

**MINUTES
CITIZENS ADVISORY COUNCIL
October 19, 2010**

CALL TO ORDER AND APPROVAL OF MINUTES

Chairperson Hatala called the meeting to order at 12:30 p.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The following members attended:

Joyce Hatala, Chair	Janet Keim
Cynthia Carrow	Curtis Kratz
Jolene Chinchilli	Richard Manfredi
Jim Clauser	Thad Stevens
Eric Conrad	David Strong
John Hanger	Burt Waite
Walter Heine	John Walliser

The Council considered its first item of business – the July 28, 2010 CAC meeting minutes.

Burt Waite moved approval of the July 28, 2010, CAC meeting minutes. Eric Conrad seconded the motion, which was approved by a majority of Council members. Walter Heine, Richard Manfredi and Janet Keim abstained as they had been absent from the July meeting.

CHAIR’S REPORT

Joyce asked members of the audience to introduce themselves. She then asked Sue to discuss proposed 2011 meeting dates. Sue noted that she is waiting to get confirmation on the date of the January EQB meeting but the normal CAC and EQB meeting date would fall on January 18, 2011. Both will likely be scheduled for January 19, 2011, because the 18th is inauguration day and normally state offices are closed on that day. She will notify CAC members of the 2011 meeting dates as soon as they are confirmed.

DEPARTMENT REPORT

Joyce welcomed Secretary Hanger, who offered to answer questions.

Richard Manfredi stated that John Hines did a tremendous job providing information at that morning’s Water Committee meeting. He then asked whether DEP has solidified its position if the EPA puts new stormwater rules in place. Secretary Hanger responded that since the Department doesn’t yet know exactly what’s coming, it has not solidified its

position regarding this matter. He stated that a broad-brush approach could be cost prohibitive, but that there are also huge costs when communities fail to deal with stormwater, for example flash flooding resulting in drowning deaths, and continuing complaints from property owners about stormwater impacts on their property due to poor stormwater control by another property owner. There are often other, less expensive options (besides broad retrofitting) to deal with stormwater that have good local impacts. We have a state law requiring stormwater planning and there have been court cases about enforcing that law. DEP has made it clear to EPA that a broad brush approach is cost-prohibitive and we need to be having a finer detailed conversation about sensible approaches.

Burt Waite asked whether Secretary Hanger has an update on the federal court case regarding the regional office employees. Secretary Hanger said the Department has filed a series of claims asking that the verdict be set aside. We've got very good legal claims and our attorneys are hopeful that the verdict will be set aside. There is no mandatory deadline on the federal court judge to issue this decision but we hope to hear within the next three months.

Eric Conrad asked about planning for implementation of the new Chapter 102 regulations, which go into effect in November. Secretary Hanger responded that John Hines and his staff have been doing a lot of internal training to make sure that the regions and permit writers are aware of the rules. There has also been a lot of outreach to applicants to make sure they understand the opportunities they have under the new rules and the grandfather provisions that exist to protect existing business relationships. DEP is well-positioned to implement the rules, but he expects some consistency issues at first. They will need to collect details on allegations of inconsistency in order to resolve real problems vs. differences in circumstances.

Eric referred to a recent discussion regarding pipeline permitting where there was a lack of agreement between several district and regional offices on the definition of "common project." In addition to coordinating between DEP offices, the department often has to coordinate decision making with other state and federal agencies, all of whom have legal roles and authorities. Secretary Hanger said that is an excellent point and that often we are a delegated agency but we are not the sole agency making a decision.

Burt Waite asked about next steps for the revised Chapter 78 Oil and Gas regulations, and when will they go into effect. Secretary Hanger replied that the regs will go to IRRC on November 18th and we are not anticipating any problems, since DEP has worked closely with IRRC and others to resolve issues before the final vote. Policy Director Duke Adams explained that after IRRC it goes to the Office of Attorney General for a 30-day review and then the reg will be published in the *PA Bulletin*. Mr. Adams also noted that when it goes to IRRC it also goes to the standing environmental committees in the House and Senate who also have the opportunity to take action and comment.

