

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, May 18, 2023  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The May 18, 2023 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:02 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:      George D. Bedwick, Chairman  
   John J. Soroko, Esq.  
   Murray Ufberg, Esq.  
   Dennis A. Watson, Esq.

Telephone:                      John F. Mizner, Esq., Vice Chairman

**II. APPROVAL OF THE APRIL 20, 2023 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the April 20, 2023 public meeting minutes, as submitted. Commissioner Ufberg made the motion and Chairman Bedwick seconded, and the motion passed 5-0.

**III. EMBARGOED MAIL**

The commissioners took time to review embargoed mail.

**IV. NEW BUSINESS**

**A.      DEEMED APPROVED**

1. **No. 3327 Environmental Quality Board #7-563: National Pollutant Discharge Elimination System (NPDES) Schedules of Compliance**

**B.      ACTION ITEMS**

1. **No. 3275 Department of Human Services #14-545: Subsidized Child Care Eligibility**

Laura Campbell, Regulatory Analyst, explained the regulation aligns child care eligibility requirements with requirements set forth in the federal Child Care and Development Block Grant

of 2014. She noted that the Commission received comments from the Early Child Care and Education Consortium, the Pennsylvania Association for the Education of Young Children (PennAEYC), Start Strong PA, Trying Together, and four child care providers opposing provisions within the regulation, and comments from the Community Justice Project and Community Legal Services on Behalf of Success Against All Odds in support of the regulation. She added that the Department of Human Services (Department) submitted a letter requesting the regulation's disapproval.

Shante' Brown, Deputy Secretary, Office of Child Development and Early Learning (OCDEL), Michael Ordonez, Program Representative, and Jessica Sands, Division Chief, Department, were present to answer any questions.

Ms. Brown detailed how the proposed regulation would update state child care eligibility requirements to better reflect federal guidelines. She added the regulation would prevent child care providers from charging the difference between the provider's private pay rate and the state subsidy reimbursement. She explained that the issue is complex and challenging, and the Department is considering incorporating stakeholder feedback into the final-form regulation.

Vice Chairman Mizner expressed his appreciation for the Department focusing on "very important" issues, as well as its work on the regulation.

Chairman Bedwick questioned whether the Department could gauge the impact of child care eligibility requirements on low-income communities. Ms. Brown replied that the Department requested the regulation's disapproval to utilize the time to further study any consequences.

Jen DeBell, Executive Director, PennAEYC, spoke on behalf of Start Strong PA.

Ms. DeBell outlined her concerns with the regulation. She said child care providers were not given sufficient time to offer feedback on the regulation. She detailed how the average child care provider earns under \$12.50 per hour, with a \$16.5 million total impact on the child care industry. She claimed providers would have to reduce in size to cover rising expenses, further exacerbating problems with available staff and retention. She encouraged disapproval of the regulation.

Commissioner Watson wondered if Ms. DeBell's estimates only focused on 1,100 child care programs out of over 6,000 total programs, and if she found about 30,000 children to be on waiting lists. Ms. DeBell replied in the affirmative. She explained her organization receives comments from stakeholders about severe wait times for the program, though the full scale of the problem is unknown. Ms. DeBell noted that PennAEYC wanted to focus its research on the potential impact of the regulation on families.

Ms. Brown outlined how the Department was required to gather financial data on child care program eligibility or else it would not comply with federal guidelines. She articulated how the Department is committed to working with families and educators across Pennsylvania to

identify the most efficient ways to carry out the Department's programs.

Vice Chairman Mizner made a motion for disapproval. Commissioner Ufberg seconded, and the motion passed 5-0.

**2. No. 3365 State Board of Medicine #16A-4954: Temporary Graduate Perfusionist**

Scott Schalles, Regulatory Analyst, detailed how the regulation conforms the existing regulation to Act 120, which deleted the provision requiring that a temporary graduate license shall expire immediately upon notice that an individual has failed the required certification examination.

Shana Walter, Board Counsel, and Marc Farrell, Regulatory Counsel, Department of State, were present to answer any questions.

Commissioner Watson questioned why the "straightforward" regulation took six years to be brought to the Commission. Ms. Walter responded that State Board of Medicine (Board) was prioritizing less-complex regulations that were "self-executing." She indicated that the Board is in the process of addressing regulations like the one being proposed.

Commissioner Watson inquired what the Board has done throughout the six years. Mr. Farrell outlined how once a statute is passed, the Board orients itself to enacting the statute's provisions. He explained when the Board works to enact a new statute, certain regulations would take less priority, especially if the regulation has no negative impact. He stated that the Board is training and on-boarding legal professionals to assist with its regulatory review procedure.

