

**MINUTES**  
**CITIZENS ADVISORY COUNCIL MEETING**  
**November 19, 2013**

**Citizens Advisory Council Members in Attendance:**

Terry Dayton (Chairman), Cynthia Carrow, William Fink, Walter Heine, David Hess, Janet Keim, S. Pat Lupo, Seth Mendelsohn, Nancy Perkins, Thad Stevens, Burt Waite, John Walliser, Don Welsh, and Tim Weston.

**Citizens Advisory Council Staff in Attendance:**

Marjorie Hughes, Citizens Advisory Council, Executive Director

**Call to Order:** Chairman Terry Dayton called the meeting to order at 10:01 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

**PA Right to Know Law:** Trisha Salvia, Assistant Counsel, Bureau of Regulatory Counsel, Department of Environmental Protection (Department), provided Council with an overview of the PA Right to Know Law (RTK). She elaborated that under RTK, a public record shall be accessible for inspection and duplication unless otherwise provided by law. A record is information, regardless of physical form or characteristics that documents a transaction or activity of an agency, and is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. She further noted a record in possession of an agency is presumed to be a *public* record unless it is exempt under section 708 of the RTKL, is protected by a privilege, is exempt from disclosure under other federal or state law or regulation or is exempt from disclosure by judicial order or decree. Ms. Salvia discussed the process the Department follows when it receives and responds to a RTK request and elaborated on the procedures an individual can follow when their RTK request is denied, including submitting an appeal with the Commonwealth's Office of Open Records. Ms. Salvia noted to Council that the Department has received 994 RTK requests between January and October 2013.

Following Ms. Salvia's presentation, Council members asked several questions including whether legal representation by a lawyer is necessary by an individual who wants to appeal a RTK request that was denied. Ms. Salvia responded that legal representation is not necessary, as the appeal process is straight forward. She noted that the Office of Open Records has a very user-friendly website that provides detailed information to assist individuals requesting information under RTK. Council also inquired if emails are considered a public record and therefore subject to RTK provisions. Ms. Salvia responded that emails, including personal emails sent on government-issued computers, are records under RTK and also noted that voicemails can be considered a public record.

**Chairman Dayton's Report:** Chairman Dayton asked Council if there were any comments or corrections to the October 15, 2013, draft meeting minutes. With no amendments or corrections to the minutes, Seth Mendelsohn motioned to adopt the minutes as presented to Council. John Walliser seconded the motion, which was unanimously approved by Council.

Chairman Dayton also asked for a motion from Council to approve a Resolution of Appreciation for Richard Manfredi, who recently resigned from Council. In response, Burt Waite motioned to approve the resolution. Thad Stevens seconded the motion, which was unanimously adopted by

Council.

**Department Report:** Acting Secretary Chris Abruzzo reported on several topics of interest to Council, including the following topics:

