

MINUTES
CITIZENS ADVISORY COUNCIL MEETING
September 16, 2014

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:

Cynthia Carrow, Allegheny County
David Hess, Dauphin County
Burt Waite, Crawford County
William Fink, Bedford County
Janet Keim, Lehigh County
Thaddeus Stevens, Tioga County
Joi Spraggins, Philadelphia County
Don Welsh, Chester County
R. Timothy Weston, Cumberland County

CITIZENS ADVISORY COUNCIL STAFF PRESENT:

Michele Tate, Executive Director

CALL TO ORDER:

Vice-Chairman Bill Fink called the meeting to order at 10:05 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Vice-Chairman Fink recognized Joi Spraggins, who was recently appointed by Governor Corbett to serve on the CAC.

VICE-CHAIRMAN FINK'S REPORT TO COUNCIL:

In Chairman Dayton's absence, Vice-Chairman Fink provided a report to Council by elaborating on several topics. He first noted the status of the Act 54 Report, which is being completed for the Department of Environmental Protection (DEP or Department) by the University of Pittsburgh to evaluate the effects of subsidence resulting from underground bituminous coal mining on surface structures, features and water resources, covering the years from 2008-2013. He noted that the University of Pittsburgh completed the report and submitted it to the Department. After the Department's review of the report, it will be submitted to the CAC and the General Assembly. Upon receipt of the report, the CAC will invite staff from the University of Pittsburgh to present the report at a future Council meeting.

Vice-Chairman Fink updated Council on a meeting recently convened by DEP with select members of Council and the Sewage Advisory Committee to discuss ways to overcome current regulatory impediments that restrict the consideration of alternative technologies in the onlot sewage planning phase of development under the state's sewage management program. He noted that the meeting was held on August 11, 2014, and that meeting participants agreed in concept to the regulatory changes necessary to address the current ambiguities in the state's sewage management regulations. Vice-Chairman Fink noted that the Department is drafting a regulatory proposal based on the concepts discussed at the meeting and that the proposal will be shared with the Sewage Advisory Committee for discussion on November 5, 2014. In addition to a regulatory proposal, the Department also discussed the possibility of implementing an interim final policy to more immediately clarify the unclear provisions currently in the state's sewage management regulations.

Vice-Chairman Fink reminded Council of several opportunities to provide comments on pending proposals. First, he noted that the CAC was invited by DEP to participate in a listening session on

EPA's proposed Clean Power Plan regulations. He explained that DEP is sponsoring the listening session in order to receive public testimony on EPA's regulatory proposal. The listening session will take place on September 25, 2014, in the Honors Suite of 333 Market Street, Harrisburg, starting at 9:00 a.m. Vice-Chairman Fink noted that EPA is accepting comments on the proposed Clean Power Plan regulations until October 16, 2014, and that DEP is planning to submit comments to the EPA based upon its analysis of the proposed rulemaking and the public comments it receives.

Second, Vice-Chairman Fink reminded Council that it was invited to share its recommendations to improve the current PNDI Web Tool by Ellen Shultzabarger with the Department of Conservation and Natural Resources (DCNR) Division of Conservation Science and Ecological Resources. He noted that Ms. Shultzabarger presented the overall enhancements planned to the PNDI Web Tool at Council's July 15, 2014, meeting and that she stated DCNR would be working on those enhancements throughout the remainder of this year and would welcome Council's input.

Vice-Chairman Fink announced the reappointments of John Walliser and Don Welsh to Council and noted that Council continues to have 4 vacancies, including two seats under the appointing authority of the President Pro Tempore of the Senate, and 1 vacancy each from the respective appointing authorities of the Governor and the Speaker of the House.

Vice-Chairman Fink noted to Council John Over's interest in serving as the CAC's representative on the Solid Waste Advisory Committee (SWAC). He also noted Michele Tate's willingness to serve as Mr. Over's alternate to SWAC.

Thad Stevens moved to approve the nomination of John Over to serve as Council's representative on SWAC. Burt Waite seconded the motion, which was unanimously approved by Council.

APPROVAL OF JULY 15, 2014, MEETING MINUTES:

With no corrections or additions recommended by Council, Vice-Chairman Fink asked for a motion to approve the July 15, 2014, Council meeting minutes.

