

**WATER RESOURCES ADVISORY COMMITTEE
Chapter 105 Adhoc Workgroup**

September 22, 2008
Room 105, RCSOB
Harrisburg, PA

MEETING MINUTES

1. Call to Order and Attendance – Ken Murin

- Steve is not able to attend the meeting today; the group decided Ken Murin should chair the meeting.
- Ken Murin announced that Sid Freyermuth is the new section chief for Chapter 105, some may recognize Sid from the program in years past.
 - Mr. Freyermuth looks forward to continuing to move things forward.
- Members
 - Dr. Robert P Brooks, PSU
 - Sue Germanio, PA Coal Association
 - Grant Gulibon, PA Builders Association
 - Robin Mann, Sierra Club
 - Matt Royer, CBF
 - Rich Shannon, McCormick Taylor
 - Thom Shervinski, PFBC
 - Cindy Tibbott, USFWS
 - Pat Strong, ACOE, Balt
 - Toni Zawisa, PADOT
- General Audience
 - Jeffrey Kost, PGC
 - Duke Adams, DEP
 - Ken Murin, DEP
 - Frank Payer, DEP
 - Shelby Reisinger, DEP
 - Dave Goerman, DEP
 - Sid Freyermuth, DEP

2. Review and Approval of Minutes – Ken Murin

- *Draft February meeting minutes emailed to group for comment on Wednesday, August 20, 2008 by Shelby Reisinger. No changes suggested, draft minutes awaiting approval from group in order to be finalized.*
 - Sue Germanio motioned to accept the minutes, Dr Brooks 2nd the minutes. Meeting minutes were accepted by the group.
- *Draft Summary Comments on Wetland Classification Concepts document emailed to group for comment on Wednesday, August 20, 2008 by Shelby Reisinger. The document was revised based on comments received. Revised document emailed with the agenda on*

Friday, September 19, 2008 from Shelby Reisinger and is awaiting approval from group in order to be finalized.

- Comments were received by the PA Builders Association and PGC and incorporated into document.
- The document does not include every comment, and is not intended to take place of the minutes from each meeting, but is to serve as a summary of comments collected for the wetland classification concepts presented by the Program.
- A few small wording changes were made to the document at the time of the meeting.
- Matt Royer would like documentation that several groups do not think changing WTW linkage is appropriate after the July PFBC data presentation. Ken Murin suggested those comments would be more appropriately documented in the July meeting minutes, than the summary document.
- The workgroup decided to not vote to finalize this summary document until a later meeting. The group would like finalized minutes from the previous meetings (January, February, May and July meetings) before finalizing this summary document.

3. Chapter 105 Aquatic Resource Compensation – David Goerman

- *Please review Chapter 105 Aquatic Resource Compensation document emailed with this agenda on Friday, September 19, 2008 from Shelby Reisinger for this discussion.*
 - DEP is proposing to develop an In-Lieu Fee (ILF) program for all aquatic resources in light of federal changes and experience by the Department. Essentially waterways compensation would be increased to the level of current wetland compensation.
 - The Program has also been doing its own studies on wetland mitigation and compensation which so far are agreeing with the direction of the Federal Mitigation Rule.
 - This concept is a slight shift from the focus of past meeting compensation discussions due to numerous changes since those meetings and the development of the concept to increase the waterway compensation program and aggregate it with the wetland compensation program.
 - The Program feels continuing on a case-by-case basis for wetland and waterway resource compensation would be a very large increase in workload. The resources could best be compensated for by all entities (government and other) working together.
 - The Aquatic Resource Compensation concept includes all General Permits contributing to an ILF, many Individual Permits would result in a contribution also.
 - The mitigation process would not change, there will still be the emphasis on avoidance and minimization first and foremost.
 - A lot of money has been invested in aquatic resources (state and federal government and local groups, others too).
 - Effort to couple regulatory and non-regulatory programs is happening now, this compensation concept takes that coordination further.
 - The concept document gives some examples of possible uses.
 - Ken Murin noted that this is a DRAFT document.
 - Dave clarified for the group that this approach would be used for wetlands and waterways.
 - The Pennsylvania Wetland Replacement Project (PWRP) has been in place for 12 years, the current concept being discussed proposes to broaden and strengthen that program into waterways.
 - The concept continues the minimum 1:1 ratio in current regulations as a baseline, then looks at four other factors which provide a basis to increase ratios for compensation. Those four factors for wetlands are ecological conditions and functions provided, secondary and long term affects, physiographic resource priorities, and method of compensation used (on-site, bank, ILF).

