

Citizens Advisory Council

to the Department of Environmental Protection



2009 *Annual Report*

Adopted: January 19, 2010

Richard J. Manfredi
Chair

Susan M. Wilson
Executive Director

**CITIZENS ADVISORY COUNCIL
(December 2009)**

GOVERNOR'S APPOINTMENTS

Jolene E. Chinchilli - Lancaster Co.; B.S. Biology, Chatham College; M.S.P.H., Environmental Science and Engineering, University of North Carolina; Former Executive Director, Pennsylvania Office of the Chesapeake Bay Foundation; appointed June 27, 1996; current term expires January 2012.

Gail M. Conner, Esquire - Delaware Co.; JD, Widener University School of Law; B.S., University of Wisconsin; Founder and President of G&C Environmental; appointed June 17, 2005; current term expires January 2011.

S. Pat Lupo, O.S.B. - Erie Co.; B.A. Elementary Education, Mercyhurst College; M. Ed. Science Education, Clarion State University; Director, Lake Erie Allegheny Earth Force; appointed June 29, 1988; current term expires January 2010.

Richard J. Manfredi - Bucks Co; B.S. Public Administration, Shippensburg University; M.S. Public Administration, Marywood College; President & CEO of RJM Public Affairs; appointed June 13, 2002; current term expires January 2011.

John J. Walliser, Esquire – Allegheny Co.; B.A. Political Science, University of Pittsburgh; JD, University of Pittsburgh School of Law; Allegheny Valley Conservancy Board of Directors 2004-Present; Allegheny County Bar Association, Environmental Law Section Council, 2006-present; appointed October 2008; current term expires 2010.

Peter R. Wilshusen, Ph.D. – Union Co.; B.A. Environmental Studies, University of Vermont; M.F.S. Master of Forest Science in Environmental Policy, Yale School of Forestry and Environmental Studies; Ph.D. Resource Policy and Behavior, School of Natural Resources and Environment, University of Michigan; Co-director, Bucknell University Environmental Center 2005-2009; Associate Professor of Environmental Studies 2003 - present; appointed October 2008; current term expires January 2012.

PRESIDENT PRO TEMPORE OF THE SENATE APPOINTMENTS

Cynthia Carrow - Allegheny Co.; B.S. University of Pittsburgh; Executive Vice-President of Western Pennsylvania Conservancy; President of the Board of Directors, Conservation Consultants, Inc.; appointed February 1997; current term expires January 2010.

Joyce Hatala – Lackawanna Co., B.A. Anthropology, University of Notre Dame; M.A. Anthropology, University of Minnesota; CEO of Joyce Hatala Associates; appointed June 2005; current term expires January 2011.

Walter N. Heine, P.E. - Cumberland Co.; B.S. Civil Engineering, Drexel University; M.S. Sanitary Engineering, University of Michigan; Chief Executive Officer, Walter N. Heine Associates, Inc. and Township Supervisor; former Director of the Federal Office of Surface Mining, U.S. Department of the Interior; and former Associate Deputy Secretary for Environmental Protection, PA DER; appointed August 11, 1983; current term expires January 2010.

Curtis N. Kratz – Montgomery Co.; Kellogg Rural Leadership Institute at Penn State; Consultant – Environmental and Government, elected to Board of Directors for the PA Farm Bureau, represents members from Berks, Chester, Delaware and Montgomery Counties; appointed June 2005; current term expires January 2011.

Burt A. Waite - Crawford Co.; B.A. Geology, College of William & Mary; M.S. Geology, University of Vermont; Senior Geologist in charge of environmental services for Moody & Associates; appointed November 17, 1998; current term expires January 2012.

SPEAKER OF THE HOUSE APPOINTMENTS

James Clauser – Carbon Co.; Associates Degree, Williamsport Area Community College; District Manager, Carbon County Conservation District; Certified Land Management and Water Control Erosion & Sedimentation Control Specialist; Board Member for PA Western Pocono Trout Unlimited; appointed June 2009; current term expires January 2012.

Eric R. Conrad – Cumberland Co.; B.A., Geology, New England College; M.A., Urban and Regional Planning, Penn State University; President, E. R. Conrad and Associates, LLC; appointed November 2009; current term expires January 2011.

James Swistock – Centre Co.; President, Penncara Energy; appointed June 2009; current term expires January 2012.

Janet B. Keim – Lehigh Co; B.S., Elementary Education, Kutztown University. Retired Substitute Teacher; appointed August 22, 2006; current term expires January 2010.

Thaddeus Stevens - Tioga Co.; Associate Applied Science, Forestry, Paul Smith's College New York; PA Association of Realtors, Legislative Committee; Delegate to North Central Sewage Agency for Gaines Township, Tioga County; appointed April 9, 1997; current term expires January 2011.

David Strong - Jefferson Co.; B.S. Chemistry, Mansfield University; Independent Environmental Scientist; appointed October 31, 1996; current term expires January 2010.

SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

John Hanger - Dauphin Co.; 1979 graduate of Duke University; 1984 graduate of University of PA School of Law; 1984-1988 public advocate with Commentary Legal Services, Inc.; 1988-1993 legal counsel to PUC Commissioner Joseph Rhodes; 1993-1998 PA PUC Commissioner; 1998-August 2008 President and CEO of Penn Future; Secretary of Pennsylvania Department of Environmental Protection, August 2008 - present.

Executive Director - Susan M. Wilson



Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 ■ Rachel Carson State Office Building
Harrisburg, PA 17105-8459 ■ 717-787-4527 ■ Fax 787-772-2878

January 22, 2010

Allegheny County
Cynthia Carrow
John J. Walliser, Esquire

Bucks County
Richard J. Manfredi

Carbon County
James J. Clauser

Centre County
James W. Swistock

Crawford County
Burt A. Waite

Cumberland County
Eric R. Conrad, P.G.
Walter N. Heine

Delaware County
Gail M. Conner, Esquire

Erie County
Pat Lupo, O.S.B.