- **Oil and Gas eWell System:** Acting Secretary Chris Abruzzo discussed with Council the launch of the Department's Oil and Gas Electronic Well Permitting project known as eWell. He noted that the initiative is a part of the Governor's Office's overall plan to streamline the permitting process across all state agencies. He noted the eWell system is DEP's first venture into full electronic permitting and will serve as the platform for DEP to move to electronic permitting beyond just the Oil and Gas Program. He said that the system will increase efficiency, improve data integrity and reduce paper processing and storage. He further explained that the system includes a secure web interface where oil and gas operators will be able to create and submit a well permit application with supporting documentation and associated supplemental permits electronically. By applying field validations and edits in eWell, DEP will greatly improve data quality being submitted to the Department and will have the ability to provide up-to-the minute details on permit processing. Acting Secretary Abruzzo noted that eWell can be accessed through DEP's GreenPort application, which is accessible at [www.depgreenport.state.pa.us](http://www.depgreenport.state.pa.us). In response to Acting Secretary Abruzzo's remarks, Council asked him questions relating to whether the eWell system allows for general public accessibility and scrutiny and whether provisions have been built into the system to account for information and data that is considered confidential and proprietary.
- **Update on Chapter 78 Proposed Regulations:** Acting Secretary Abruzzo gave an update of the status of the Chapter 78 proposed regulations. He noted that the Environmental Quality Board (EQB) approved the proposed rulemaking, which includes regulations for surface activities associated with oil and gas well sites, on August 27, 2013. He mentioned that the rulemaking is currently being reviewed for form and legality by the Attorney General's Office and that the office had several questions on the rulemaking, which it posed to the Department in a Tolling Memo. He further explained that the issuance of a Tolling Memo temporarily suspends the Attorney General's Office's review of a rulemaking until a response is received from the administrative agency in question. He noted that the Department responded to the Tolling Memo on November 1, 2013, and is awaiting communication from the Attorney General's Office on the status of its review of the rulemaking. Once approved for publication, the rulemaking will be published in the Pennsylvania Bulletin, where a 60-day public comment period will be advertised. The EQB is also planning to hold seven public hearings for the purpose of receiving public testimony on the proposed regulations. Although specific details are not currently available as to the date, time and location of these hearings, the Department anticipates the hearings will be scheduled in Washington, Indiana, Meadville, Williamsport, Harrisburg, West Chester and Tunkhannock.
- **"Blotchy Bass" Syndrome in the Susquehanna River:** Acting Secretary Abruzzo shared with Council the latest developments the Department is undertaking to study the cause for the occurrence of "Blotchy Bass" Syndrome in the Susquehanna River. While it is still inconclusive as to what is causing the problem, Acting Secretary Abruzzo noted that there is consensus that the problem first emerged in 2005. He noted that the Department has spent significant time and resources in sampling, inspecting and testing the water of the Susquehanna River to determine the cause of the syndrome. He noted that the Department

has observed some improvements but is committed to continue its work on the study of the river to determine the root causes of the problem. He also noted that the Department is working collaboratively with the PA Fish and Boat Commission to continue to study the river, including sharing data with the Commission.

- **Status of Final Policy- Public Participation in the Permit Review Process:** In response to questions on the status of the draft final policy, Acting Secretary Abruzzo noted that Department staff were completing the Comment and Response Document and anticipates the policy will be finalized by the end of this year.

**Executive Session:** Chairman Dayton asked for a motion from Council so that members could convene in executive session. Dave Hess motioned to convene an executive session of Council and John Walliser seconded the motion, which was unanimously approved by Council. Council temporarily recessed its public meeting to convene an executive session of Council in Room 105 of the Rachel Carson State Office Building.

**Selection of New Executive Director:** Chairman Dayton reconvened the public meeting of Council at approximately 12:45 p.m. and announced that interviews had been conducted for a new Executive Director of Council and that a nominee had been selected and unanimously approved by Council. Acting Secretary Abruzzo announced that Council unanimously approved the selection of Michele Tate as its new Executive Director. Ms. Tate will assume her new duties as Executive Director upon the retirement of Marjorie Hughes who currently serves as Council's Executive Director. Acting Secretary Abruzzo publicly recognized Ms. Hughes for her many years of service to the Department and also read a proclamation from Governor Tom Corbett, which also congratulated Ms. Hughes and highlighted her many years of public service to the Commonwealth. Chairman Dayton thanked Ms. Hughes for her dedication and support during his time as Chairman of Council and noted that he looks forward to working with Michele Tate in the future.

### **Public Comments:**

**Steve Kunz, Schmidt and Company:** Steve Kunz, Senior Ecologist with Schmidt and Company provided comments to Council regarding the Department's proposal to modify and reissue General Permit 8 (GP-8). GP-8 allows the construction, operation, maintenance and removal of temporary crossings across regulated waters of this Commonwealth, including wetlands, where no practicable alternatives exist. The Department provided notice of the modifications and reissuance of GP-8 by notice in the November 2, 2013, issue of the Pennsylvania Bulletin and requested comments through January 10, 2014. Mr. Kunz distributed to Council comments he submitted to the Department regarding the proposed modifications to GP-8. Mr. Kunz provided Council with an overview of his concerns with the proposed modifications to GP-8, which he believes inappropriately expand the scope of the general permit in order to authorize a wide range of activities in wetlands and streams. He encouraged Council to review the proposed modifications to GP-8 and to submit comments to the Department on the proposal.

