

DRAFT MINUTES

Citizens Advisory Council Meeting
April 20, 2010

Chair Richard Manfredi convened the meeting at 10:55 am. The following members attended:

Richard Manfredi, Chair
Joyce Hatala, Vice Chair
Cynthia Carrow
Jolene Chinchilli
Jim Clauser
Gail Conner

Janet Keim
Curtis Kratz
Thad Stevens
David Strong
Burt Waite
John Walliser

I. CHAIR'S REPORT

Richard introduced Duke Adam, DEP's new Acting Policy Director. He also reported that Walter had been reappointed by Senate President pro Tempore Scarnati. There has been no word on the remaining vacancy in the Senate appointments.

Richard announced that Burt had asked to step down as chair of the Water Committee, and that he was appointing Thad as the new Water Chair and Eric as the new Administrative Oversight Chair.

He also announced that Burt and Cynthia had agreed to serve as the nominating committee for the upcoming election for leadership and EQB. Cynthia reported that Joyce had agreed to stand for Chair and John Walliser had agreed to stand for Vice Chair. She asked any one interested in being considered for EQB to let Sue know.

Richard announced that John Walliser had agreed to be Council's representative on the Air Quality Technical Advisory Committee.

Finally, he reminded Council that in May he would like to discuss making the Strategic Planning Workgroup a standing committee.

Richard asked for a motion to approve the minutes of the March 2010 meeting. Cynthia moved approval and Joyce seconded. The minutes were unanimously approved.

II. PUBLIC COMMENT

Jeff Schmidt, Sierra Club, spoke about Act 54 and Ryerson Station State Park. He reminded Council that DEP had determined that long wall mining by Consol had caused the damage to the dam, which had to be removed after being damaged. He reported that citizens had requested access to the information and reports used to make this determination, but had not yet received the information.

He also asked about the Department's 5-year report, and whether it would address Ryerson and the assumption that the 35 degree angle of draw was the appropriate measure to determine the presumption of liability.

The budget is being balanced on the back of the state forest system, and urged Council to support a severance tax on Marcellus drilling as a better way to raise needed money. HB 2235 would put a moratorium on leasing on state forestlands, and HB 2213 would improve the regulation of gas drilling.

Richard then asked other members of the audience to introduce themselves.

III. DEPARTMENT REPORT

Secretary Hanger started by asking for questions. Burt asked about the status of the recent legal action against staff in the Northeast Regional Office. Post trial motions are still before the trial judge; he expects it to be appealed one way or the other. The outcome will affect how state government interacts with the public, and he believes that the current decision is a miscarriage of justice and should be reversed.

Jan noted that she had received a copy of the study on the Little Lehigh request for redesignation, and that after 7 years, the report recommends denial of the request to upgrade. She asked why impaired streams don't get a faster TMDL? The Secretary responded that there Pennsylvania has many streams on the 303(d) list, and development of TMDLs takes a substantial amount of time and effort; resource limits in both DEP and EPA limit how fast we can accomplish.

Dave asked about OSM cutting funding for emergency programs, and whether DEP can handle these programs if they are successful. The Secretary responded that this is indicative of future federal cuts; the feds need to reduce deficits and the economy improves. Both the US and Pennsylvania need to make hard choices, but DEP opposes this cut and will argue against it.

Rich asked if DEP planned to update the bonding requirements for gas drilling. The Secretary agreed that this was definitely needed; current bonding rates are very outdated. Taxpayers are paying to plug abandoned wells, and we don't want to pass on another debt and environmental liability to future Pennsylvanians. Legislation will be needed to update the bonding requirements.

Joyce asked about the energy efficient appliance rebates that will be available starting tomorrow. He replied that the program focuses on non-electric heating, cooling and hot water heaters, and that interested parties can apply on the web or over the phone.

He reported that EQB would be very active for the rest of the year, as the department tries to finalize a number of important regulatory packages.

IV. ACT 54 AND RYERSON STATION

Harold Miller reported that the 5 year report under Act 54 will address underground mining impacts for the period August 2003 to August 2008. It is being developed by the University of Pittsburgh under the leadership of a professor who used to work for NIOSH and the Bureau of Mines, with support from graduate students and professors. When the last report was completed, DEP had hoped that the authors of that report would be able to do yearly updates, but they retired.

Report preparation is well underway, and DEP staff is reviewing and commenting as sections are completed. A complete draft report is expected by June 15 and the final report is due by July 29, 2010. They expect the report will cost over \$300,000.

The research team is developing a GIS system evaluating the applicability of depth and distance as indicators of the potential for damage. DEP continues to work to improve claim resolution and evaluation of stream impacts.

John asked if the report would address Ryerson as an impact; Harold indicated that it would be recorded as an impact, but would not go into it in any detail. The technical report is available on the DEP website.

Sue asked if the current report would address the recommendation in the last report about changing the 35 degree angle of draw. Harold indicated that the current report is evaluating depth and distance as indicators, but didn't know if it would make any further recommendations.

Jeff Schmidt stated that he hoped that the Act 54 report would address how DEP came to the conclusion that mining caused the damage to the dam and make recommendations about changes to the angle of influence as a result of lessons learned from that situation. Harold stated that because the case could be further litigated, that the report would most likely not address these matters.