Jefferson County
David L. Strong

Lackawanna County
Joyce A. Hatala

Lancaster County
Jolene E. Chinchilli

Lehigh County
Janet B. Keim

Montgomery County
Curtis N. Kratz

Tioga County
Thaddeus K. Stevens

Union County
Peter R. Wilshusen, Ph.D.

Dear Governor Rendell:

The Citizens Advisory Council (Council) to the Pennsylvania Department of Environmental Protection (DEP) is pleased to submit its *2009 Annual Report* for your review. As you know, Act 275 of 1971 established the Council, mandating among other things that the Council perform non-partisan, independent oversight of the operations, management and policy of the Department of Environmental Protection, and provide advice concerning environmental matters to the department, the Governor, the General Assembly, and the Commonwealth's federal representatives.¹

Council members are a diverse group of citizen volunteers from across Pennsylvania, who give a substantial amount of their time in assisting and advising the DEP. In addition to attending monthly Council meetings and actively participating in committee related responsibilities, many members also serve on program specific advisory committees and boards. Council annually elects five voting members on the Environmental Quality Board as well.

A few of the issues Council focused on in 2009 are:

Budgetary Impacts

Council repeatedly raised concerns about the Commonwealth's budget crisis and potential impacts the proposed cuts would have on Pennsylvania's critical environmental programs and the economy. Unfortunately, our plea for continued support for funding of Pennsylvania's environmental programs was not heeded, and funding and staff were again reduced. CAC bore more than its share of these cutbacks, losing two of its three dedicated staff. We remain extremely concerned that repeated cuts in state funding will prevent DEP from securing federal matching funds for important programs and ultimately place state primacy at risk.

¹ Act 275 of 1971 requires the Citizens Advisory Council to report annually to the Governor and to the General Assembly.



Proposed Revisions to Chapter 102, and Permit-by-Rule

Council received presentations from both the Policy Office and water management staff with regard to the proposed permit-by-rule option. After careful deliberation, Council raised procedural, philosophical and practical issues regarding implementation of the proposed permit by rule option, and submitted formal comments to EQB expressing its collective opposition to this proposed permitting option.

Joint Marcellus Shale Informational Sessions

Recognizing both the economic opportunity and the potential for environmental impact, in 2008 Council created a Joint Interagency Workgroup with the Conservation and Natural Resources Advisory Council to look into cooperation and coordination efforts between the agencies. In 2009, the Councils held two joint informational sessions with regard to the Marcellus gas play in Pennsylvania:

- An August informational session held in Harrisburg provided Council members with a broad overview of the Marcellus play and related environmental concerns. Guest presenters and panelists included representatives from industry, government, and academia.
- In October, both Councils traveled to Clinton County to hear panel discussions focusing on local drilling related impacts and to tour a Marcellus drilling site in Sproul State Forest.

These highlighted activities, in addition to many others, are discussed in greater detail in the enclosed report.

Council continues to welcome open communication with you, the Pennsylvania General Assembly, and the citizens of the Commonwealth with regard to issues of environmental concern to Pennsylvania. Council takes its mandate very seriously and encourages the citizens of the Commonwealth to be actively engaged in the protection of their air, soil, and water.

Sincerely,

A handwritten signature in black ink that reads "Richard J. Manfredi". The signature is written in a cursive style with a large initial "R".

Richard Manfredi
Chair

Attachment

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2009 ANNUAL REPORT

**CITIZENS ADVISORY COUNCIL
TO THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

COUNCIL OVERVIEW

Since its creation in 1971, the Citizens Advisory Council (Council) has been actively involved in environmental issues affecting the Commonwealth. Council is the only legislatively mandated advisory committee with the comprehensive charge to review all environmental legislation, regulations, and policies affecting the Department of Environmental Protection (DEP). In addition, the 1992 amendments to Pennsylvania's Air Pollution Control Act require DEP to consult with Council in developing state plans and regulations to implement the federal Clean Air Act. To carry out these responsibilities, Council by law¹ is granted access to all DEP records and the power to employ and fix the compensation of such experts, stenographers and assistants as may be deemed necessary.² Council reports annually to the Governor, the General Assembly, DEP and the public.

Council has 19 members: 18 appointed citizen volunteers and the Secretary of the Department of Environmental Protection. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate each appoint six members, with no more than half from the same political party. Because the appointments originate from different authorities, Council's membership is geographically, politically and professionally diverse. Appointees must be familiar with the work of DEP and willing to commit the time and energy required. Members serve staggered 3-year terms and may serve until successors are appointed.

Council typically meets monthly, except August and December, and at the call of the chairperson. Meetings are open to the public and advertised as required by the Sunshine Act.³ Each year, Council holds a regional meeting in a different part of Pennsylvania to give citizens and groups in that area an opportunity to speak about their environmental concerns. In 2009, in lieu of a traditional regional meeting, Council held two informational sessions in conjunction with the Conservation and Natural Resources Advisory Council. The first session was held in August and included a general overview of the Marcellus Play and gas drilling related environmental concerns. Then on October 20 and 21, the Councils met in Lock Haven (Clinton County) to participate in evening panel discussions focusing on local gas drilling related impacts. The Councils also toured an active drilling site and a re-mining project in the Sproul State Forest. A few of the issues discussed were frac water reuse and recycling, the highly debated severance tax, and reclamation of drilling pad sites.

Council elects five members annually to serve as the only citizen representatives to the Environmental Quality Board (EQB), a 20-member independent board that adopts all of DEP's regulations.⁴ In 2009, the EQB convened 8 times to consider 6 petitions, 18 proposed and 9 final rulemakings.

