

**MINUTES  
CITIZENS ADVISORY COUNCIL MEETING  
November 17, 2015**

**CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:**

William Fink, Bedford County  
John Hines, Lebanon County  
Jim Sandoe, Lancaster County  
Burt Waite, Crawford County  
John Walliser, Allegheny County  
Donald Welsh, Chester County  
Jim Welty, Cumberland County  
Timothy Weston, Cumberland County

**CITIZENS ADVISORY COUNCIL (CAC) MEMBERS BY PHONE:**

Cynthia Carrow, Allegheny County  
Mark Caskey, Washington County  
Thaddeus Stevens, Tioga County

**CITIZENS ADVISORY COUNCIL STAFF PRESENT:**

Katherine Hetherington Cunfer, Acting Executive Director

**CALL TO ORDER:**

Chairman Bill Fink called the meeting to order at 10:25 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

**APPROVAL OF SEPTEMBER 15, 2015, MEETING MINUTES:**

With no corrections or additions recommended by Council, Chairman Fink asked for a motion to approve the September 15, 2015, Council meeting minutes.

**Tim Weston moved to approve the September 15, 2015, meeting minutes as presented to Council. Don Welsh seconded the motion, which was unanimously approved by Council.**

**DEP REPORT TO COUNCIL:**

Secretary Quigley stated that he would provide updates on a few items important to the Council.

Secretary Quigley updated the CAC on news related to the just passed Reasonably-Available Control Technology (RACT) regulations for emissions reductions at Electricity Generating Units (EGUs) that the department successfully negotiated a 50% emissions reduction plan with PPL's Brunner Island. This coal fired facility will begin co-firing with natural gas and expects to increase generation capacity while reducing emissions.

Secretary Quigley updated the CAC on the status of the Act 54 2008-2013 responses from the Mining Program. The responses will be finalized and a presentation will be given to CAC for the next meeting.

Secretary Quigley updated CAC on the now completed Clean Power Plan Listening Sessions that were held in 14 locations across Pennsylvania. The public comment period closed on November

12, with 2,500 comments received, and the plan is in the process of being drafted. Over 250 individuals gave testimony at the listening sessions that the Secretary personally attended and the majority of commenters showed overwhelming support for the Clean Power Plan.

Secretary Quigley announced that the Pipeline Infrastructure Task Force, comprised by twelve workgroups, have submitted 184 recommendations and best management practices. The draft report is open for public comment until December 14, 2015 and submit its findings to Governor Wolf by early February 2016.

Secretary Quigley announced the 2016 round of Environmental Education Grants are open and accepting applications through December 18, 2015.

Secretary Quigley also updated the CAC on recent staff changes. John Stefanko was appointed as Executive Deputy Secretary for Programs. John has over 25 years at DEP, most recently serving as Deputy Secretary for Active and Abandoned Mining Operations and he will work with the Secretary to build internal and external partnerships and spearhead many major department initiatives. John has an Associate's degree in Mechanical Engineering from Penn State and a B.S. in Civil Engineering Technology from University of Pittsburgh at Johnstown. The second change is that former acting Chief Counsel, Richard Morrison, was appointed to be the Deputy Secretary for Active and Abandoned Mining Operations. Richard has a long history in state government service and environmental and conservation programs, most recently as the Chief Counsel for DCNR. The third addition is Carl Jones, Jr., Esquire, who will oversee the newly renamed Office of Environmental Justice. Carl joined the department from private law practice in Philadelphia.

Secretary Quigley detailed recently submitted comments by the DEP to the US Office of Surface Mining (OSM) Reclamation and Enforcement concerning the federal Stream Protection Rule. DEP provided comments encouraging OSM to expand the preamble to comprehensively address each aspect of the proposed rule and supporting science and to clarify the regulatory language related to the fee package.

Secretary Quigley stated that DEP is in the final stages of development for the plan to reboot Pennsylvania's Chesapeake Bay cleanup initiative and will be sharing the plan with stakeholders for input in the near future.