Thad Stevens referred to the earlier discussion with John Hines, who mentioned that the Department is concerned that the Delaware River Basin Commission (DRBC) is

developing its own well casing/production pressure regulation. Mr. Stevens asked whether, with the approval of the new DEP rule, DRBC is expected to stop its effort. Secretary Hanger said that Mr. Hines has done a great job representing the state on the DRBC and that what was once a wide gulf in the dialogue is now down to two or three issues at most—one of which is production pressures, as Mr. Stevens mentioned. Secretary Hanger is hopeful that the DRBC will defer to the state regulation.

Dave Strong said that the Office of Surface Mining (OSM) has stepped up their inspections and it seems to be causing some confusion with our Bureau of Mining and Reclamation. Secretary Hanger said he reviewed one briefing on the issue, and agrees with Mr. Strong that it is worth further discussion. Pennsylvania has an excellent mine safety program, and since he has been Secretary there has only been one death in underground mines. Safety and environmental issues are taken very seriously by both DEP and OSM, and as mentioned earlier, interagency coordination is important.

Hearing no further questions, Joyce thanked the Secretary for his participation.

COMMITTEE REPORTS

Prospective and Strategic Projects (PSP): Jolene Chinchilli reported that the committee had held a series of conference calls regarding the second phase of the transition report, and a final meeting this morning which most Council members attended. The final draft was reviewed and discussed, final edits made, and a new title chosen: “Protecting Pennsylvania’s Environment: Issues for a Challenging Time.” The report will go to the new administration’s transition team after the election. Ms. Chinchilli said that if Council accepts the report with the changes discussed this morning, she and Sue would get the revisions out to everyone ASAP for a final review. Curtis Kratz thanked the committee, especially Ms. Chinchilli and Ms. Wilson for their good work. Ms. Chinchilli thanked everyone for the close review and excellent input.

Ms. Chinchilli moved approval of the report with the changes that were made this morning. Mr. Waite seconded the motion, which was unanimously approved by the Council.

Chairperson Hatala asked that the PSP committee put together a strategic planning meeting for next year. Ms. Chinchilli suggested that each committee look at their current priorities and determine what is still relevant and then report back in preparation for a strategic planning meeting early next year. Ms. Wilson asked each of the committee chairs to contact her regarding setting up committee conference calls. She also suggested looking at existing priorities in the context of the two transition reports we’ve just done.

Air: John Walliser reported on the Air Committee’s conference call with DEP staff to discuss the following three packages:

1. Final form rulemaking for New Source Review for Fine Particulates, PM_{2.5}, which will go to EQB in November.

2. Final form rulemaking Fees for Title V of the Air Program, which was approved as draft by EQB in 2009. AQTAC will review this package on October 21, 2010, and the new Fee package would go into affect in 2011 if approved. One of the discussion points was whether the fee increases are sufficient to cover all of DEP's anticipated costs; BAQ staff reported that there is sufficient funding in the Clean Air Fund to cover any shortfalls until the fees are reevaluated as required in the rulemaking.
3. Draft Rulemaking on High Electric Demand Days (HEDD) is also going before AQTAC on October 21, 2010. The purpose of this rulemaking is to deal with stationary generators that are only used during peak demand times to ensure system reliability, and which are typically high emitters. Since HEDD are also often air quality action days, these high emissions pose a problem with ozone attainment. The rulemaking would seek 80% emissions reductions from these units by 2013 and allowing the use of offsets to achieve compliance for up to three years to protect system reliability. Since DEP doesn't foresee the package going to EQB as proposed till 2011, the committee wanted to take more time to consider it.

John Walliser moved approval of the letter. David Strong seconded the motion, which was unanimously approved by the Council.