¹ Section 1922-A of Act 275 of 1971

² Section 448(P) of Act 275 of 1971

³ Act 84 of 1986

⁴ Sections 471 and 1920-A of Act 275 of 1971

Council elects 4 members to serve on the Mining and Reclamation Advisory Board.⁵ Council also holds seats on the Air Quality Technical Advisory Committee; Low-Level Radioactive Waste Advisory Committee; Radiation Protection Advisory Committee; and Solid Waste Advisory Committee.

Council is represented on the Environmental Hearing Board Rules Committee⁶ and the Oil and Gas Technical Advisory Board.⁷ For the Oil and Gas Technical Advisory Board, Council submits three names to the Governor for selection of a representative.

Council is granted the independence to hire its own staff by law.⁸ Until November 2009, staff included Susan M. Wilson, Executive Director; Janis Dean, Program Analyst; and Patty Davenport, Administrative Officer. The Council's offices are located on the 13th floor of the Rachel Carson State Office Building in Harrisburg.

For more information, you may contact the Council by using any of the following methods:

Write: P.O. Box 8459, Harrisburg, PA 17105-8459
Call: (717) 787-4527
Fax: (717) 787-2878
E-mail: epcontactcac@state.pa.us
Web site: <http://www.depweb.state.pa.us/cac>

INTRODUCTION

The objective for creating the Council in 1971⁹ was to establish a non-partisan body to represent citizen viewpoints and provide objective analyses of DEP's performance and environmental issues in general. This legislation gave the Council three specific charges:

- (a) The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification, and codification thereof.*
- (b) The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents, and records pertaining to or belonging to the department.*
- (c) The Council shall advise the department on request, and shall make recommendations upon its initiative, for the improvement of the work of the department.*

This report highlights the activities, positions and recommendations of the Citizens Advisory Council, pursuant to these mandates, from January 1 - December 31, 2009. Where appropriate, the current status of an issue is included.

⁵ Section 18 of Act 181 of 1984

⁶ Section 5 of Act 94 of 1988

⁷ Section 216 of Act 223 of 1984

⁸ Section 448 of Act 275 of 1971

⁹ Act 275 of 1971

CAC STANDING COMMITTEES

ADMINISTRATIVE OVERSIGHT COMMITTEE

The Administrative Oversight Committee's primary focus is on the department's workload and resource shortfalls in its various programs and regions. Program staffing continues to be a major area of concern. The Administrative Oversight Committee's priorities are:

1. Identify opportunities for greater consistency (process and enforcement) among DEP regions.
2. Work towards more appropriate use and communication of policies, guidance and regulation (literal interpretation vs. direction).
3. Enhance DEP effectiveness.

Budgetary

Deputy Secretary of Administration Patrick McDonnell attended the February meeting to provide the department's report. Patrick reported that in the Governor's proposed budget, DEP would receive an overall funding decrease of 7.9% (compared to FY 2008-09) and would also lose 172 positions. He elaborated that these budget cuts would not affect staffing increases in the oil & gas program, as the program had been granted an exemption. Several DEP programs were being eliminated.

On October 9, 2009 Governor Rendell enacted the 2009-10 FY budget. DEP sustained a budget cut of \$58 million and 258 positions (138 furloughs and 120 vacancies). Ultimately, 98 DEP staff lost their jobs.

Patrick also reported that legislation had been introduced that would impose a severance tax on all natural gas. This tax would be 5% of the value of the gas at the wellhead.

In July, Patrick provided a brief update on the budget situation and its possible impacts to DEP. He highlighted what DEP's program spending may look like under both HB 1416 and SB 850.

Following the July meeting, Council sent a letter to Secretary Hanger relaying several pertinent questions with regard to the potential implications of proposed budget cuts. Council also sent a memo to the Pennsylvania General Assembly with regard to two critical issues: future gas leases in Pennsylvania, and the implications proposed environmental budget cuts will have on future environmental and public health, and the economic recovery of Pennsylvania. Council urged the Pennsylvania General Assembly to continue its strong support of environmental protection in Pennsylvania.

In August, Council sent another letter to Secretary Hanger outlining several concerns with regard to the Commonwealth's budget crisis and potential impacts to critical environmental programs. A few areas of concern were: potential for loss of primacy; potential loss of DEP's ability to meet existing mandates; ability to continue to be proactive with regard to emerging issues of concern; and lack of resources/staffing available to continue appropriately managing natural resources to meet the health, environmental, and economic needs of Pennsylvanians.

Sewage Enforcement Grants Funding

In April, the committee held a conference call to discuss Sewage Enforcement Grant funding. Reimbursements for 2007 have not all been made and 2008 reimbursements, which were to be distributed in May or June, cannot be made until after the 2009 budget is approved. Some local governments and agencies depend on these monies to carry out the intent of Act 537. Council approved sending a letter to the Secretary with regard to this funding issue. In May, Council followed up with another letter to Secretary Hanger recommending DEP review whether local fees support an equitable portion of local programs or if some areas depend too heavily on state reimbursements. Council also sent a letter in support of increased funding to the governor and to the House and Senate Environmental Resources and Energy Committees.

AIR COMMITTEE

Pennsylvania's air quality has continued to improve and considerable progress has been made. However, the Commonwealth continues to face new challenges. At times, these challenges require innovative, aggressive action to protect Pennsylvania citizens and the environment. The department must be poised to identify these challenges and be prepared to utilize creative and aggressive solutions to meet the demands of Pennsylvania's ever-changing air pollution issues.