Secretary Quigley gave a few quick updates including Chapter 71 and 73 Sewage Facilities Planning regulations will undergo a comprehensive revision that staff is developing now, not just a targeted edit related to alternative systems, the Chapter 78 and 78a Oil and Gas Regulations development is still underway, and the state budget is still under development with the goal of a budget that meets the financial needs of the commonwealth and hopefully restores staffing and funding levels and invests in necessary programs.

Tim Weston asked whether the travel ban is impacting inspections and Secretary Quigley stated that travel that is necessary for public health and safety and mission critical functions is still allowed, but he curtailed his own travel other than attending the Clean Power Plan Listening Sessions because it was mission critical.

**PUBLIC COMMENT:**

There was not any public comment at the November 17, 2015 meeting.

### **EPA CLEAN POWER PLAN:**

Mike Gordon, Environmental Engineer, Office of Permits and State Programs, EPA Region III and Jessica Shirley, DEP Executive Policy Specialist gave presentations on the EPA's Clean Power Plan (CPP). The plan, being formulated under Chapter 111(d) of the Clean Air Act looks to set reductions in carbon emissions from existing EGUs by implementing best system of emission reduction practices and technologies through state developed enforceable plans from federal guidelines. New EGUs are regulated under Section 111(b) Mr. Gordon's presentation focused on the EPA's regulations generally while Ms. Shirley discussed how Pennsylvania is tackling the process and outlined state specific factors currently under consideration.

Mr. Gordon discussed that each state plan relies on three building blocks: improved efficiency at power plants, shifting generation from higher-emitting steam EGUs to lower-emitting natural gas power plants, and shifting generation to clean energy renewables. He explained that the plan had undergone some changes from proposed rule to finalized rule and the original fourth building block of energy conservation and end user efficiency measures were removed as a building block, but would be important for states like Pennsylvania that produce energy to help reduce their emission rates due to reduced consumption rates. States are also encouraged to work collaboratively, be they contiguous or not as long as the state plans hold the same tenants to "trade" for emission credits from energy production. If a state does not submit, or the state created plan fails to meet the EPA standards, a federal plan will be instituted for that state. The emission rate targets can be set by the state and could be a statewide number, a EGU specific rate, or a EGU classification rate, but it must be done through an enforceable mechanism.

Tim Weston asked about the differing, higher rate for natural gas combined cycle facilities that was published in the New Source Performance Standards for Natural Gas EGUs and how they related. Mr. Gordon answered that the lower rate in the Clean Power Plan is achieved by natural gas EGUs purchasing renewable energy credits from wind or solar to reduce their pounds of carbon dioxide emissions per megawatt hour (CO<sub>2</sub> Rate/MWH). Mr. Weston asked if a natural gas EGU can just reduce capacity (energy production) to reduce the emissions rate to 75% and Mr. Gordon replied that the rate will remain constant no matter the level of production, requiring the purchasing of renewable credits for production.

Pennsylvania is required to reduce emission rates of 1,682 CO<sub>2</sub> Rate (lbs/Net MWH) or 116 short tons in 2012 or to 1,095 CO<sub>2</sub> Rate (lbs/Net MWH) or 89 short tons on a graduated glide path by 2030. The timing for the plan includes the rule being finalized by August 3, 2015, states being able to submit plans starting September 6, 2016 or file an extension that can go no longer than September 6, 2018 for a final plan, compliance period begins January 1, 2022, and final goals must be met by January 1, 2030.

States can submit two types of plans: an emission standards plan which will be state created and federally enforceable and can meet either rate or mass based goals or a state measures plan where the plan is state enforced but can lead to federal enforcement if the federal standards are not met. States can also decide between a lbs/MWH rate or a tons/year mass based plans that fit their individual needs.