**Roberta Winters, League of Women Voters:** Roberta Winters of the League of Women Voters of Pennsylvania read a prepared statement to Council in which the League expressed its appreciation for the hard work Council does in providing oversight and advice to the Department. She further noted the League's appreciation of Marjorie Hughes as Executive Director of Council

and noted the League would miss her competent guidance when Ms. Hughes retires from Council at the end of 2013.

In regard to Council's meeting agenda, Ms. Winters expressed the League's appreciation for Council considering the RTK law and emphasized that the League believes that democratic government depends on informed and active participation at all levels of government. She furthered by noting that the League believes all governmental bodies must protect the citizens right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.

With regard to its evaluation and review of changes proposed to the Policy for Community Environmental Projects in Conjunction with the Assessment of Civil Penalty, Ms. Winters asked that Council pay particular attention to the following questions:

- What determines an "appropriate" situation?
- Will it be based primarily on financial ability to pay?
- What other factors might determine its applicability?
- Will there be direct, hands-on involvement in such projects by those at the highest levels of organizations who may have been responsible for incurring such penalties?

Ms. Winters also noted that while the League applauds projects that enhance public health and the environment, the purpose of the policy should be to promote greater compliance as well as to provide alternative means to compensate for violations.

In her closing statements, Ms. Winters noted that the League is eager to learn more about the National Rivers and Streams Assessment and noted that this evaluation will assist the League's efforts to prevent nonpoint source water pollution and also protect public drinking water resources. She discussed the League's Water Resource Environmental Network (WREN), which she noted has worked for more than a decade with public officials and organizations to manage and protect the state's water resources. She also noted that the League is hopeful that Council shares and supports its member's viewpoints about water resource programs and policies in that they should:

- reflect the interrelationships of water quality, water quantity, ground-water and surface water and address the potential depletion or pollution of water supplies;
- include measures to reduce water pollution from direct point-source discharges and from indirect nonpoint sources;
- achieve water quality essential for maintaining species populations and diversity, including measures to protect lakes, estuaries, wetlands and in-stream flows; and
- include stringent controls to protect the quality of current and potential drinking-water supplies, including protection of watersheds for surface supplies and of recharge areas for groundwater.

**Jeff Schmidt, The Sierra Club:** Jeff Schmidt, Director, Pennsylvania Chapter of the Sierra Club, congratulated Ms. Hughes on her impending retirement as Executive Director of Council. Mr. Schmidt also announced his retirement from the Sierra Club and announced that Joanne Kilgour will be named the new Director of the Pennsylvania Chapter of the Sierra Club. Ms. Kilgour's first day in her new position will be January 1, 2014.

**National River & Streams Assessment:** Ellen Tarquino, project leader for EPA's National Rivers and Streams Assessment initiative, and Sarah Lehman, EPA Team Leader for National Aquatic Resource Surveys, provided an overview of EPA's National Rivers and Stream Assessment initiative. Ms. Lehman explained that the National Aquatic Resource Surveys include a series of surveys implemented by EPA and its state and tribal partners to assess the biological and recreational conditions of all surface waters within the 48 contiguous states. The goal of the initiative is to help build and enhance state monitoring and assessment capacity by providing data on the condition of water resources and the stressors that impact those conditions. The surveys are also intended to fill critical water quality data gaps and assist federal, state and local decision makers in addressing important policy questions by providing national and regional conclusions on the health of the broad populations of waters. Every year the initiative will focus on surveys of a different water body type, including coastal areas, streams and rivers, wetlands and lakes. Surveys will be conducted on a rotating basis, with reports issued on a 5-year cycle for each of the surveys conducted. Ms. Lehman continued her discussion by focusing her presentation on the recently issued draft National River and Streams Assessment and noted that the National Coastal Assessment will be coming out in the upcoming year as well as the National Wetlands Condition Assessment.