Tim Weston motioned to adopt the July 15, 2014, meeting minutes as presented to Council. Burt Waite seconded the motion, which was unanimously adopted by Council.

CAC MEMBER RECOGNITION; PAT LUPO, OSB (1988-2014)

In recognition of Pat Lupo's 26 years of dedicated service to Council, Vice-Chairman Fink presented a resolution to Ms. Lupo, which was unanimously adopted by Council. Vice-Chairman Fink expressed Council's appreciation of Ms. Lupo's longstanding commitment to the CAC and its mission and noted that she was initially appointed to Council by Governor Robert P. Casey in 1988.

In addition to Council's resolution, Burt Waite presented Ms. Lupo with a plaque honoring her many years of service to Council. Mr. Waite noted that Ms. Lupo's leadership on environmental education, stewardship and conservation, based on her experience in Northwest Pennsylvania, were vital in guiding Council's priorities. He also noted that Council will miss her enthusiasm and dedication which influenced a number of important Council initiatives.

PUBLIC COMMENT:

No individuals attending the Council meeting presented public comments.

OFFICE OF OIL AND GAS MANAGEMENT PROGRAM UPDATE:

Scott Perry, Deputy Secretary for DEP's Office of Oil and Gas Management, provided a presentation to Council where he highlighted a number of updates to the Oil and Gas Management Program. Deputy Secretary Perry first emphasized the increase in program complement that has been achieved to ensure adequate resources are dedicated to implementing and managing the oil and gas program in Pennsylvania. He noted that complement has grown to 202 employees and that only the state of Texas surpasses Pennsylvania in the number employees hired to regulate the oil and gas industry. He also emphasized the significant increase in unconventional well inspections conducted by DEP, which since 2008 has increased from 1,262 inspections to over 12,390 inspections in 2013. He also noted the substantial decrease in the number of total unconventional well violations by industry which now stands at 4% according to 2013 data. Deputy Secretary Perry also highlighted the number of regulatory and policy enhancements the Department has implemented to strengthen and improve the oil and gas management program, including the additional resources DEP has dedicated to modernize and leverage technology that supports the program. He also noted the continuous analysis DEP conducts to ensure the integrity of the program and how public comments on the program are regularly solicited and encouraged by DEP. He concluded his remarks by announcing that DEP has been working on enhancements to the oil and gas program's compliance and enforcement policy which will be announced in the *Pennsylvania Bulletin* in October 2014 for public comment.

At the conclusion of Deputy Secretary Perry's remarks, Council discussed a number of issues relating to the oil and gas management program, including the issuance of administrative orders by DEP when violations are determined, the efforts by DEP to locate abandoned wells throughout the state, and the difference in compliance rates between conventional and unconventional oil and gas operators, including efforts by DEP to separate regulations in the *Pennsylvania Code* that affect conventional operators and unconventional operators. Council also raised questions regarding recent media reports that indicate there are discrepancies in the amount of waste reported for disposal by drilling operators and the amount of waste received by landfills. In response, Deputy Secretary Perry said that the Department is investigating the issue to determine why reports from drilling operators and landfills are not producing the same results.

CAC COMMITTEE REPORTS:

Public Participation Committee: Dave Hess reported that the Committee is continuing to review the Department's 1998 Advisory Committee Guidelines policy (ID #012-1920-002). As a measure to assist in the evaluation of the policy, Mr. Hess noted that a five question survey was sent by the CAC on August 25, 2014, to all DEP Advisory Committee Chairs asking for their input and evaluation of DEP's use of their respective advisory committee to assist the agency in the development of regulations, policies, procedures and standards. He stated that responses to the survey are requested by September 19, 2014, and that Council will be sending reminders to all survey recipients to encourage their completion of the survey. Mr. Hess also noted that it was originally the intention of the Public Participation Committee to distribute the survey to all advisory committee members but contact information for each number was not readily available on the websites of each DEP Advisory Committee. Mr. Hess noted that the lack of that contact information is an issue that DEP should address and will be a finding included in Council's final report to DEP.

In response to Mr. Hess's report, Tim Weston noted that he believes it is important that a review of the entire DEP advisory committee process be completed to determine if the agency's advisory committees are helping programs be effective. He stated that this review should include an examination of each committee's mission to ensure they are meeting their stated purpose and a review of each committee's membership to ensure the committee is actively being engaged by DEP. He also noted that a collective examination of DEP's advisory committees should be initiated to identify areas for overall improvement, including opportunities to combine similar committees to avoid duplication of efforts.

