



west virginia department of environmental protection

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Environmental Protection Advisory Council 2014 Annual Report

I. INTRODUCTION

This Annual Report is submitted in accordance with W. Va. Code § 22-1-9(e)(6), to apprise the Joint Committee on Government and Finance of the activities undertaken by the Environmental Protection Advisory Council for the period of January 1, 2014 through December 31, 2014. The Council was created in 1994 by an Act of the West Virginia Legislature, and it is currently organized and administered within the auspices of the Department of Environmental Protection (“DEP”). In addition to the preparation and submission of this Report, the Council’s mission, set forth in W. Va. Code § 22-1-9, embraces the following duties:

- (1) To consult with and advise the DEP Cabinet Secretary on program and policy development, problem solving, and other appropriate subjects;
- (2) To identify and define problems associated with the implementation of the legislative statement of purpose and policy set forth in W. Va. Code § 22-1-1(b) (a full recitation of which is made below) and observed by DEP;
- (3) To provide and disseminate to industry and the public early identification of major federal program and regulatory changes;
- (4) To provide a forum for the resolution of conflicts between constituency groups; and
- (5) To strive for consensus, to the extent possible, on the development of overall environmental policy.

II. COUNCIL MEMBERS

Eight members comprise the Council. The Cabinet Secretary is an *ex officio* member and serves as the Chair. The remaining seven members are appointed by the Governor, typically for full terms of four years, and any member may serve successive terms upon renewal of

appointment. The balance of constituencies among the Council members is fixed by statute and must be maintained: two members are associated with industries regulated by DEP; two members represent organizations advocating environmental protection; one member represents local government organizations; one member represents public service districts; and one member represents the largest coal miner’s labor organization in the State.

There were no changes among the five remaining appointed members during 2014. However, there are still two vacancies that have not been filled by appointment of the Governor. The first vacancy was caused by the resignation of Ms. Jacqueline A. Hallinan, representing organizations advocating environmental protection, who resigned her position on the Council on June 3, 2013. The second vacancy was caused by the resignation of Karen Price, who represented industry, upon her retirement from the West Virginia Manufacturers Association, on December 5, 2013.

| MEMBER | APPOINTMENT | REPRESENTS | TERM EXPIRES |
|--|--------------------------------|--------------------------------|-----------------------------------|
| Lisa K. Dooley Madison, West Virginia | 10/01/1999 2002, 2005 | Local Governments | June 30, 2009 |
| Charles “Larry” Harris, Ph.D. Morgantown, West Virginia | 10/12/1995 1997, 2002, 2005 | Environmental Organizations | June 30, 2009 |
| Jacqueline A. Hallinan, Esquire Charleston, West Virginia | 11/02/1995 1999, 2002, 2006 | Environmental Organizations | June 20, 2010 Resigned 6/3/13 |
| Karen Price Charleston, West Virginia | 05/18/2005 | Industry | June 30, 2010 Resigned 12/5/13 |
| William Raney Charleston, West Virginia | 10/12/1995 1996, 2000, 2004 | Industry | June 30, 2008 |
| Charles “Rick” Roberts, Jr. Charleston, West Virginia | 10/12/1995 1996, 2000, 2004 | Public Service Districts | June 30, 2008 |
| Ted Hapney Roane County, West Virginia | 10/29/2010 | UMWA | June 30, 2014 |

III. SUMMARY OF ACTIVITIES DURING 2014

The Council met four times during 2014. The first meeting, on March 27, 2014, discussed the 2014 Regular Session of the Legislature as it pertained to environmental laws. At the June 12, 2014 meeting, DEP presented for the Council’s review and comment the entire slate of agency rules proposed for 2014. The September 11, 2014 meeting included a presentation from the Division of Air Quality about the federal EPA’s proposed regulations under Clean Air Act § 111(d) and a discussion with Patrick Campbell, Deputy Director of the Division of Water and Waste Management, regarding DEP’s interpretive rule regarding initial inspections, certification, and submission of spill prevention response plans for aboveground storage tanks pursuant to the new Aboveground Storage Tank Act. The Council’s final meeting for the year, on December 11, 2014, was devoted in large part to a briefing from the agency on its legislative agenda for the 2015 Regular Legislative Session. A more detailed recitation of the Council’s actions appears in the Council’s official minutes, which are included with this Report.