The Air Committee's Priorities are:

1. Air permits and permitting procedures
 - a. Support and encourage permitting procedures that are economically and administratively efficient yet remain protective of the environment.
 - b. Look for opportunities to achieve measurable improvement in environmental quality as well as advancing economic and administrative efficiency.
2. Emission reductions
 - a. Look for opportunities to further minimize air emissions, especially where health and environmental impacts can be measure and/or are strongly correlated.
 - b. Promote awareness of the connection between air pollution and public health with focus on the general public and government decision-makers.
 - c. Identify and encourage private sector innovations in minimizing emissions.
 - d. Identify and address the significant impacts of individuals and permittees on air quality (e.g., open burning, inspection/maintenance, etc.) through education, public awareness, etc.
3. Influence of/relationship with EPA
 - a. Monitor the effectiveness of the relationship between DEP and EPA with regard to air programs and issues.
4. Energy impacts on air quality

5-Year Report

In February, the Air Committee received a presentation on the department's draft 5-year Report. Council was informed that due to timing issues BAQ was only able to integrate some of CAC's comments into the report. The department addressed the lateness of its 5-year report (due in 2007) and assured Council that subsequent reports would be completed in a more timely fashion. Council sent a letter to AQTAC expressing Council's desire to benefit from and be informed by correspondence from AQTAC on important air issues and reports.

Regulatory/Rulemaking

In February, the Air Committee convened to receive presentations from the Bureau of Air Quality on toxics near schools, ozone redesignations, and a fees rulemaking. Council voted to send a letter supporting the proposed rulemakings.

BAQ staff provided Council a review of the following regulatory updates:

Draft Outdoor Wood-Fired Boilers

Staff provided an overview of this draft regulation, which addresses stack size, setback, and seasonal requirements. Gail reported that AQTAC had extensive discussion on the draft regulation. She said that the vetted issues seem to have been addressed in the updated draft presented to CAC. This regulation is expected to go to EQB in September. Council forwarded a letter supporting the BAQ moving forward to EQB with this draft regulation. This proposed rulemaking was approved by EQB at the September meeting and subsequently published for comment on October 17.

Draft New Source Review – PM2.5

Staff reviewed the NSR-PM2.5 draft regulation. Regulated new source review pollutants include NOx or VOC's, SO2, a pollutant for which EPA has promulgated a National Ambient Air Quality Standard, and pollutants that are a constituent or precursor pollutant. This regulation is expected to go to EQB in October. Council sent the BAQ letter supporting their moving of this draft regulation to EQB. The proposed rulemaking was considered by the EQB in November. This proposed draft rulemaking was approved by EQB at the November meeting.

Control Techniques Guidelines

Staff also reviewed the following draft regulations: Large Appliance and Metal Furniture, Paper Film and Foil, and Flat Wood Paneling. These packages were expected to go to EQB in September. These draft regulations aim to reduce VOC content, increase controls, and add housekeeping requirements. Council voted to send a letter supporting the BAQ moving forward with these draft regulations to the EQB.

- The proposed Large Appliance and Metal Furniture Rulemaking went to EQB for consideration in November.
- The proposed Paper Film and Foil Rulemaking was approved by EQB in September and the draft was published for comment in the *Pennsylvania Bulletin* on November 9. The comment period will be 60-days.
- The Flat Wood Paneling proposed rulemaking was approved by EQB in September. It was published in the *Pennsylvania Bulletin* on October 17. The comment period for this proposed rulemaking was set at 60 days as well.

On a December 16, 2009 conference call, staff from the Bureau of Air Quality discussed with the Citizens Advisory Council's Air Committee two rulemaking packages:

- Final-form rulemaking for Adhesives, Sealants and Primers; and
- Final-form rulemaking for Glass Melting Furnaces.

In January the committee will be recommending that CAC concur with proceeding to EQB with both regulations.

ENVIRONMENTAL STANDARDS COMMITTEE

The Environmental Standards Committee primarily handles regulatory and policy issues for mineral resources, waste, land recycling, and energy.

Mineral Resources

The Environmental Standards Committee's priorities for mineral resources, which were developed in 2005, were retained in 2009:

1. Expedite remediation of historic problems.
2. Enhance the ease of reclamation of current mining.
3. Promote quicker resolution of surface and water impacts and ensure that the spirit and intent of the law is properly applied and enforced to result in a just balance of conflicting property uses and users.

Drilling in the Marcellus Gas Play

At the February meeting, Chair Manfredi reported that he, with a few Council members and staff had met with Secretary Hanger and other DEP executive staff in January. Among the items discussed was Council's role. It was agreed that focusing on defined priorities would better facilitate the flow of information. Secretary Hanger followed up with a post-meeting letter suggesting Council focus future discussions on specific topics, one of them being Marcellus shale.

Additionally, Kelly Heffner reported that the Bureau of Oil and Gas would open a satellite office in Williamsport to handle permits and inspections for Marcellus Shale activity. Currently, DEP staff from the Meadville office handles those inspections.

Council reviewed the department's "Marcellus Page" and forwarded recommendations on information that should be included or revised that might would make the site easier to navigate.

In April, department staff from both mineral resources and water management attended to discuss the proposed Permit-by-Rule and the conceptual Total Dissolved Solids Strategy. (These issues are further discussed in detail under the "Water Committee" on pages 10 and 11.)

At the May meeting, Secretary Hanger discussed the department's consolidation of authority for gas drilling related activities including erosion & sediment (E&S). He explained that drillers will now only need to deal with one agency (DEP) on planning, inspection, and enforcement.

In August, Council conducted a joint Marcellus Play related informational session with the Conservation and Natural Resources Advisory Council. During this meeting, a general overview of the Marcellus Play and gas drilling related environmental concerns was provided and discussed. Then in October, the two advisory councils convened local panel discussions with regard to gas drilling impacts and toured a Marcellus drilling site in Clinton County on Sproul State Forest land.