WATERS OF THE U.S. RULE:

Randy Pomponio, U.S. EPA Region III, Director of Environmental Assessment and Innovation presented information to Council on EPA's proposed Waters of the U.S. rulemaking. He explained that the proposal was jointly issued by the U.S. EPA and the U.S. Army Corps of Engineers on April 21, 2014, to clarify and define the scope of waters protected under the Clean Water Act by defining "waters of the United States". He noted the proposed rulemaking was developed in response to a number of recent U.S. Supreme Court case decisions, which were forcing the agencies to evaluate the jurisdiction of waters on a case-by-case basis, leading to confusion and uncertainty among regulated entities and Federal and State regulators. Mr. Pomponio noted the agencies hope the rulemaking will provide clarity to entities on whether individual water bodies are jurisdictional (or "waters of the United States") and would therefore require entities to obtain a permit before they could discharge to those jurisdictional water bodies.

Following the presentation by Mr. Pomponio, Council discussed the potential impact the proposed rulemaking may have on Pennsylvania given the state's existing and broad regulatory authority under the Pennsylvania Clean Streams Law. Council also discussed the various misconceptions that are being purported about the proposed rulemaking, which has led to confusion and uncertainty regarding what the proposal actually entails. Council noted further the confusion that may ensue given recent court cases that suggest activities affecting groundwater, where the groundwater may have a nexus to surface water, are subject to NPDES permitting requirements under the Clean Water Act. In conclusion, it was noted that EPA is accepting public comments on the proposal until October 20, 2014. Council members agreed that if they have any comments on the proposal that they would like considered by DEP when the agency submits its comments to the EPA, those comments should be sent to Michele Tate. In response, Tim Weston noted that he believes the more relevant issues facing Pennsylvania, beyond the consideration of the Waters of the U.S. proposal, are those directly related to the permitting process by the Department, the EPA and U.S. Corps of Engineers and how that process was to be a collaborative process instead of a sequential process, which is contributing toward and resulting in delayed permit actions.

PENNSYLVANIA DEPARTMENT OF HEALTH; ENVIRONMENTAL HEALTH PROGRAMS, POLICIES AND PROCEDURES:

Ram Nambiar, Director of the Division of Infectious Disease Epidemiology, Pennsylvania Department of Health provided a presentation to Council in which he elaborated on the process and procedures in place within the Department of Health to investigate environmental health concerns and complaints. He noted that the Bureau of Epidemiology is designated as the point of contact within the agency to receive and process environmental health complaints and concerns and that the Bureau works closely with partners at the federal, state and local level to investigate complaints, including collecting and analyzing data associated with environmental health concerns reported to the agency. He stated that while the Department of Health does not directly provide primary health services, it does provide advice to individuals based upon the nature of

their complaint and works with the individual and their health care provider, upon their consent, to address their concerns. He noted that the Department has implemented a number of recent improvements, including providing information to its various partners on how individuals can file an environmental health complaint and making enhancements to the environmental health section of the Department of Health's website to improve accessibility and ease of navigation. He also stated that the Department of Health recently instituted a written letter response policy to better track and document the correspondence between the agency and an individual who has reported an environmental health concern and/or complaint. In closing, Mr. Nambiar also stated that the Department of Health is committed to enhancing its coordination and communication with DEP when handling complaints that affect both agencies.

In response to the presentation, Council inquired about the number of environmental health complaints the Department of Health has received that directly referenced Marcellus Shale drilling activity. Council also inquired how many complaints the Department of Health has investigated and completed and how many complaints are pending. For those environmental health clusters that have been verified and confirmed in Pennsylvania, Council also inquired what the Department of Health is doing to identify the root cause of those clusters and, of the universe of environmental factors investigated by the agency, what the Department of Health considers as the most significant environmental concerns.

NEW/UNFINISHED BUSINESS:

Vice-Chairman Fink as well as Council noted that they did not have any new or unfinished business to discuss.

ADJOURN:

With no further business, Janet Keim moved to adjourn the meeting. Dave Hess seconded the motion, which was unanimously approved by Council. Vice-Chairman Fink adjourned the meeting at 1:49 p.m.