The EPA has also created the Clean Energy Incentive Program to incentivize adoption and matching credits for energy efficiency and renewable energy projects that are based in low income and/or minority communities that are developed during the two-year plan adoption timeframe starting in September 2016.

Mr. Weston asked what is the ability for states to revise the plans, even once submitted. Mr. Gordon stated that states have the ability for revision as long as the new plan meets the requirements for emissions reductions.

Ms. Shirley presented to the board from the Pennsylvania perspective and how we are working towards formulating a plan that complies with the 33% CO<sub>2</sub> emissions reduction as required in the CPP while maintaining our position as the second largest state for electricity generation in the US and as a net exporter of energy. With the development of the Marcellus and Utica shale deposits, Pennsylvania has gone to the second largest producer of natural gas in the last ten years, and we also rank second in nuclear generation, fourth in coal production, twelfth in solar capacity, and sixteenth in wind capacity. Pennsylvania's energy portfolio mix has drastically shifted with coal fired energy declining from 57% in 2001 to a projected 35% in 2017 and natural gas produced energy increasing from 1% in 2001 to a projected 23% in 2017. Mr. Weston asked for clarification on the renewable sources and Ms. Shirley clarified that the volume is based on capacity for generation, not specifically actual generation.

Pennsylvania is still going through many consideration factors that will help to maximize efficiency and flexibility for EGUs while preserving electricity grid reliability and following the legislative mandate to create a plan that does not unduly burden electricity customers. DEP held a public comment period and the listening sessions, receiving 3,000 comments and 273 individual testimonies. The listening sessions were held across the state with eight sessions being held in Environmental Justice areas, two in areas adjacent to Environmental Justice areas and four not in or adjacent to Environmental Justice areas. Environmental Justice areas are defined by the census data that indicates an area is either 20% poverty and/or 30% minority.

Pennsylvania plans to release a draft plan in the spring of 2016 which will have a public comment period and public hearings and continued stakeholder engagement including advisory committees with the goal of submitting a final plan to the EPA by September 2016.

Mr. Weston asked how the rules will be established, by regulations or legislation. Ms. Shirley stated that yes, there will need to be enforceable rules to go with the plan and those proposals will be part of the plan that is submitted. Mr. Weston also asked about the status of the National Governor's Association modeling program. Ms. Shirley stated that Pennsylvania is still engaged in that process, but the models need to be redone based on the changes to the final plan. Mr. Waite asked why hydroelectric capacity or nuclear capacity increases were not in the final plan. Mr. Gordon stated it can be used to meet the targets, but it is not a guarantee for states to include in plans.

**EPA'S PROPOSED EMISSION STANDARDS FOR NEW AND MODIFIED SOURCES AND DRAFT CONTROL TECHNIQUE GUIDELINES FOR THE OIL AND NATURAL GAS SECTOR:**

Krishan Ramamurthy, Bureau of Air Quality, Permitting Chief presented to the CAC on the proposed EPA emission standards for new and modified sources in the natural gas sector and how they will affect Pennsylvania regulations. On August 18, 2015, the U.S. Environmental Protection Agency (EPA) released proposed amendments to the new source performance standards (NSPS) for the oil and gas sector. The revised NSPS will include emission standards to reduce volatile organic compound (VOC) and methane emissions from certain sources, processes and activities in the sector. The EPA also released the draft Control Techniques Guidelines

(CTG) for the oil and natural gas industry on August 18, 2015. The Department intends to submit comments to EPA on the proposed rules and CTG by December 4, 2015.