Oil & Gas – Fees Rulemaking & Pending Legislation

In February, department staff reported that there were two oil and gas fee packages that relate specifically to Marcellus Shale wells currently in process. If approved, the department plans to use some of the money generated from the fees to hire additional staff.

The department also reported that legislation has been proposed that would impose a severance tax of 5% of the value of the gas at the wellhead on all natural. It was estimated that this tax would raise approximately \$107.2 million for the Commonwealth.

August 31, Governor Rendell announced that he was no longer pursuing a severance tax this year.

Mineral Resources - Additional Items of Discussion

At the May meeting, Council discussed the federal Office of Surface Mining's proposal to eliminate funding for mining related emergencies. To compensate for the proposed loss of federal funding, Pennsylvania would need to pull money from the AML funding it is scheduled to receive for the reclamation of priority 1 and 2 sites to cover mining related emergencies. Council voted to send another letter supporting the federal governments continued funding of mining related emergencies.

In October, Council toured the Kettle Creek re-mining project in Sproul State Forest. This reclamation of this site and abatement of the acid mine discharge is a joint effort between DEP and DCNR. The value of the remaining coal reserves will finance a majority of the reclamation work to be completed on the site. A Growing Greener Grant will supplement coal revenues to fund enhanced abatement of the acid mine drainage into Kettle Creek.

Waste

Traditional methods of dealing with pollution prevention include, recycling, source reduction, and public education. While these methods have a significant role in dealing with waste management, society needs to look at the bigger picture and deal with the issue of reducing the amount of waste. It is important that the department not only promote pollution prevention, but also aggressively look for new, innovative ways to reuse, reduce and recycle. The Environmental Standards Committee priority for waste is to promote a more sustainable yet still protective approach to waste management.

Regulatory Revisions

Municipal and Residual Waste - Prior to the March Council meeting, the committee met with department staff to discuss the department's proposal to combine the residual and municipal waste regulations. Some cautioned that combining these two regulations, which have been split for 20 years, should be carefully thought-out and may warrant additional time and consideration by the department.

In April, the Council voted to send a letter to the department containing questions they had with regard to the proposed revisions to the waste regulations and with regard to the beneficial use of coal ash. There has been no further movement with regard to the proposed comprehensive modifications to the Municipal and Residual Waste Regulations.

PUBLIC PARTICIPATION AND OUTREACH COMMITTEE

This committee handles public participation, outreach and engagement issues; and works cooperatively with the Conservation and Natural Resources Advisory Council committee on education and stewardship issues. The Public Participation and Outreach Committee's priorities are:

1. Public Participation in DEP Decision-making
 - a. Seek continued improvement in DEP's decision-making at all levels
2. Environmental Education and Stewardship
 - a. Elevate the role of environmental education within the department and improve cooperation among resource agencies
 - b. Increase community/grass roots awareness, knowledge, skill and involvement in achieving and maintaining desired environmental quality and quality of life utilizing environmental education as one of the primary tools.
3. Environmental Justice
 - a. Monitor and aid Environmental Justice staff and the Environmental Justice Advisory Board in improving how the department addresses these issues.
4. Communication and Education
 - a. Seek continued improvement in DEP's internal communication and interregional consistency
 - b. Seek continued improvement in external outreach regarding DEP activities (not to be confused with EE)
 - c. Maintain accountability for both

Legislation re: wind energy siting criteria

In response to an invitation discuss potential legislation establishing statewide siting criteria for wind turbines, the Public Participation and Outreach Committee began reviewing the pros and cons of various approaches to addressing siting concerns. In February, Council concurred with the committee's recommendation to send a letter to Senator Eichelberger outlining its findings to date:

- There are no federal guidelines for the siting of wind energy facilities that developers are required to follow¹⁰.

¹⁰ USFWS Interim *Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines* (2003) includes a site evaluation process for predevelopment evaluations of potential wind energy sites which must be followed if the project is built on federal lands.

The National Wind Coordinating Committee's *Permitting of Wind Energy Facilities* (2003) includes broader range of topics than the USFWS document (e.g., public safety, noise, infrastructure, permitting)

- Similarly, in Pennsylvania, no statewide siting guidelines currently exist although efforts are underway to encourage voluntary action (e.g. the Game Commission's Voluntary Cooperative Agreement (VCA) and the Wind and Wildlife Collaborative).
- At the November 2008 committee meeting, the Western Pennsylvania Conservancy gave a presentation using Natural Heritage Program data showing areas suitable for wind development that would be eliminated if broad data layers such as Important Bird Areas, Important Mammal Areas and Important Biodiversity Areas were used. When these broad data layers were overlaid with wind maps, they quickly eliminated most of the acreage with highly suitable wind energy potential for wind turbine applications. Clearly, more study is needed.

Marcellus outreach

The Public Participation and Oversight Committee was requested to monitor public outreach on Marcellus Shale issues. The committee made several suggestions to improve how information is packaged and to fill gaps in the information provided, including:

- Reorganize information by user groups (e.g., landowners, industry, local governments) to make it easier for these groups to find the type of information they need instead of getting bogged down in sorting through information intended for another user.
- Add brief, clarifying information to the listing of items provided on the website. For example, while the DEP list of contacts are clearly identified with their respective roles, some of the other agency links are not as clearly explained. It would help to add a brief statement of each agency's role with regard to Marcellus (e.g., SRBC (regulates water withdrawals in the Susquehanna River Basin). This would make it easier for novices to find the information they need.
- Add information on related issues and how they are being addressed: pipelines, air emissions, frac water components, water treatment, emergency management, etc.
- Clarify up-front that DEP is the environmental permitting agency and has no role in negotiating leases and or protecting property rights

In addition, the committee suggested that the department add the following information to the Marcellus page to demonstrate the scope and effectiveness of its efforts to address the environmental challenges and economic opportunities presented by the interest in the Marcellus Shale play:

- Statistics on permit activity (permits received, permits issued, processing times) by county and/or township.
- Statistics on inspection activity.
- Statistics on drilling activity and overall production.