Commissioner Ufberg asked whether Pennsylvania experienced a loss of perfusionists due to current regulations. Ms. Walter noted that perfusionist licenses did not expire under current regulations. Commissioner Ufberg argued the Board is "papering over" an issue that does not have immediate harm on the Commonwealth.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

**3. No. 3366 State Board of Osteopathic Medicine #16A-5332: Temporary Graduate Perfusionist License**

Mr. Schalles indicated the regulation is the same as IRRC No. 3365, but addresses the State Board of Osteopathic Medicine rather than the State Board of Medicine.

Ms. Walter and Mr. Farrell were present to answer any questions.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

#### **4. No. 3371 PA State Civil Service Commission #61-13: Rules of the Civil Service Commission**

Michelle Elliott, Regulatory Analyst, stated the proposed regulation rescinds obsolete regulations related to the administration of classified service employment in Pennsylvania. She noted the Civil Service Commission's (CSC) current provisions have been superseded by Act 71 of 2018 (Act 71), which moved civil service positions from CSC to the Office of Administration (OA). She indicated OA provided a comment to the Commission opposing the regulation, though OA expressed its support for CSC's intention with the regulation.

Alina L. Andreoli, Assistant Counsel, and Elizabeth C. Lawson, Chief Counsel, CSC, were present to answer any questions.

Ms. Andreoli detailed CSC's approach to the multistep process. She reiterated how Act 71 moved the duties of CSC to OA, and now CSC must determine which regulations could be removed or re-examined. She noted the proposed regulation incorporates CSC's findings on current regulations and that they are now working alongside the Legislative Reference Bureau (LRB) to implement editorial changes. She illustrated how the last step focuses on more complicated regulations that are related to the moving of CSC's duties to OA.

Ms. Andreoli highlighted the regulation's implementation of clearer definitions and exemption guidelines for classified employment within current law. She noted CSC is unable to remove or alter certain provisions within current regulations because of its loss of authority to OA. She encouraged approving the regulation to clarify what CSC is able to accomplish.

Chairman Bedwick asked why CSC did not enact easy fixes in regulations for which it still has authority. Ms. Andreoli replied that this regulation is trying to implement several easy fixes. She stated the next step of the process after the proposed regulation is approved is reviewing outdated or nonfunctional regulations.

Chairman Bedwick wondered why the proposed regulation included the provisions Ms. Andreoli mentioned. Ms. Andreoli specified that the provisions she was addressing in her opening remarks were a response to comments CSC received from stakeholders. She added that the provisions she was addressing were not included in the proposed regulation because they are more complex. Ms. Andreoli continued that the letter provided by OA to the Commission did not challenge CSC's proposed regulation in general, but raised concern over how CSC would address more complex provisions.

Commissioner Ufberg questioned whether CSC and OA worked together on the regulation. Ms. Andreoli replied that CSC only worked with LRB to fine-tune the proposed regulation's language. Chairman Bedwick posited that Commissioner Ufberg was referring to the interagency agreement. Ms. Lawson responded that the interagency agreement did not address regulations and that CSC was not given the authority to update its regulations. She asserted CSC experienced employee transitions for a time before the COVID-19 pandemic hit the Commonwealth, which slowed CSC's operations. She affirmed CSC's commitment to serving Pennsylvania.

Commissioner Watson asked whether OA's temporary regulations at the start of the proposed regulation's development were sufficient. Ms. Andreoli replied OA's temporary regulations underwent several changes over three years. On March 12, 2022, she continued, OA's final temporary regulations took effect.

Commissioner Watson inquired whether the temporary regulations were submitted before CSC's Regulatory Analysis Form (RAF) was submitted. Ms. Andreoli replied in the affirmative.

Commissioner Watson inquired whether the panel contacted OA. Ms. Lawson stated she was not able to contact OA and received no reply when she called before the meeting.

Commissioner Watson pondered whether OA reached out to CSC. Ms. Lawson replied this regulation did not include discussions with OA.

Anthony Holbert, Deputy Chief Counsel, OA, indicated that OA is pleased at the removal of obsolete regulations through Act 71. He asserted OA was unaware of CSC's multistep plan for its regulations because OA was not included in CSC's development of the regulation. He contended CSC does not have the authority to alter the definitions within current regulations. He detailed OA's purview and again criticized CSC for not including his office in its plans.