Water: Thad Stevens reported on the Water Committee this morning with Deputy Secretary John Hines regarding the Chesapeake Bay TMDL and Watershed Implementation Plans. EPA was critical of DEP's original submission; revisions are due to the EPA by the end of November. The committee will also be discussing a white paper on the need for water well construction standards, especially in light of ongoing concerns with gas migration issues.

CNRAC REPORT

Kurt Leitholf, Executive Director of CNRAC, reported that he had received positive comments from his members about the joint regional meeting last month. Getting out and observing activities first hand helps us all provide better advice to our respective department and the legislature. He noted that it is an increasing challenge to do these trips given the budget situation, but that we need to balance economics with keeping our members informed so they can carry out their mandates.

As the current administration is winding down, he noted some of the specific initiatives that this administration accomplished, including new facilities such as

- ✦ The Nature Inn at Bald Eagle State Park. This establishment is sort of a Bed & Breakfast, which is a new concept; in fact, it's the first one in state park system. It is now open to the public.
- ✦ Elk Country Visitors Center in Benezette, which was a joint effort with DCNR, the Elk Foundation and some other wildlife organizations. This has also recently been completed.

Unfortunately, it appears that the proposed severance tax is dead at this time. Mr. Leitholf said that DCNR and the state parks will be adversely affected by the lack of a natural gas severance tax. DCNR is trying to protect its resources, and will need financial assistance to eventually restore its facilities. CNRAC was also hoping that a portion of the severance tax would go toward Growing Greener 3 and to restoration of local impacts from the drilling.

Mr. Leitholf is working with Ms. Wilson to finalize the September regional report. In addition, CNRAC is finalizing a report on revenue generation and retention for DCNR. The meeting schedule for 2011 has not been set yet, but will be taken care of at next CNRAC meeting. CNRAC is looking forward to meeting with the new administration, and is anxious to see what their goals and priorities will be.

Mr. Waite asked if DCNR is reporting how much money it receives from royalties on gas production, in addition to lease and bonus income from drilling on state land. Kurt said that the Bureau of Forestry has been maintaining Marcellus Shale information on its website. Mr. Waite asked how many active wells there are right now and what is expected in terms of income from royalties. Mr. Leitholf said there are only about 12-15 operating Marcellus wells on state land at this time and significant royalties will not be seen immediately. It is projected that down the road we might have hundreds of wells on state forest land, and that it might lead to a significant income stream. Mr. Waite asked how much of that money goes to DCNR. Mr. Leitholf replied that the money goes into the Oil and Gas Lease Fund, which used to be under the control of the Secretary of DCNR, but now is under the control of the legislature. So DCNR is now required ask for money for hiring new staff, purchasing additional equipment etc.

2010 REGIONAL MEETING DISCUSSION

Ms. Wilson asked for feedback on the regional meeting while Kurt was still here.

- ✚ Mr. Manfredi offered that it was a job well done; even though he wasn't able to stay for the site visits, the evening session was very informational.
- ✚ Mr. Leitholf said that site visits are fundamental to what we do and it is important to see the reality of it, and talk to people who live there and are experiencing it.
- ✚ Ms. Wilson said that we invited groups to sit on our panel and the SRBC offered to come talk to us in more detail about where they are with Marcellus, and asked whether Council members believe this is a good idea. Mr. Stevens suggested we invite the DRBC as well as the SRBC to try to accomplish some coordination. Chairperson Hatala said that is a good idea. Ms. Wilson said she would talk to Mr. Leitholf to see if we can set something up.
- ✚ Mr. Kratz said he appreciated the mix of local people, department staff and company representation, and believes they did a fantastic job with the tour.
- ✚ Mr. Strong said that it is good to see how companies work and also suggested that more experienced local government folks could offer guidance for areas which are just starting out in this phase.