The proposed rule updates EPA's NSPS to adopt additional methane and VOC requirements for new and modified sources in the oil and gas industry. The CTG recommendations will assist State, local and tribal agencies with reasonably available control technology (RACT) determinations for reducing VOC and methane emissions from existing oil and gas sources in ozone nonattainment areas. State Implementation Plan (SIP) revisions must be submitted to EPA two years following the issuance of the final CTG. The proposed PPS amendments would: require that the oil and gas industry reduce methane; add emissions reduction requirements for sources of methane and VOC pollution that were not covered in the 2012 Subpart OOOO rule, including requirements that owners/operators capture natural gas from the completion of hydraulically fractured wells covered in the 2012 rule, green completion/reduced emissions completion required; exemptions for some types of wells (those would have to reduce emissions using combustion), find and repair leaks (fugitive emissions, limit emissions from new and modified pneumatic pumps, expand coverage to limit emissions from several types of equipment used at natural gas transmission compressor stations and gas storage facilities, and include compressors and pneumatic controllers that were not covered by the 2012 rule.

The draft CTG for the oil and gas sector include EPA's RACT recommendations for storage tanks, pneumatic controllers, pneumatic pumps, centrifugal and reciprocating compressors, equipment leaks from natural gas processing plants, and other equipment leaks that are known as "fugitive emissions." Many of the recommended RACT levels of control are similar to the VOC requirements established under the 2012 NSPS and August 18, 2015, NSPS proposal.

EPA is proposing to clarify the term "adjacent" in the definitions of: (1) "building, structure, facility or installation" used to determine the "stationary source" for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs and (2) "major source" in the Title V program as applied to the oil and natural gas sector. EPA has further defined these terms to mean activities or sources which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). The EPA has previously issued guidance on how to assess "adjacency" for this industry, but the use of the guidance has been challenged, resulting in uncertainty for the regulated community and for permitting authorities.

EPA is co-proposing two definitions for the term "adjacent" and is seeking comment on both defining adjacent based on proximity (EPA preferred) and equipment or activities adjacent if they are near each other or if they are related by function such as being connected by a pipeline, for example. Under the proximity definition, equipment or activities would be considered adjacent if they are located on the same site or are on sites that are within a short distance (1/4 mile) of each other. EPA believes this straightforward definition will clarify permitting, compliance and enforcement for state, local and tribal air agencies, source operators and other interested parties.

## **OVERVIEW OF EPA'S FINAL 2015 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS:**

Sean Nolan, Bureau of Air Quality. Air Quality Monitoring Chief presented to the CAC on the EPA's final 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS). The Federal

Clean Air Act mandates that the Administrator of the U.S. Environmental Protection Agency (EPA) review the National Ambient Air Quality Standards for each of the six criteria pollutants (carbon monoxide, lead, nitrogen oxide, ozone, particulate matter, and sulfur dioxide) every five years. In March 2008, EPA lowered the 1997 8-hour ozone standard from 0.08 parts per million (ppm) to 0.075 ppm. In April 2012, EPA issued final designations for the 2008 ozone NAAQS based 2009-2011 air quality data.

EPA designated 17 counties in five areas of Pennsylvania as “nonattainment” for the 2008 8-hour ozone NAAQS: Allentown-Bethlehem-Easton, PA (Carbon, Lehigh and Northampton Counties), Lancaster, PA (Lancaster County), Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties), Pittsburgh-Beaver Valley Area, PA (Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties), and Reading, PA (Berks County). EPA granted a one-year extension of the July 20, 2015 attainment date for the Philadelphia and Pittsburgh-Beaver Valley Areas. Based on preliminary 2015 ambient ozone data, all monitored areas of the Commonwealth have attained the 2008 ozone standard.

On October 1, 2015, EPA lowered the 8-hour ozone primary (health-based) standard from 0.075 ppm to 0.070 ppm (80 FR 65292, October 26, 2015). The primary standard was lowered because, based on science, the EPA Administrator determined that the 2008 standard was no longer adequate to protect public health. In addition, the 8-hour ozone secondary (welfare-based) standard was also strengthened to 0.070 ppm. The secondary standard was also lowered because of scientific evidence to the impact of ozone on growth processes of plants and trees.