IV. STATEMENT ON DEP'S PERFORMANCE

The Council is required to include within its Annual Report its findings with regard to DEP's performance in accomplishing the purposes set forth in W. Va. Code § 22-1-1(b). These statutory purposes, upon which DEP was established, are:

- (1) To strengthen the State's commitment to restore, maintain, and protect the environment;
- (2) To consolidate environmental regulatory programs in a single State agency;
- (3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment, and use of the natural resources of the State;
- (4) To supplement and complement the efforts of the State by coordinating its programs with the efforts of other governmental entities, public and private organizations, and the general public, to improve the quality of the environment, the public health and public enjoyment of the environment, and to propagate and protect animal, aquatic, and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism, and energy-producing industries;
- (5) To endeavor, insofar as federal environmental programs require State participation, to obtain and continue State primacy in the administration of such programs, to endeavor to maximize federal funds that may be available to accomplish the purposes of the State and federal environmental programs, and to cooperate with appropriate federal agencies to meet environmental goals;
- (6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;
- (7) To promote improvement in the quality of the environment through research, evaluation, and sharing of information;
- (8) To improve the management and effectiveness of State environmental protection programs;
- (9) To increase the accountability of State environmental protection programs to the Governor, the Legislature, and the public generally; and
- (10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use, or other source reduction opportunities.

The Council finds that DEP has engaged in good-faith, reasonable efforts to accomplish the statutory purposes with which it is charged, a fair representation of which are outlined in

DEP's Annual Report and State of the Environment publications. It is recognized that the challenges facing the agency in fulfilling its mission are not static, but instead demand constant adaptation. DEP strives to do the best possible job with all resources it may access to implement the letter and the spirit of the Legislature's charge.

V. CONCLUSION

SUBMITTED this 29th day of December, 2014.

/s/Kristin A. Boggs

Kristin A. Boggs, General Counsel

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

MEETING MINUTES

March 27, 2014

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order the regular meeting of the Environmental Protection Advisory Council at 1:38 p.m. on March 27, 2014 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Ted Hapney, Larry Harris, Bill Raney, and Rick Roberts. Lisa Dooley participated by phone.

The meeting was also attended the following individuals from the DEP: Cabinet Secretary Randy Huffman; Kelley Gillenwater, Chief Communications Officer; Scott Mandirola, Director of the Division of Water and Waste Management; Kevin Coyne, Environmental Resources Program Manager of the Division of Water and Waste Management.

Rebecca Randolph, who replaced Ms. Price as the Executive Director of the West Virginia Manufacturer's Association, but has not yet been appointed to the Council by the Governor, was also present, as was Don Garvin from the West Virginia Environmental Council.

III. OLD BUSINESS

Minutes of the December 5, 2013 Meeting. The minutes were provided to Council via email and in hard copy for their review. Mr. Hapney moved for approval of the minutes, Mr. Roberts seconded the motion, and it was carried by acclamation of Council.

2013 Annual Report. The report was provided to Council via email and in hard copy for their review. Mr. Hapney moved for approval of the report, Ms. Dooley seconded the motion, and it was carried by acclamation of Council. Ms. Dooley noted that Ms. Price retired from the West Virginia Manufacturers Association as of the end of 2013 and thus resigned her position on the Council. Ms. Boggs advised that she would file an amended Annual Report.

IV. DEP LEGISLATIVE INITIATIVES FOR THE 2014 SESSION

Ms. Boggs summarized DEP's legislative initiatives for the 2014 Legislative Session, and she, Secretary Huffman, Scott Mandirola and Kevin Coyne answered questions regarding the legislation.

INTRODUCED BY THE DEP:

- HB 4480 – Allowing AML to keep earnings on investment of AMD Fund
- SB 485 – DOH exemption from permitting requirements of the Natural Streams Preservation Act.
- HB 107 – Drill cuttings in landfills

GOVERNOR’S BILLS

- SB 373 – Aboveground Storage Tank Act / Source Water Protection Act
 - Dr. Harris stated that it is an unfortunate oversight that the bill did not include siting restrictions, preventing tank farms from being located near source water supplies.

BILLS OF INTEREST TO DEP

- SB 454 – Defining “dam owner”
- HB 4339 – Putting Elkins-Randolph County landfill and Webster County landfill into LCAP
- HB 4346 – Establishing separate standards of performance for carbon dioxide emissions

VI. OTHER BUSINESS

- Secretary Huffman discussed four issues:
 - Reports coming into DEP earlier in the day about white foam on the Elk River.
 - Pam Nixon’s retirement earlier this year. Secretary Huffman advised Council he is working with Mr. Garvin and the Environmental Council to nominate a new Environmental Advocate.
 - The rulemaking process for the Aboveground Storage Tank rules DEP must propose in time for the 2015 Legislative Session.
 - His plan to propose an amendment to the Water Quality Standards Rule to change the use restriction on the Kanawha River to make the waterway from Point Pleasant to Belle Category A. He stated that this is the only large river in West Virginia that is not approved for drinking water use, despite the fact that the water quality has met drinking water standards for years.
- Set Council Meeting dates for 2014: June 12, September 11, and December 11 at 1:30 p.m.

VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:35 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
June 12, 2014**

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on June 12, 2014 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Ted Hapney, Larry Harris, Bill Raney. Lisa Dooley participated by phone. Rick Roberts was absent.

The meeting was attended by Cabinet Secretary Randy Huffman; Kelley Gillenwater, Chief Communications Officer, and William F. Durham, Director of the Division of Air Quality and Jim Mason, a Division of Air Quality employee. Also present were Yogesh Patel, Kevin Coyne, Jeremy Bandy, Joe Sizemore, Jennifer Pauer, Ken Holliday, David Johnston, and Sudhir Patel, employees from the Division of Water and Waste Management.

Don Garvin from the West Virginia Environmental Council and Jason Bostic from the West Virginia Coal Association were also present.

III. OLD BUSINESS

Minutes of the March 27, 2014 Meeting. The minutes were provided to Council via email and in hard copy for their review. Ted Hapney moved for approval of the minutes, Larry Harris seconded the motion, and it was carried by acclamation of Council.

IV. PROPOSED 2014 LEGISLATIVE RULES

Division of Air Quality

- ❖ 45 CSR 14 – *Permits for Construction and Major Modification of Major Stationary Sources for the Prevention of Significant Deterioration of Air Quality* – Promulgated last in 2014 Session. Revisions to the rule comport with current federal counterpart PSD provisions regarding significant impact levels and significant monitoring concentration levels for fine particulate matter.

- ❖ 45 CSR 16 – *Standards of Performance for New Stationary Sources* – Promulgated last in 2014 Session. Annual incorporate-by-reference amendments to the New Source

Performance Standards, including: Standards of Performance for: Oil and Natural Gas Sector; Petroleum Refineries; Test Methods; and Kraft Pulp Mills. The rule incorporates by reference the NSPS promulgated by EPA under 40 CFR Part 60, effective June 1, 2014.

The Oil and Gas amendments are a result of reconsideration of certain issues raised by petitioners related to implementation of storage vessel provisions. The final amendments provide clarity of notification and compliance dates, ensure control of all storage vessel affected facilities, update key definitions, and correct technical errors. The Petroleum Refinery revisions amend the definition of “delayed coking unit” by removing process piping and associated equipment (pumps, valves, and connectors) from the definition and deleting a redundant definition of “delayed coking unit.” Amendments to Test Methods standards include technical and editorial corrections for source testing of emissions. Some current testing provisions contain inaccuracies and outdated procedures, and new alternatives are added. These amendments will improve the quality of data and will provide sources additional flexibility to use the newly approved alternative procedures. Revisions to Kraft Pulp Mills standards include particulate matter emission limits for recovery furnaces, smelt dissolving tanks, and lime kilns and opacity limits for recovery furnaces and lime kilns equipped with electrostatic precipitators. The revisions remove an exemption for periods of startup, shutdown, and malfunction resulting in a standard that applies at all times. Revisions to the testing, monitoring, recordkeeping, and reporting requirements ensure that control systems are properly maintained, are in continuous compliance, and provide improved data accessibility.

- ❖ 45 CSR 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities* – Promulgated last in 2014 Session. Revisions to the rule include annual incorporation by reference updates with 33CSR20. This revised rule incorporates by reference the provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 promulgated as of June 1, 2014.

The Resource Conservation and Recovery Act (RCRA) regulations have been revised to *conditionally exclude* from the definition of hazardous waste *hazardous carbon dioxide streams*, provided these hazardous CO₂ streams are captured from emission sources (such as electric generating units), are injected into Underground Injection Control Class VI wells for purposes of geologic sequestration, and meet certain other conditions. EPA believes that proper management of these CO₂ streams does not present a substantial risk to human health or the environment, and therefore additional regulation pursuant to RCRA’s hazardous waste regulations is unnecessary. EPA expects that this amendment will substantially reduce the uncertainty associated with identifying these CO₂ streams under RCRA Subtitle C, and will also facilitate the deployment of geologic sequestration by providing additional regulatory certainty.

