  
9           much mind continuing to pay  
10          violations that are maybe, you  
11          know, \$5,000 to \$25,000 a year  
12          if they're saving nearly a  
13          million dollars a year from  
14          this delisting petition. We've  
15          not incentivized them to have  
16          better compliance, really, if  
17          we grant this petition.

18                       Yeah, I think it's just  
19          not the time to continue to  
20          issue fines and hope for the  
21          best. We need to have more  
22          oversight on the MAX  
23          facilities, not less, which is  
24          what would be happening here.

25                       CHAIR:

1                   Thank you, Melissa.  
2                   thank you for your comments.  
3                   And I'm not sure if Tina joined  
4                   us or not. She was the other  
5                   speaker that signed up for this  
6                   evening.

7                   MR. JAGIELA:

8                   I do not see Tina on the  
9                   line.

10                  CHAIR:

11                  Okay.

12                  Since we still have some  
13                  time, if --- I'm not sure if  
14                  anyone is listening who had  
15                  thought about providing  
16                  comments. We still have one  
17                  more hearing left next  
18                  Wednesday evening the 26th at  
19                  6:00 p.m., if someone would  
20                  like to sign up to provide  
21                  testimony, but has not done so  
22                  yet.

23                  Or if there is anyone  
24                  listening who would like to  
25                  provide testimony right now,

1           you can message us in the chat  
2           box and we can unmute you, if  
3           you'd like to provide  
4           testimony.

5                     Give it a few seconds to  
6           see if anyone is interested.

7                     All right.

8                     Any sign of anyone who  
9           wanted to speak?

10                    MR. JAGIELA:

11                    Cathy wants to know if  
12           she could ask some additional  
13           questions.

14                    CHAIR:

15                    We aren't answering  
16           questions during the hearing,  
17           but Cathy, please remember you  
18           can submit additional written  
19           comments in addition to your  
20           written testimony to us. And  
21           that will be entered into the  
22           record, so we can definitely do  
23           that.

24                    And we'll follow up with  
25           Tina. I'm pretty sure she'll

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

be able to join us at the next  
public hearing.

So with no other  
commenters present, on behalf  
of the EQB I adjourn this  
hearing at 6:22 p.m.

Thank you, everyone.

\* \* \* \* \*

HEARING CONCLUDED AT 6:22 P.M.

\* \* \* \* \*

## CERTIFICATE

I hereby certify that the foregoing proceedings, hearing was held before Chair Griffin, was reported by me on January 20, 2022 and that I, Brian D. O'Hare, read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 7 day of February, 2022



Brian D. O'Hare

Court Reporter