Changes to the monitoring network include: updates to the Photochemical Assessment Monitoring Stations (PAMS), extension of the ozone monitoring season for 32 states, approved additional Federal Reference Method monitor, and new data handling procedure for determining compliance with revised standards. Updates to the PAMS network include additional PAMS (which measure ozone, nitrogen oxides and volatile organic compounds) at NCore sites (currently in major metro areas, including Philadelphia and Pittsburgh) and areas where nonattainment area is classified as moderate or higher (develop an Environmental Monitoring Plan to address).

The ozone monitoring season in Pennsylvania is currently April to October. EPA’s final rule for the 2015 ozone standards requires an extension of the ozone monitoring season in Pennsylvania from March to October, starting January 1, 2017. PADEP is already monitoring ozone concentrations year-round to assess the impact of natural gas operations during the winter since 2010. The addition of a new ozone Federal Reference Monitor (FRM), based on advanced technology and monitoring methods, will be used with currently existing FRM and Federal Equivalent Monitors (FEMs) to meet EPA requirements. EPA has also issued new data handling procedures for determining compliance with the 2015 ozone standards. The procedures include revisions for determining daily maximum 8-hour average concentrations and addition of a new procedure for combining data when two or more monitoring instruments are operating at the same monitoring site.

PADEP must submit Pennsylvania’s designation recommendations to EPA Region III by October 2016 for attainment and nonattainment areas. EPA Region III will issue a 120-day letter to states in June 2017, outlining any modifications to Pennsylvania’s designation recommendations. States will have an opportunity to comment on EPA’s proposal and to submit

supplemental information including certified ambient air data. Final designations, based on 2014-2016 ozone data, will be due in October 2017; designations would take effect in December 2017. Based on preliminary 2013-2015 ozone design values, eight samplers in the Commonwealth are monitoring nonattainment of the 2015 8-hour ozone NAAQS.

The new ozone standards were promulgated in October 2015. The new ozone rule outlines the changes to the level of the ozone standard, changes to the AQI scale, changes to the monitoring network, and nonattainment /attainment designation timeline. Based on the preliminary 2015 ozone data all monitors in the Commonwealth are attaining the 2008 8-hour ozone NAAQS (0.075 ppm). Eight monitors in the Commonwealth are not attaining the 2015 8-hour ozone NAAQS (0.070 ppm).

Mr. Weston asked about the why the monitor in the Lebanon County area is out of 8-hour ozone attainment and Mr. Nolan answered that the Lebanon County monitor is new due to recent population increases so the data is still being complied, but it is generally due to the proximity to electricity generation and population densities. Don Welsh asked if DEP anticipated non-attainment in areas of New Jersey downwind on Pennsylvania. Mr. Nolan explained that yes that is considered with the urban area, specifically Philadelphia and the affected other states' areas can have control over and upwind area for attempting to achieve attainment, but certain areas are just considered unable to achieved attainment. Mr. Welsh also asked what was the basis for the EPA changing the monitoring season and Mr. Nolan explained that the EPA used Pennsylvania's year round monitoring data to decide where the threshold of .60 ppm starts to be seen and found that March is a more accurate timeframe to monitor as the 8-hour ozone approaches the threshold of .70 ppm.

#### **FINAL RULEMAKING FOR ENVIRONMENTAL PROTECTION STANDARDS AT OIL AND GAS WELL SITES (CHAPTER 78 AND 78 a):**

Scott Perry, Deputy Secretary, Office of Oil & Gas Management updated the council on the final draft of the Chapter 78 and 78(a) Oil & Gas Subsurface regulations that will be going before the EQB in February. DEP has undergone a massive effort to get public input on these regulations including 20 advisory board meetings, 135 days of public comment, 12 public hearings, 30,000 comments received and continual work with industry and environmental groups to explain the details of the regulations. This work started over four years ago and has been impacted by several pieces of legislation including Act 13 of 2012 and the FY 2014-15 bifurcation requirement between conventional and unconventional operations.

Mr. Perry wanted to dispel the misconception that DEP is not listening to or working with the industry through the process and explained where the rules will differ between conventional and unconventional operations with considerations for the differing business types, scales, and practices.