- ❖ 45 CSR 30 – *Requirements for Operating Permits* - Promulgated last in 2013 Session. Revisions to the rule implement an increase in Title V operating fees from \$18/ton to \$2X/ton. The increase in fees will correct a downward trend in fee collection and will keep the Title V Operating Permit Program solvent in accordance with the federal Clean Air Act.
- ❖ 45 CSR 34 – *Emission Standards for Hazardous Air Pollutants* – Promulgated last in 2014 Session. Revisions to the rule include general annual incorporation by reference updates. The revised rule incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2014: National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting; Group IV Polymers and Resins; Pesticide Active Ingredient Production; Polyether Polyols Production; and Test Methods.

The Secondary Lead Smelting revisions amend a previous NESHAP standard for existing and new secondary lead smelters. The amendments revise regulatory text to clarify compliance dates, provisions related to monitoring of negative pressure in total enclosures, and correction of typographical errors. Amendments to NESHAP standard for Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production include the following: residual risk reviews; technology reviews; emissions during periods of startup, shutdown and malfunction; standards for previously unregulated hazardous air pollutant emission sources; revisions to require monitoring of pressure relief devices that release to the atmosphere; and electronic reporting of performance test results. This action also lifts the stay of requirements for process contact cooling towers at existing sources in one Group IV Polymers and Resins subcategory, issued on February 23, 2001. The revisions to the final rules maintain the level of environmental protection or emissions control on sources regulated by these rules. Amendments to Test Methods include technical and editorial corrections for source testing of emissions. Some current testing provisions contain inaccuracies and outdated procedures, and new alternatives are added. These amendments will improve the quality of data and will provide sources additional flexibility to use the newly approved alternative procedures.

- ◆ *James Mason and Fred Durham answered questions of Council regarding the proposed rules.*

Division of Water & Waste Management

- ❖ 33 CSR 1 – *Solid Waste Management Rule* – Promulgated last in 2012 Session. In accordance with HB107 (1st Extraordinary Session 2014), the amendments to this rule – which must be introduced as an emergency rule – establish limits for the unique toxins associated with drill cuttings and drilling waste (i.e. radiation); establish the procedures the landfill must follow if those limits are exceeded; and establish a procedure for the handling of such waste if those limits are exceeded.

- ❖ 33 CSR 20 – *The Hazardous Waste Rule* – Promulgated last in 2012 Session. These proposed amendments include incorporation-by-reference updates regarding solvent-contaminated wipes and EPA’s new e-Manifest system. The rule incorporates by reference the amendments promulgated by EPA under 40 CFR Part 260 and 261, effective January 31, 2014 and 40 CFR Part 260, 262, 263, 264, 265, and 271 promulgated as of August 6, 2014.

This amendment revises the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused and revises the definition of hazardous waste to conditionally exclude solvent-contaminated wipes that are disposed. The purpose of this rule is to provide a consistent regulatory framework that is appropriate to the level of risk posed by solvent-contaminated wipes in a way that maintains protection of human health and the environment, while reducing overall compliance costs for industry, many of which are small businesses. This amendment also incorporates EPA’s authorization of the use of electronic manifests (or e-Manifests) as a means to track offsite shipments of hazardous waste from a generator’s site to the site of the receipt and disposition of the hazardous waste.

- ❖ 47 CSR 2 - *Water Quality Standards* – Promulgated last in 2014 session. These proposed amendments change the use designation of the Kanawha River main stem, Zone 1. There is also a proposal to add a copper water effect ratio (WER) for the Charleston Sanitary Board’s wastewater treatment plant discharge into the Kanawha River. This WER only applies to copper and is not applied to any other constituent.
- ◆ 47 CSR 30 – *Mining NPDES Rule* – Promulgated last during 2013 Session. In conformance with the intent of SB615 (2012), we propose to amend this rule to conform it to its counterpart NPDES Rule, 47-10, and to clarify that compliance with a permit issued pursuant to the West Virginia Water Pollution Control Act shall be deemed compliance with that Act and with section 301, 302, 306, 307, and 403 of the federal Clean Water Act.
- ◆ 60 CSR 4 – *Rule re Awarding of West Virginia Stream Partners Program Grants* – Promulgated last during the 2002 Session. During the 2013 Executive Committee meeting, the members agreed it would be beneficial to the Program if the volunteers were not bound by the requirement that in-kind match and volunteer labor be valued only at minimum wage. Thus, this proposed amendment changes the value of such services from minimum wage to rates “consistent with those paid for similar work in the labor market in which the entity competes for the kind of services involved.”
- ◆ *Kevin Coyne answered questions of Council regarding the proposed rules.*

VI. OTHER BUSINESS

- ❖ Cabinet Secretary Huffman and Ms. Boggs responded to questions regarding total dissolved solids (TDS) and the progress of Senate Bill 562(2012), the bill establishes how DEP is to measure compliance with the biologic component of the narrative water quality standard (WQS).
- ❖ Cabinet Secretary Huffman advised Council that Wendy Radcliff has been hired as the Environmental Advocate for the agency.
- ❖ The next meeting of the Council is **September 11, 2014 at 1:30 p.m.**

VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:12 p.m.