Ms. Lehman discussed the field work and data gathering and analysis involved in the development of the National River and Streams Assessment and noted that EPA sampled just under 2,000 sites over a 2-year period in 2008-2009 to compile the assessment. She noted that the major findings of the assessment include that 55% of our nation's waters are in poor biological condition, which is 7% more in comparison to statistics from a 2004 assessment. Other key findings of the assessment include that nutrients and physical habitat are widespread national stressors, including that 44% of the nation's rivers and streams have high levels for phosphorus and 29% have high levels of nitrogen. Ms. Lehman noted that the comment period for the draft report recently concluded over the summer and that EPA is reviewing, responding to comments, and revising the report, as necessary, to address comments. She concluded her presentation by noting that EPA hopes to release the final report in March 2014.

At the conclusion of Ms. Lehman's presentation, Council members questioned the conclusions of the report, given the overall national progress that has been over several decades to improve water quality. Ms. Tarquino acknowledged that the report only compares data collected from 2004 to 2008 and doesn't provide a vast historical context within which to evaluate the progress of water quality nationally. Rodney Kime with the Department's Water Quality Standard Division noted to Council the data the Commonwealth is collecting on the health of streams across Pennsylvania and explained that those findings appear to be contradictory to the assessments completed by EPA. For example, Mr. Kime noted that the Department has conducted sampling at over 25,000 sites state-wide and has found that 33% of Pennsylvania's streams have been found to be ecologically significant streams. Mr. Kime noted that the state's analysis is based on regulatory criteria that may not mirror the criteria EPA is using to determine the condition of a water body. Ms. Tarquino agreed that there may be different thresholds, approaches and programmatic goals EPA is adhering to in comparison to activities of the Commonwealth.

**Draft Community Environmental Project (CEP) Policy Review:** Nancy Perkins noted to Council that it had previously provided comments to the Department on potential modifications that could be made to the Department's "Policy for the Consideration of Community Environmental Projects (CEP) in Conjunction with the Assessment of Civil Penalties". The

policy provides guidance on the process Department staff will follow for considering, in certain situations, the acceptance of a CEP in lieu of a portion of the amount of a civil penalty. Ms. Perkins noted that several of Council's suggestions were not made to the policy, which is now open for public comment until November 25, 2013. Ms. Perkins noted that it may be appropriate for Council to decide whether it intends to submit official comments to the Department on the draft policy prior to the close of the public comment period.

Ms. Perkins introduced Rob Altenburg, Executive Policy Specialist with the Department's Policy Office, to provide an overview of the draft policy that is currently out for comment. Mr. Altenburg prefaced his presentation by discussing the general procedures and factors, pursuant to individual statutes and regulations, which are used by the Department to propose a penalty. He emphasized that the Department is interested in the most efficient way to bring the alleged violator into compliance and to assure compliance is maintained in the future. He also mentioned that the Department is frequently open to settlement to resolve a violation, which makes the draft policy relevant. He stressed that, regardless of the penalty assessed, the Department does not want to create situations where it is less expensive for the alleged violator to pay a fine and to continue its noncompliant actions than to comply with the Department's regulations. Mr. Altenburg then briefly identified and explained some of Council's recommendations that were not incorporated into the draft policy, one of which included the suggestion that Conservation Districts be specifically added as a potential recipient of land donated as a result of a CEP. Mr. Altenburg explained that while the Department tried to list examples of potential projects, it kept that list broad as to not create any misconceptions that the list was exhaustive. He noted that while the suggestion from Council has merit, he was reluctant to include specific examples as that could potentially deter someone from suggesting a CEP that was not specifically identified in the policy. Ms. Hughes offered that it may be beneficial to include more examples of CEPs in the policy to aid those individuals who may not have the experience necessary to propose a project.