Chairman Bedwick asked whether the provisions OA disagrees with are included in the proposed regulation. Mr. Holbert confirmed the specific provisions are not within the proposed regulation.

Chairman Bedwick stated if the proposed regulation was disapproved, the current regulations would remain effective and foster more conflict with OA's temporary regulations. He asked if Mr. Holbert would alter its request for disapproval. Mr. Holbert explained if a disapproval provides CSC 40 days to resubmit its regulation, then disapproval would be appropriate. He contended OA would not "stand in the way" of enacting regulations that are efficient and updated.

Commissioner Watson asked what Mr. Holbert means by "short order." Mr. Holbert replied OA intends to address CSC's concerns by the end of 2023.

Commissioner Watson underscored the discrepancies in the regulations offered by the two agencies. He wondered if OA ever reached out to CSC. Mr. Holbert replied that other than a few initial meetings, there was little communication between the two.

Commissioner Ufberg highlighted the provisions not included in the proposed regulation and how they relate to OA's authority. He asked if OA anticipates stakeholder confusion over its authority. Mr. Holbert claimed the confusion on OA's authority is fueled by this regulation being cited as a CSC regulation. He affirmed OA's goal to inform the public about whose authority regulations would be under.

Chairman Bedwick inquired whether CSC ever appealed a violation of OA's regulations. Mr. Holbert responded there is a difference of opinion on how regulations are violated. He

indicated a case did reach the Commonwealth Court. He added CSC tends to cite former regulations.

Chairman Bedwick questioned whether OA hopes to start addressing regulations by the end of the year. Mr. Holbert replied in the affirmative.

Chairman Bedwick queried whether the Commission could disapprove a regulation based on what is not in the regulation. Leslie Lewis Johnson, Chief Counsel, Commission, explained that the Commission could only approve or disapprove the regulatory package filed by the agency. She added that expanding the scope of the regulation before the Commission is prohibited under the Commonwealth Documents Law.

Commissioner Watson focused on whether the regulation is in the public interest. Mr. Holbert articulated his concern about the proposed regulation's disregard of provisions suggested by OA. He repeated that OA seeks to reduce issues with regulations and provide information to the Commonwealth's residents.

Commissioner Watson questioned whether OA requested disapproval of this regulation. Mr. Holbert responded that if disapproval is appropriate, then OA would support a negative vote. He expressed support for utilizing whatever process is required to get rid of confusing and outdated regulations.

Chairman Bedwick stated the LRB could provide support to CSC without OA's approval. He argued it "is in everybody's interest" for OA and CSC to cooperate. Mr. Holbert voiced his agreement.

Ms. Lawson suggested the process could be started by the end of the year, though she argued the process is lengthy. She detailed how the commissioners of CSC dictate the agency's goals. She expressed that despite minor differences, CSC and OA could have a productive relationship. She highlighted procedures like electronic signatures that CSC needs assistance with implementing.

Commissioner Watson asked whether the 2023 deadline is subject to CSC's commissioners. Ms. Lawson replied in the affirmative and added that she would underscore the importance of "moving this along."

Commissioner Watson argued it is a pipedream to address the regulations by the end of the year. Ms. Lawson stated CSC began working on regulations in January of this year. She argued once CSC has momentum it could get the work accomplished.

Commissioner Watson again questioned why the proposed regulation took six years to reach the Commission. Ms. Lawson reiterated how employee turnovers hampered CSC's operations before the onset of the COVID-19 pandemic. She asserted resources have been shifted towards CSC and she is now fully staffed, with the potential for an additional attorney.

Commissioner Watson inquired whether employee pay issues were deprioritized at CSC. Ms. Lawson responded that every applicant received a hearing. She claimed there was confusion about which applications to utilize.

Commissioner Ufberg wondered if CSC determined any of OA's suggestions to be problematic. Ms. Andreoli replied that it is challenging to work within the confines of the regulatory process. She again outlined how more complex regulations are not suitable for the regulatory process because the regulations would mix the duties of CSC and OA together. She concluded the two agencies should hold discussions with each other and stakeholders to rectify problems.

Chairman Bedwick asked if the issues that are substantial enough for OA to take CSC to court. Ms. Lawson stated the court case revolves around the status of veterans' preference as it applies to promotions. Ms. Andreoli added that she is unaware of another court case.

Commissioner Watson disclosed he would vote against the regulation, citing the lack of communication between the two agencies and how OA is seeking disapproval if appropriate. He criticized the regulatory process for its inadequacy on the situation.

Commissioner Ufberg voiced that he would hesitatingly vote against the regulation. He highlighted the absence of talks between OA and CSC, noting that this regulation is CSC's regulation with OA's concerns.