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
September 11, 2014

I. CALL TO ORDER

Lisa A. McClung, Deputy Secretary, called to order the regular meeting of the Environmental Protection Advisory Council at approximately 1:35 p.m. on September 11, 2014 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Ted Hapney. Larry Harris and Rick Roberts participated by phone. Lisa Dooley and Bill Raney were absent.

The meeting was attended by Kelley Gillenwater, Chief Communications Officer, Wendy Radcliff, Environmental Advocate and Patrick Campbell, Deputy Director of the Division of Water and Waste Management and Division of Air Quality employees James Mason and Laura Crowder. Rebecca Randolph was also present.

III. OLD BUSINESS

Minutes of the June 12, 2014 Meeting. The minutes were provided to Council via email and in hard copy for their review. The decision was made to delay approval of the minutes until the December meeting of Council.

IV. PRESENTATIONS

Division of Air Quality

James Mason gave presentation re: Clean Air Act 111(d) Requirements and answered Council's questions.

Division of Water & Waste Management

Patrick Campbell, Deputy Director of the Division of Water and Waste Management, discussed DEP's interpretive rule re: initial inspection, certification, and submission of spill prevention response plans for above-ground storage tanks and answered Council's questions.

VI. OTHER BUSINESS

Discussion about how many Council members need to participate in the meeting to constitute a quorum.

VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at approximately 2:15 p.m.

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
December 11, 2014

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on December 11, 2014 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Larry Harris, Bill Raney and Rick Roberts. Lisa Dooley participated by phone. Ted Hapney was absent. There being two vacancies on the Council, a quorum was had.

The meeting was also attended by Kelley Gillenwater, Chief Communications Officer.

III. OLD BUSINESS

Minutes of the June 12, 2014 and September 11, 2014 Meeting. The minutes were provided to Council via email and in hard copy for their review. Mr. Raney moved for approval of the minutes, Dr. Harris seconded the motion, and it was carried by acclamation of Council.

IV. DEP LEGISLATIVE INITIATIVES FOR THE 2015 SESSION

Ms. Boggs summarized DEP's legislative initiatives for the 2015 Legislative Session and answered questions of Council regarding the same:

- ❖ Continuing the Hazardous Waste Management Fund: This legislation would defer for five years – from June 30, 2015 to June 30, 2020 – the sunset provision for the Hazardous Waste Management Fee Fund and supporting annual certification fee.
- ❖ Abandoned Mine Lands Fund Updates: This legislation would amend the Code to mirror the 2006 amendments to the federal Surface Mining Control and Reclamation Act (SMCRA) regarding use of the Abandoned Land Reclamation Fund. The 2006 federal amendment removed the thirty percent cap placed on AML waterline funding. Removing this cap will allow for funding for AML-eligible projects on a ready-to-proceed basis. The 2006 federal amendment also now allows for up to thirty percent of the annual AML grant to be retained in the AMD Set-Aside Fund, in increase from ten percent pre-2006. Allowing for a

larger contribution will help to ensure funding of water treatment facilities after the AML program has ended. The goal is to build the AMD Set Aside Fund principal to a point that earnings will perpetually fund water treatment sites without placing a financial burden on future generations.

- ❖ Reimburse Special Reclamation Fund: This legislation would require that any person who seeks to reinstate a previously revoked Surface Coal Mining and Reclamation Act (SMCRA) permit to reimburse the Special Reclamation Fund and/or the Special Reclamation Water Trust Fund all costs or expenditures incurred by the State for site reclamation from the date of permit revocation through the date of permit reinstatement.

V. OTHER BUSINESS

2014 Annual Report. The report was provided to Council via e-mail and in hard copy for their review. Mr. Roberts moved for approval of the report, Dr. Harris seconded the motion, and it was carried by acclamation of Council.

Vacancies on Council. Ms. Boggs advised she has contacted the Governor's Office multiple times, most recently the morning of this meeting, to inquire about filling the vacancies on the Council. The Governor's Office is aware of the issue.

2015 Meeting Dates. Council scheduled dates for 2015 as follows: March 19, June 18, September 17, and December 17, all meetings to commence at 1:30 p.m. at DEP's headquarters in Kanawha City.

VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:40 p.m.