In other comments, Council had suggested reordering the points in the policy so that information on the procedures applicable for a CEP would be listed first. Mr. Altenburg explained that the Department refrained from making that change as it wanted readers to first learn if their potential project may be acceptable as a CEP and then be directed to information on procedures associated with a CEP. Council also noted that the current policy included a provision that a CEP could not discount the penalty more than 75%, whereas the draft policy does not include a maximum discount value. Specifically, Council inquired why the policy could not be revised in order to provide a 99% discount on the penalty amount. Mr. Altenburg explained that the Department removed any reference to a specific percentage discount as it believed the number is an arbitrary limit that would, in actuality, depend on the value of the project and the outcome of negotiations. He emphasized that historically projects have been proposed that would have cost the violating facility far more than just simply paying the penalty. Speaking strictly on a dollar for dollar offset value, he noted that the Department would be open to considering a higher discount value, but noted that an arbitrary limit or discount value may not make the most sense.

Mr. Altenburg noted that Council had also suggested adding a section to the policy that obligated the Department to maintain a list of "shovel ready" projects that could be provided upon request. Mr. Altenburg maintained that this suggestion was not accommodated because the information on a potential list would only be useful if it was timely, and since there is no guarantee as to when a violation with a potentially significant penalty may be assessed, the list may not be useful. In response, Council maintained that it believes it would be beneficial to provide examples of

projects in the policy to stimulate creative thought. Mr. Altenburg also noted that Council had questioned under the current and proposed policy whether a portion of the penalty could be directed to support any anticipated costs to the Department for inspection or monitoring of the project. He replied that the policy was crafted to allow for such Departmental support, if needed, but noted that any such support would be dependent upon the nature of the project itself. Mr. Altenburg also clarified with Council that a civil penalty will still be required in every case, regardless of whether settlement negotiations include a CEP. Mr. Altenburg also clarified that it is the intent that CEPs occur in the same geographic region and address the same medium from which the violation was based.

**CAC Director's Report:** Ms. Hughes reminded Council of its impending review of the final Act 54 report and noted that the last time Council reviewed a previous Act 54 report, an ad hoc review committee, consisting of Burt Waite, Cynthia Carrow, John Walliser, and Terry Dayton, was convened. She noted that Chairman Dayton was planning to convene the ad hoc review committee again to spearhead Council's review of the report.

**New/Unfinished Business:** Under New Business, Dave Hess inquired if Council was interested in developing a report for the gubernatorial candidates which would frame environmental issues for their conversation and public dialogue. Council concluded that such a report may be premature and that it may be best to issue such a report after the elections have concluded.

Ms. Hughes provided a brief report from Council's Legislative Committee, where she noted that the committee had a conference call on November 14, 2013, to discuss S.B. 994, which concerns TMDL parameter credits and technology promoted by the Bion Corporation. The committee concluded that if further progress is made by the state legislature on the proposed legislation, Council may want to schedule a panel discussion on the bill at a future meeting. It was suggested that Senator Vogel, who is the prime sponsor of S.B. 994, be invited to participate on the panel, if one is organized, as well as a representative from the Chesapeake Bay Foundation. Since the proposed legislation deals with how the state is approaching the cleanup of the Chesapeake Bay, Mr. Fink noted to Council that it may be beneficial to organize a field trip for Council to examine the "best management practices" of local farmers who are skilled in nutrient reduction.

Chairman Dayton also requested further Council deliberation on GP-8, in light of the comments provided by Steve Kunz at today's meeting. Ms. Hughes noted that she would schedule a conference call between Department staff and Council members to discuss the proposed modifications to GP-8. Other topics identified by Council members as prospective meeting agenda items included a presentation from Department staff from the California District Mining Office to assist Council in their review of the Act 54 report, the Endangered Species Coordination Act, Onlot Sewage Planning, Climate Change and the Department's issuance of its Pennsylvania Climate Change Action Plan Update, and the Department's Environmental Justice Policy.

**Adjourn:** At the call of Chairman Dayton, the meeting was adjourned at 2:50 pm.