Some of this information can be found mixed in with general reports, but it should be highlighted on the Marcellus page for ease of access.

Advisory committees

Council's Public Participation and Outreach Committee has an ongoing review of DEP's public participation activities.

Three federal laws provide some protection to wildlife from wind energy facilities: the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Endangered Species Act.

WATER COMMITTEE

The Water Committee's priorities are:

1. Quantity
 - a. Continue to advocate adoption of a comprehensive and integrated system of water resource management.
 - b. Ensure adequate flow to maintain designated uses and the integrity of the hydrologic cycle for watershed protection.
2. Quality
 - a. Ensure that all Pennsylvanians have access to safe drinking water.
 - b. Ensure that all waters meet or exceed designated use and maintain integrity of the hydrologic cycle.
 - c. Minimize pollution entering the Commonwealth's waters and ensure that the pollution does not alter any water's designated use.

Chapter 102 & Permit-by-Rule (PBR)

To follow-up on Secretary Hanger's suggestion that Council comment on the proposed revisions to Chapter 102, specifically the proposed permit-by-rule, Policy Office staff was invited to the February meeting to provide an overview of the concept and its intent. In March, Water Management staff attended Council's meeting to further discuss DEP's draft regulations for changes to Chapter 102, Erosion and Sediment Control. It was explained that the PBR is not mandatory, and can only be used on low risk sites that meet specific criteria. It is intended to help the department focus the use of its staff to higher risk sites. Following the presentation, much discussion ensued, many questions were asked and concerns expressed. Department staff encouraged Council members to submit their comments.

At the April meeting, Council voted unanimously to forward a letter to Secretary Hanger expressing some of its concerns surrounding the department's draft Permit-by-Rule in Chapter 102. Expressed concerns included: transparency of process, change in procedural precedent, and difficulty in evaluating impacts of proposed changes.

In May, the committee requested a meeting with Deputy Secretary Hines. The committee reported that it was considering drafting and submitting comments during the department's formal comment period. The committee then held a follow-up conference call with Deputy Secretary Hines to further discuss draft changes to Chapter 102 and the proposed Permit-by-Rule.

The Water Committee held a conference call in November to discuss submittal of formal comments with regard to Chapter 102 and the PBR. At the November 17 Council meeting, Council approved sending the comments to EQB.

Proposed Total Dissolved Solids (TDS) Strategy

In February, the committee reported that the department's newly proposed total dissolved solids (TDS) strategy will have significant implications for industry and municipalities and deserves further attention and suggested that Council arrange a presentation. In April, department staff gave a presentation on permitting updates surrounding the Marcellus Shale and introduced the proposed TDS Strategy. The department reported that need for change was demonstrated when TDS in the Monongahela River

exceeded regulatory standards in some areas. While the department acknowledged that this newly proposed strategy would have far-reaching impacts on many stakeholders, it intended to move ahead with the strategy.

In July, the Water Committee reported that WRAC had formally asked DEP to slow down and study this matter in greater detail. WRAC recommended the creation of a stakeholder effort. The Water Committee met with department staff following the Council meeting.

EQB approved the proposed rulemaking at the August meeting. Publication of the draft rulemaking was scheduled for November 7. There will be a 90-day public comment period.

Consumptive Use of Water in Ethanol Production

In February, the Water Committee also discussed concern over the amount of water necessary in the manufacture process for ethanol. Council members and staff will further research this issue.

STRATEGIC PLANNING WORKGROUP

In February, the Strategic Planning Workgroup distributed a proposal on how to set and manage Council priorities. Council voted to focus its attention on a select number of issues, to allow for evaluation of select issues in greater depth and make more fully informed recommendations. The workgroup recommended that new issues and other business be delegated for committee discussion, and if deemed appropriate, elevated to the Council priority list. Council voted to adopt the workgroup's recommended guidelines with the following issues as immediate priorities:

- Chapter 102 – Permit-by-Rule
- Marcellus Shale
- Climate Change / Carbon Capture & Sequestration

The workgroup met in May to begin preliminary discussions with regard to what issues should be addressed in the Transition Report to be provided to the next administration. During the workgroup's July call, the upcoming Transition Report was discussed as well as the continuity of Council's summer meetings. The workgroup was in consensus that the Transition Report should immediately become council's top priority so that it would be ready in time to share and discuss with candidates early in their campaign. Council concurred and voted to accept the workgroup's recommendation.

In September, the Workgroup met and discussed the upcoming transition report in depth. A draft outline of issues to be included in the report was circulated for comment. The workgroup has held numerous conference calls and meeting to discuss various aspects of a transition report and expects to finalize the first phase in January 2010.

CAC/CNRAC Joint Workgroup

The Councils formed a joint workgroup to study and encourage coordination between the states two sister natural resource agencies. In August, the two Councils held joint informational panel discussions to gain a general overview of the various issues surrounding the development of the Marcellus play in Pennsylvania. Representatives from DEP, the US Environmental Protection Agency, local government, interest groups, industry, and academia were invited to participate.

The Councils then held a follow-up joint regional meeting in October, which included evening panel discussions focusing on local perspectives and potential local impacts. The Councils then toured an Anadarko drilling pad in the Pennsylvania Sprout State Forest and a site where DCNR and DEP are working collaboratively to reclaim an acid mine drainage impaired creek and abandoned mine site located within the state forest.