- ✚ Mr. Strong added that he attended a meeting of the Elk County Gas Task Force, and many concerns that were not addressed in any of our meetings were raised. Mr. Strong believes that we should explore some of these concerns. Chairperson Hatala said that perhaps a discussion on how problems to date have been addressed would be beneficial.
- ✚ Mr. Strong said that during the EQB meeting, there was a discussion about well standards background testing and the 1000 foot presumption. He noted that Secretary Hanger was proactive in directing the Department to create a list of analytical parameters for those that may have to test on their own to put on DEP's website (including legal aspects, ballpark costs for testing, labs that can do tests, etc.) so well owners know what to test for. Mr. Strong added that the Penn State Extension Services has created its own webpage which lists similar information.

EPA CONDUCTIVITY BENCHMARK

Deputy Secretary Scott Roberts lead a discussion regarding the EPA Conductivity Benchmark and potential impacts on mining, and how we deal with abandoned mines and mine drainage in Pennsylvania. On April 1, 2010 EPA's central office sent a directive to its regions that states are to impose a narrative water quality standard designed to protect aquatic communities from adverse affects when they are looking at coal mining in the northern Appalachians.

Specific conductance, which measures the ability of a body of water to pass an electrical charge, tells you if something is dissolved in the water. The numeric limits being imposed are based upon studies done in southern West Virginia, with a specific geology and environment. EPA believes that impacts on aquatic communities begin about 300 micro-siemens and that at 500 micro-siemens there are adverse impacts. Those numbers are related back to total dissolved solids by using a correction factor between .55 and .7, depending on what species of anion is present in the body of water. Under this directive, DEP should be applying a limit of somewhere between 250-350 (rather than 500 in the new TDS regulation) in order to protect aquatic life.

Neither EPA's approach nor the background study was vetted with EPA's Science Advisory Board before implementation last April. It applies to all eco-regions which include northern Appalachia even though they may not share the geology and environment observed in the study. The standard only applies to coal mines, even though other activities impact specific conductance.

DEP does not permit valley fills in Pennsylvania. For decades, Pennsylvania has been using osmotic pressure as a permit limitation designed to ensure that the amount of salts that are in any particular discharge do not create a problem for aquatic life. DEP believes that our program has more appropriate standards to use which are as protective or more protective in streams in this particular criteria.

There is concern that it going to create many problems for Pennsylvania mine sites, new and old. DEP also believes there is a huge concern with remining efforts. If DEP has to tell the operators they have to take all of the solids out to reduce discharge levels down to these specific conductance levels, those mining sites are no longer viable and we will not get that reclamation done by the industry. Using this standard will adversely impact our abandoned mine drainage projects, particularly in light of other activities that suggest that we should be requiring NPDES permits on watershed groups.

EPA and DEP are exchanging information but at this point in time we are not getting any positive feedback from the EPA.

Dave Strong asked whether the new TDS regs are going to take care of this. Scott said our TDS standards were implemented and designed to protect drinking water quality.

Mr. Strong asked whether this is scientifically defensible. Deputy Secretary Roberts said we will have to wait and see what EPA's Science Advisory Board says.

Ms. Wilson asked whether there is anything we can do and if it would be discussed at MRAB. Scott said he thought MRAB would be briefed on this issue, but at this point he does not believe there is anything MRAB or CAC should be doing. Members from our congressional delegation as well as other states are raising this to EPA as well.

Mr. Strong asked for an update on OSM and DEP joint mine inspections. Scott said that with the change of administration in Washington, OSM was mandated to take a different posture with regard to oversight of the states; there is a belief in Washington that additional oversight is needed because the states are not appropriately enforcing the federal law. OSM hired additional inspectors, and some are not seeing things appropriately in the field or they are concerned about the limits of their discretion. Mike Teretti, Director of District Mining Operations is regularly meeting with OSM to try to get things back where they should be.

NEW/UNFINISHED BUSINESS

Sue said that the Act 54 Report is to be complete this month and that she has asked that DEP come talk to us about it in November. Sue reviewed a draft of the report.

Mr. Kratz moved to adjourn the meeting. Mr. Strong seconded the motion, which was unanimously approved by the Committee.

Meeting adjourned: 1:53pm.