- The concept also includes evaluation of compensation for long term vegetation modification/management of wetlands, especially converting forested wetlands to emergent and/or scrub shrub.
- For waterways, the concept includes a baseline replacement, and looks at four general categories. These four categories are water quality, water quantity, habitat effects, recreation/resource support.
- Dr. Brooks supports the concept and would like to move forward with the concept towards a better overall program.
- In the past, different policy and program decisions led to minimized wetland impacts, hopefully the same will occur for waterways.
- Robin Mann is not sure how Philadelphia would be a good pilot, as there are not really any resources left to impact. Dave Goerman replied that many of those impacts are repeated, and even if not compensated for initially, through the concept we could now get compensation for those impacts.
- Robin Mann pointed out that we cannot really replace headwater streams. Dave Goerman said we cannot really replace streams anywhere. Robin says there should be less stream impacts and this does not have enough emphasis on avoidance. Ken reminded the group that this is to fall in line with Federal program too and emphasis on avoidance would continue, this will just require additional compensation.
- Dr Brooks sees avoidance and improved compensation as a parallel track. The Program can map the impacts and be able to monitor the impacts more closely, then provide compensation appropriately. Dr. Brooks thinks the resources need to be brought into the same realm before impacts can be further minimized and have more targeted compensation. Dave Goerman says the process is not to allow more impacts in order to generate more money, the process is intended to allow fewer impacts and get more compensation. Dave gave some numbers on deminimus policy and PWRP policy. When those policies were implemented, people worked harder to get their project impacts down to the lowest threshold (0.05ac), avoidance and minimization did not, and will not, go away. The policies actually provided financial incentives to reduce impacts further. We now have numbers to see the actual cost of mitigation and we can now set fees appropriately. This approach leads to savings for the applicants too, they spend less time finding sites and less time working on the mitigation planning.
- Matt Royer asked what vehicle would be in place to ensure wetland impact contributions lead to wetland projects replacing functions and values. Dave Goerman replied that we're not aiming towards out of kind replacement; the draft document continues what we do now. Like in PWRP, we track wetland impacts and then work to replace them. Like all ILF programs there is no direct line from impact to replacement, but similar goals within the service areas. There would be a continued and larger scale collaborative effort with many agencies and programs. The proposed fund would be used for streams and wetlands, but those resources would be tracked separately. In summary, impacts are and will continue to be tracked, the contribution money goes into the same pool to be spent and the resulting replacement projects are tracked.
- Matt Royer asked if compensation would be targeted in same watershed. Dave Goerman replied that there would be defined service areas for impacts and replacements.
- Toni Zawisa stated that DOT took on wetland banking years ago, how would the programs work together? Dave Goerman replied that those discussions would be an inter-agency discussion outside of this workgroup. Toni feels this approach would take banking out of the equation. Dave stated that there are a lot of opportunities to work together, different incentives for each compensation method (ILF vs banking). Dr Brooks echoes Dave and sees it all working together. Dave asked the group to keep an open mind for future discussions and options to work together.