COUNCIL NEWS

Member News & Updates

Appointments - Governor Rendell reappointed both **Jolene Chinchilli** and **Peter Wilshusen, PhD** to new terms. In February, **Gail M. Conner** was appointed to represent Council on the Air Quality Technical Advisory Committee. In June, Speaker McCall appointed **James Clauser** and **James Swistock** to serve on Council. Senator Scarnati reappointed **Bernard Hoffnar, PhD** and **Burt Waite** to three-year terms as well. In November, Speaker McCall appointed **Eric Conrad** to serve the remainder of a term expiring January 2011.

Resignations – **Bruce Tetkoskie** resigned in January for personal reasons. In November, **Bernard Hoffnar** resigned from the CAC. Council appreciates the many years of service provided by each of these individuals.

Elections - In February **Dave Strong** and **Burt Waite** were re-elected to serve two-year terms on the Mining and Reclamation Advisory Board and **Bernard Hoffnar** was elected to serve the remainder of **Bruce Tetkoskie's** term on the Board. Council leadership and EQB elections were held in July. The results of the leadership elections were: **Richard Manfredi**, chair and **Joyce Hatala**, vice chair. The following individuals were re-elected to represent Council on the EQB: **Jolene Chinchilli, Walter Heine, Bernard Hoffnar, Richard Manfredi, and David Strong**. Council's EQB alternates are **Cynthia Carrow, Gail Conner, Pat Lupo, and John Walliser**.

Staff News and Updates

On November 20, Council learned that two of its staff, **Janis Dean** and **Patricia Davenport**, were furloughed as part of the department's budget cuts. The loss to Council is exceeded only by the impact to these two dedicated and caring individuals.

COMMITTEES AND BOARDS

(as of December 2009)

Chair: Richard J. Manfredi

Vice Chair: Joyce Hatala

STANDING COMMITTEES

Administrative Oversight

Thaddeus Stevens, Chair
Cynthia Carrow
Jolene Chinchilli
Richard Manfredi
Janet Keim

Air

John Walliser, Chair
Gail M. Conner, Esquire
Walter Heine, P.E.

Environmental Standards

David Strong, Chair
Joyce Hatala
Curtis Kratz
Thaddeus Stevens
John Walliser, Esquire

Integrated Projects

Jolene Chinchilli, Chair
Gail M. Conner, Esquire
Joyce Hatala
Pat Lupo, O.S.B.
Burt Waite

Public Participation and Outreach

Cynthia Carrow, Chair
Jim Clauser
Gail M. Conner, Esquire
Curtis Kratz
Pat Lupo, O.S.B.

Water

Burt Waite, Chair
Cynthia Carrow
Jolene Chinchilli
Jim Clauser
Gail M. Conner, Esquire
Joyce Hatala
Walter Heine, P.E.
Janet Keim
Curtis Kratz
Pat Lupo, O.S.B.
Richard Manfredi
Thaddeus Stevens
David Strong

OTHER BOARDS & COMMITTEES
(as of November 2009)

Environmental Quality Board

Members:

Jolene Chinchilli
Walter Heine, P.E.
Bernard Hoffnar
Richard Manfredi
David Strong

Alternates:

Cynthia Carrow
Gail M. Conner, Esquire
Pat Lupo, O.S.B.
John Walliser

Mining and Reclamation Advisory Board

Members:

Walter N. Heine, P.E.
Bernard Hoffnar
David L. Strong
Burt A. Waite

Alternates:

Susan Wilson
Janis Dean
Patricia Davenport
Curtis Kratz

Air Quality Technical Advisory Committee (AQTAC)

Appointee: Gail M. Conner, Esquire

Environmental Hearing Board Rules Committee (EHB)

Appointee: Thomas Scott

Low-Level Radioactive Waste Advisory Committee (LLWAC)

Member: Susan Wilson

Alternate: Janis Dean

Oil and Gas Technical Advisory Board (OGTAB)

Appointee: Burt Waite

Radiation Protection Advisory Committee (RPAC)

Appointee: Susan Wilson

Solid Waste Advisory Committee (SWAC)

Member: David Strong

Alternate: Susan Wilson

Council Staff

Executive Director – Susan Wilson

Program Analyst – Janis Dean

Administrative Officer – Patricia Davenport

REPORTS, STATEMENTS, AND RESOLUTIONS
(January – December 2009)

Budget / Administrative Issues
Letter to the PA Environmental Resources & Education Committees introducing Council and welcoming an open exchange of information.
Letter to Arthur Coccodrilli, Chairman of IRRC, expressing Council’s support of DEP’s efforts to increase program fees to bring them in line with current program operating costs. The letter was sent with regard to the Marcellus Shale Well Permit Fees Final-Omitted Rulemaking.
Letter to Secretary Hanger with regard to funding for the Sewage Facilities Enforcement Grants program.
Follow-up letter to Secretary Hanger in regard to funding for the Sewage Facilities Enforcement Grant program.
Letter to Governor Rendell and the PA Environmental Resources and Education Committees encouraging funding to reimburse local agencies as per Section 6 of Act 537.
Letter to Secretary Hanger expressing concern over potential impacts of the budget debate on DEP.
Water Issues
Letter to Secretary Hanger with regard to proposed Chapter 102, Permit-by-Rule.
Formal comments submitted to EQB regarding proposed changes to Chapter 102, Erosion and Sediment Control and Stormwater Management.
Air Issues
Letter sent to Director, Bureau of Air Quality, Joyce Epps, supporting the proposed rulemaking for Fee Schedule Amendments.
Letter to Director, Bureau of Air Quality, Joyce Epps, providing Council’s comments on the Bureau’s draft report, An Evaluation of the PA Air Quality Program 2002-2007.
Letter to Roger Westman, Chair, DEP Air Quality Technical Advisory Committee, expressing Council’s desire to continue to benefit from and share written and verbal viewpoints.
Letters to Director, Bureau of Air Quality, Joyce Epps, supporting moving to EQB with the following draft proposed rulemakings: Outdoor Wood-Fired Boilers, Large Appliance and Metal Furniture, Paper Film & Foil, Flat Wood Paneling, and New Source Review for PM 2.5.
Waste
Letter to Deputy Secretary Fidler regarding proposed changes to the waste and beneficial use of coal ash regulations.
Mineral Resources
Letter to the federal Office of Surface Mining supporting EPCAMR’s proposal to determine availability and quality of mine pool waters throughout the Commonwealth.
Letter to Special Deputy Secretary Sexton suggesting improvements to the department’s Marcellus Shale webpage.
Memo to the Pennsylvania General Assembly concerning proposals to expand gas extraction on state lands and to further reduce funding of DEP and DCNR programs.
Letter to the PA Congressional Delegation concerning the proposal to eliminate federal funding for Pennsylvania’s Abandoned Mine Land Emergency Program.
Public Participation & Outreach
Letter to Senator Eichelberger informing him of Council’s efforts in reviewing potential statewide criteria for the siting of wind turbines.
Reports/Newsletters
2008 Annual Report
2008 Regional Field Trip Report (Sayre, PA)
CAC Advisory
CAC Advisory