Chairman Bedwick made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 3-2, with Commissioner Watson and Commissioner Ufberg dissenting.

#### **5. No. 3291 Environmental Quality Board #7-544: Noncoal Mining Clarifications and Corrections**

Corinne Brandt, Regulatory Analyst, said the purpose of the rulemaking is to update and clarify requirements for mining non-coal minerals in the Commonwealth related to general provisions, license permits, bonding, and insurance requirements. She added the regulation provides separate requirements for exploration conducted through drilling. She stated the Commission did not receive comments on the regulation.

Nathan Houtz, Director, Bureau of Mining Programs (Bureau), Sharon Hill, Chief, Permitting & Compliance Division of the Bureau of Mining Programs, and Richard Marcil, Assistant Counsel, Bureau of Regulatory Counsel, were present to answer any questions.

Chairman Bedwick noted he previously sent a question related to insurance liability payments and the Bureau responded that the liability coverage payment was determined in consultation with the relevant committee.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

**6. No. 3309 Environmental Quality Board #7-554: Water Quality Standards – Dunbar Creek et al. Stream Redesignations**

Ms. Elliott said the regulation updates several stream redesignations because of evaluations the Department of Environmental Protection has conducted. She noted that Senator Patrick Stefano (R-Fayette) and the Pennsylvania Campaign for Clean Water provided written comments in support of the regulation and both the Senate and House standing committees have deemed the regulation approved.

Lisa Daniels, Acting Deputy Secretary, Office of Water Programs, Manyi Liu, Director, Bureau of Clean Water, Josh Lookenbill, Chief, Water Quality Standards Division of the Bureau of Clean Water, and Michelle Moses, Assistant Director, Bureau of Regulatory Counsel, were present to answer any questions.

Commissioner Soroko questioned where the streams are located. Mr. Lookenbill said the streams are located in several counties throughout the state: two are in Indiana County, one is located in the south central region, and another is located in Monroe County.

Commissioner Soroko asked if there are any ramifications that result in limitations on certain activities such as the stocking of fish. Mr. Lookenbill said the rulemaking will not impact any activities of the Pennsylvania Fish and Boat Commission or any other cooperatives.

Commissioner Soroko questioned if the rulemaking would impact any organizational fish stocking. Mr. Lookenbill said it would not.

Chairman Bedwick noted Trout Unlimited is supportive of the regulation.

Vice Chairman Mizner made a motion for approval. Commissioner Watson seconded, and the motion passed 4-0, with Commissioner Soroko abstaining.

**7. No. 3311 Environmental Quality Board #7-555: Radiation Safety Requirements for Non-Healing Arts Radiation Generating Devices**

Ms. Campbell said the regulation amends radiation safety standards for industrial radiographic operations in non-healing arts radiation producing devices. She said the Commission has not received any comments on the topic.

Ali Tarquino Morris, Deputy Secretary for Waste, Air, Radiation, and Remediation, Department of Environmental Protection, Dwight Shearer, Director, Bureau of Radiation Protection, John Chippo, Chief, Radiation Control Division of the Bureau of Radiation Protection, and Nicholas Pistory, Assistant Counsel, Bureau of Regulatory Counsel, were present to answer any questions.

Commissioner Ufberg made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.



## **8. No. 3352 Environmental Quality Board #7-574: Radiological Health Fees**

Ms. Campbell said the regulation increases 54 fees related to accelerators, radiation-producing machines, vendors, service providers, and radioactive materials and decommissioning. She noted the fees will fully fund and sustain the radiation protection program through fiscal year 2027-28. She stated no comments were received on the topic and both the Senate and House standing committees have deemed the regulation approved.

Ms. Tarquino Morris, Mr. Shearer, Mr. Chippo, and Mr. Pistory were present to answer any questions.

Chairman Bedwick made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

## **V. OTHER BUSINESS**

### **Approval of Vouchers**

Commissioner Watson made a motion to approve vouchers and expenses for the period December 9, 2022 through April 20, 2023. Commissioner Ufberg seconded, and the motion passed 5-0.

## **VI. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Bedwick announced the June meeting has been cancelled because there are no regulations to consider, and the next public meeting is scheduled for Thursday, July 13, 2023, at 10:00 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg.

## **VII. EXECUTIVE SESSION ANNOUNCEMENTS**

Chairman Bedwick announced that no executive session would be held.

## **VIII. ADJOURNMENT**

Chairman Bedwick adjourned the meeting at 11:56 am.