Regarding the situation at Ryerson Station, Harold indicated that DEP had found Consol's Bailey Mine to be responsible for the damage to the dam. The DEP technical report is now on the BMR page on the DEP page. They are now in the second stage, of meeting with both parties to identify the appropriate remedy and its cost. The third stage will be to issue an order requiring Consol to implement the remedy; this action can be appealed.

Nora Carreras, DEP's Environmental Advocate, stated that the public finds the technical report to be too hard to understand, and asked if she could refer questions to BMR for explanations. Harold agreed.

V. CNRAC UPDATE

Kurt Leitholf reported that John Quigley has been confirmed by the Senate as Secretary of DCNR.

The biggest issue facing DCNR is drilling on state forest and state park lands. Twelve new positions have been authorized. DCNR manages 2.1 million acres of state forest lands, 1.5 million are in the Marcellus Play. Of these 1.5 million acres, 700,000 acres have already been leased for gas development; DCNR owns mineral rights for 410,000 these leased acres. In 2009, DCNR approved 230 locations for Marcellus drilling; in 2010, anticipate 250 more to be approved (50 to date). Note—these are approved, not necessarily drilled at this time. Approximately 35 wells are either drilled or currently being drilled, and 12 are royalty producing; these are highly productive wells. CNRAC issued a statement in support of a severance tax.

CNRAC and CAC staffs are researching sites and issues for a proposed joint regional meeting in the fall.

CNRAC is working on a study of how DCNR should be funded; they don't want the agency to be totally dependent on drilling revenues when they are charged with protecting the natural resources. They have also contacted the Game Commission regarding not stepping back on deer management.

Burt asked if Topographic/Geologic Survey is moving to the Rachel Carson Building. Kurt was not sure; the bureau is under utilized, under valued and under funded, but a move may be difficult given the library of core samples, etc. that they house.

Joyce asked if there was any money left in the Wild Resources Conservation Fund. Kurt said that it is severely under funded, and had been dependent on Growing Greener grants, which are declining.

Jolene commended CNRAC on its excellent letter in support of a severance tax.

VI. BUDGET ISSUES

Deputy Secretary Patrick McDonnell joined CAC for a continuing conversation regarding budget issues. He responded to Gail's question last month regarding how much of the DEP budget is for contracts; he reported that \$81.1 million, or 9% of the FY2009 budget went for contracts (e.g., IT, HSCA remediation, service contracts, leases, procurement/supplies, etc). Gail stated that she supports internal hiring vs. outsourcing.

Pat reported that the House had passed the Governor's budget; there will be no Senate action until they at least see the April revenues. Revenues so far this year have been below projections.

Jolene highlighted a recent report that Commonwealth Court had directed the Commonwealth to replace funds transferred to the General Fund from the Medical Malpractice Fund, and asked if this had any ramifications for DEP which has also had a number of funds transferred in recent years. Patrick stated that the Governor's Office

may appeal the decision, and that he would have to ask DEP counsel about how the decision might impact use of DEP's special funds.

Patrick referred to a Senate bill (SB 1303) that would expand the use of the Clean Water Fund for programs such as West Nile black fly, sewage and stormwater. The CWF has always been primarily penalties and fines; new fees are now going into it so it can support staff that has been transferred to it, but there are not sufficient funds for expanded uses. These programs in the past had their own line items.

Jim Clauser asked about reports that the Chapter 102 regulations provide for DEP to take a portion of the fees authorized in the regulations, or if they all go to Conservation Districts. Dan Lapato stated that the version posted on the WRAC page should be the most current.

VII. COMMITTEE REPORTS

Strategic Planning Workgroup—Jolene thanked everyone who was able to attend the morning workgroup meeting. Progress is being made on the second phase of the Transition Report, which is targeted for the transition team, but there is still much work to do.

Air—John referred to the draft letter regarding the Outdoor Wood Burner regulations that was included in the mailing. John moved and Dave seconded that the letter be approved by the CAC. The letter was unanimously approved.

He also reported that the committee would be looking into the air quality impacts of Marcellus activities, and environmental impacts of emissions controls vs. increased fuel consumption and/or fuel switching that result.

Joint Workgroup—Cynthia asked that CAC change its July meeting date to July 28 so that we can meet jointly with CNRAC. Thad moved and Joyce seconded the date change; it was unanimously approved. Staff will advertise the date change.

She indicated that we are considering another joint regional meeting in the fall, and that the report of last year's joint regional trip would be posted on our website by the end of the week.

Oil and Gas TAB—Burt reported that OG TAB has had extensive discussions about changes to Chapter 78 regulations (gas well casing requirements); with OG TAB concurrence, this regulatory package is slated to go to EQB in May.

VIII. NEW BUSINESS

Dan reported that the bill which would limit EQB's ability to pass regulations (HB 2304) would make it impossible for DEP to conduct business. There is no official position at this time.

OSM letters—Sue reported that she had disseminated a draft outlining issues regarding OSM funding of emergency programs as well as some concerns with both Title IV and V funding. Cynthia agreed to work with Sue on language to be included in a letter or letters. Dave indicated that he would share with MRAB at the meeting later in the week.

Rich asked if there was any public comment. Hearing none, he asked for a motion to adjourn. Curtis moved and John seconded that the meeting be adjourned.

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Notice of the April meeting was published in a newspaper of general circulation in Dauphin County and mailed to individuals and offices in compliance with the Sunshine Act (1986-84). These minutes constitute the official record of the Citizens Advisory Council meeting; no official transcript is prepared.