LEGISLATIVE MANDATE

ACT 275 OF 1971

Section 448. Advisory Boards and Commissions

(p) The Citizens Advisory Council shall consist of the Secretary of Environmental Protection, six members who shall be appointed by the Governor, no more than three of whom shall be of the same political party, and six members who shall be appointed by the President Pro Tempore of the Senate, no more than three of whom shall be of the same political party, and six members who shall be appointed by the Speaker of the House of Representatives, no more than three of whom shall be of the same political party. The appointed members of the Council shall be citizens of the State who, during their respective terms, shall hold no other state office to which any salary is attached except that of membership of the Environmental Quality Board.

The term of office of each appointed member shall be three years, measured from the third Tuesday of January of the year in which he takes office or until his successor has been appointed.

The Citizens Advisory Council shall include persons knowledgeable in fields related to the work of the Department of Environmental Protection such as, but not limited to, ecology, limnology, toxicology, pharmacology, organiculture, and industrial technology.

The Council shall annually elect one of its appointed members as Chairman and shall elect a Secretary who need not be a member of the Council. Meetings of the Council shall be held at least quarterly or at the call of the Chairman.

The Council shall have the power to employ and fix the compensation of such experts, stenographers, and assistants as may be deemed necessary to carry out the work of the Council, but due diligence shall be exercised by the Council to enlist such voluntary assistance as may be available from citizens, research organizations, and other agencies in Pennsylvania or elsewhere, generally recognized as qualified to aid the Council.

Section 1922-A. Citizens Advisory Council

- (a) The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification and codification thereof.
- (b) The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents and records pertaining or belonging to the department.
- (c) The Council shall advise the department on request, and shall make recommendations upon its initiative, for the improvement of the work of the department.
- (d) The Council shall report annually to the Governor and to the General Assembly and may make such interim reports as are deemed advisable.

ACT 95 OF 1992, THE AIR POLLUTION CONTROL ACT

Section 7.6. Advice to Department

- (a) The department shall consult with the Citizens Advisory Council established under Section 448 of the Act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929," as appropriate, in the consideration of State implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. Nothing in this section shall limit the Council's ability to consider, study and review department policies and other activities related to the Clean Air Act implementation as provided under Section 1922-A of "The Administrative Code of 1929." This section shall not apply to state implementation plans or portions thereof comprised of permit emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations. The requirements of this section shall not apply to State implementation plans submitted by a local air pollution control agency.

Section 4.3. Evaluation

Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the Clean Air Act. The evaluation shall include:

- (6) A summary of the activities undertaken by the Citizens Advisory Council and the air technical advisory committee under Section 7.6.

INFORMATION REQUEST FORM

Pennsylvania Constitution Article I, Section 27

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

If after reading this report you would like to receive more information about the Council **or** would like to be added to our electronic mailing list, please use the form provided below and send it (i.e. mail, fax or electronic mail) to:

Citizens Advisory Council
P.O. Box 8459
Harrisburg, PA 17105-8459
Phone No. (717) 787-4527
Fax No. (717) 787-2878
Email: epcontactcac@state.pa.us

-
- YES, I would like to be added to the CAC's **electronic** mailing list.
 - YES, I would like to receive more information about the Council or a particular issue.

I am interested in _____

Name _____ Organization _____

Address _____

City _____ State _____ Zip Code _____

Phone No. (____) _____ Fax No. (____) _____

Internet/other electronic mail address _____



MISSION STATEMENT OF THE CITIZENS ADVISORY COUNCIL

It is the mission of the Citizens Advisory Council to strive to ensure that all people of the commonwealth enjoy the benefits included in Article I, Section 27 of the Pennsylvania Constitution.

This mission specifically states that the Council is to carry out the mandates of Act 275 of 1971 and Act 95 of 1992, by:

- *Performing non-partisan, independent oversight of the operations, management and policy of the Department of Environmental Protection;*
- *Evaluating environmental issues and laws;*
- *Participating in the development of environmental regulations; and*
- *Providing advice concerning environmental matters to the department, the Governor, the General Assembly, and the Commonwealth's federal representatives.*

The council strives to represent all people of the Commonwealth and endeavors to bring a collective view of the public interest in environmental protection and natural resources, forged from the Council's own diversity of personal experiences and perspectives.

(Unanimously Adopted: November 20, 1989; Amended: November 12, 1996;
Reaffirmed: March 15, 2005; Amended: April 17, 2007.)

CITIZENS ADVISORY COUNCIL

to the Department of Environmental Protection
13th Floor, Rachel Carson State Office Building
P.O. Box 8459
Harrisburg, PA 17105-8459