- Toni Zawisa also asked about the distribution of funds. Are the funds tracked back to where impacts happened? What about mined areas and urban area? There may only be a few permits now, but a lot of damage has been done in the past. She asked about politicians vying for money for their areas. Dave Goerman replied that the monies are not Commonwealth monies, cannot be used for anything else. Monies are held by a 3rd party, non-profit organization and dispersed at DEP's recommendation. The checks and balances are in place now and the same will be continued. Toni asked if that would change when the ILF program is implemented on a larger scale. Dave replied that the Program doesn't see that happening and reminds the group that the mitigation would need to meet the Federal Rule, so would also need ACOE approval. Dr Brooks would like to see most (maybe 90%) stay specifically within the limits of restoration/creation, but allow some go to Regional and Commonwealth efforts.
- Cindy Tibbott asked if we've looked at numbers. What do we expect the fees to be? Dave replied that we've looked at what other states have done, but have not looked at our own numbers yet, we will base the fee schedule off of best available numbers. For example, what does it cost to build? What does it cost to monitor? Other costs? Toni volunteered to provide some numbers (as long as FWS doesn't mind).
- Sid Freyermuth brings up that this concept is going to create a considerable increase in workload for DEP. The Program is thinking about working with the Growing Greener program as another possible coordination effort. Regional Offices all have watershed sections that issue permits, the Program staff can talk to Regional Office staff to see what priority watersheds are identified. Could possibly use this fund for suitable projects that did not receive Growing Greener monies.
- Robin Mann asked how to handle failures? Dave replied that there should be a set aside reserved to cover any potential failures in a given service area.
- DEP staff collaboratively explained that this approach would really enable further communication on a large scale basis for state and federal agencies and non-profit organizations to work together.
- Toni Zawisa mentioned that several partners are also stretched very thin. Dave acknowledged that is a concern, however because these are not state funds, there are also not state restrictions and agencies and organizations may be able to work in a less traditional way.
- Matt Royer thinks it is an interesting concept and it has some potential. He's trying to work it back into the overall Chapter 105 program goal of avoidance and minimization. His initial reaction is that it will be a streamlining with less focus on avoidance and minimization. He hopes fees are high enough to deter that effect, he would like to see continued focus of on-site mitigation when available. Dave responds that there still has to be a caution on doing that, the site may be atypical of the watershed, or other efforts which may be good on site, but not beneficial to the watershed. Ken reminded that the watershed plans would be helpful for making this determination.
- Toni Zawisa suggested talking to Mackin Engineering and the Pennsylvania Woodcock Habitat Initiative on State Lands (PA WHISL) and possibly adding on to that effort. Dave said that something along those lines is the plan. Shelby Reisinger added that the Program has already started talking to Mackin about the PA WHISL program for wetlands and PWRP.
- Dave Goerman mentioned that there is already a great amount of Commonwealth staff working in various water programs and that with some new direction could work really well together. This concept could have numerous effects, including freeing up some permit review staff time. Ken said it is a change and it requires a lot more thought, but the Program believes it is a good approach.
- Cindy Tibbott asked how this could free up time for DEP staff. Dave replied that 30-40% of staff time during a permit review is spent working through the mitigation process, compensation specifically, after avoidance and minimization. The Program foresees a

net gain in time. Toni agrees and thinks 30-40% is conservative, 50% may be more realistic.

- Pat Strong added that fees should be reflective of the actual cost, asked if initial permit fees could be bumped up? Ken said we will be looking at fees as part of the regulation revisions process. Dave followed that the Program has looked at different fee schedules.
- Tom Shervinskie asked if the group would see the concept again. Ken Murin responded positively. Tom asked for a summary of comments to better lead the next conversation. Ken said that most members just got the document and can go through it and get their comments ready for the next meeting.
- Dave Goerman again reminded the group that avoidance and minimization is not going to change.
- Sid Freyermuth mentioned that there are currently 67 watershed specialists in 66 County Conservation Districts, as well as watershed managers in the Regional Offices and District Mining Offices. Those people are frequently the project offices for Growing Greener projects and can work with the Program. Toni Zawisa asked about the background and/or education of these staff and their abilities to do these new tasks. Sid said the backgrounds vary, but staff use all the resources available to work together (Biologists, Engineers, etc).
- Tom Shervinskie asked for clarification that this concept is not to fund Growing Greener grants. Sid said no, this will not fund Growing Greener. However, instead of searching for sites, Program can go to these staff people for leads on projects. There is a great deal of opportunity for staff from various programs to work together.
- Ken asked for comments on draft concept from the group by COB Wednesday, October 15, 2008 to help facilitate discussion for the next meeting. The draft document is for discussion purposes only, do not distribute it. Shelby Reisinger distributed the new version of the document for distribution via email on Monday, September 22, 2008.
- Sue Germanio asked what impact we foresee this having on mining. Ken responded that the Program foresees it being helpful to the mining community as well as others.

4. Other Business – Ken Murin

- *If needed*
 - Pat Strong asked if there are draft General Permits available for review. Ken responded not at this time, only internal work on revising the General Permits. Pat asked if they would be brought to this group when they were available. Ken responded no, this group is to focus on the regulations themselves, General Permit changes would be reviewed separately from this group.

5. Next Meeting

- The next meeting will continue focusing on aquatic resources compensation
- The next meeting will be Thursday, November 13, 2008 at 9:30am in Room 105 in the RCSOB

6. Adjourn

- Meeting adjourned at 12:04pm.