The key differences between conventional and unconventional requirements include: The unconventional industry will be prohibited from utilizing pits to store drill cuttings and waste fluid. The conventional industry will continue to be able to use pits that are less than 3,000 square feet and store less than 125,000 gallons of fluid under a permit by rule. Larger pits will require an individual permit. The unconventional industry will be required to install vandal proof tanks with valve locks, open end caps, retractable ladders or other similar protective measures to prevent vandalism to their tanks. No such requirement exists for the conventional

industry. The unconventional industry will be required to obtain an individual permit to dispose of drill cuttings at the well site with this practice being permitted by rule for the conventional industry and no changes to this practice are proposed. The proposed unconventional rules require operators to obtain a water management plan before they withdraw water for drilling or hydraulic fracturing purposes. The conventional rules do not contain this requirement. The proposed unconventional rules contain new sections on gathering line construction and horizontal directional drilling beneath streams. The conventional rules do not contain these sections. The proposed unconventional rules contain a new section on the installation and use of temporary lines used to transport freshwater and wastewater. The conventional rules do not contain this provision. Conventional operators have the ability to beneficially use their brine for dust suppression and de-icing purposes. Waste fluid from unconventional wells may not be used. Unconventional operators must report their product (gas and condensate) and waste on a monthly basis. Conventional operators must report annually.

Mr. Perry also discussed the ways that the regulations overlap for both industries, much of these issues are a result of legislation that affects the regulations, legal decisions, and environmental impacts experienced in the field.

The key similarities include:

Act 13 requires DEP to promulgate regulations to better protect public resources such as state parks and forests. DEP added playgrounds, schools and DEP approved well head protection areas to this requirement (those areas included in a public water supply's ground water wells zone of influence). The purpose of this statutory amendment is to require DEP to evaluate impacts beyond the agency's traditional mission and include concepts such as recreation and aesthetics. The new regulations require both conventional and unconventional operators to evaluate the potential for their hydraulic fracturing operations to impact abandoned and operating wells. This rule is based on a recommendation of DEP's well construction regulations by the STRONGER organization. If oil and gas development degrades a water supply, the operator must restore or replace the supply with one that meets Safe Drinking Water Act standards or is as good as pre-drilling conditions if the water supply was better than the Drinking Water Act standards. This restoration standard is more stringent than other programs such as mining and storage tanks and is the result of changes made by Act 13. Pre-drilling Review. Spills greater than five gallons of any substance that can pollute the environment must be reported to DEP. Spills greater than 42 gallons (one barrel) must be cleaned up in accordance with the Land Recycling and Environmental Remediation Standards Act (Act 2). Cleaning up spills to the scientifically based standards established by Act 2 is required of all industries. Mr. Perry clarified that spills are considered those fluids that hit the ground outside of secondary containment, hoping to promote the universal adoption of secondary containment.

The next steps for the regulation include taking the draft forms to the Oil & Gas Technical Advisory Board (TAB) and the Conventional Oil & Gas Advisory Committee (COGAC) by January 2016, taking the final rule before EQB by January/February 2016, then to the Independent Regulatory Review Commission (IRRC) in March 2016, and an effective date by summer 2016.

Thad Stevens asked Mr. Perry to look into an orphaned well that is on his property that has not been addressed. DEP closed the case without resolution and Mr. Perry promised to look into the issue and get the local staff to address the complaint.

John Walliser wanted to address some issues that came up during the TAB meetings over this process for Chapter 78 and 78(a).

The following exchange is being submitted verbatim from to accurately reflect the dialogue:

Mr. Walliser: *I'd like to offer two sets of observations with the materials that were provided – First, going through the number of advisory board and committee meetings, I probably made all but maybe one of those. I will say I don't think any of those meetings lasted less than 6 hours. I don't think any issue was ever off the table with respect to the Department wanting us to respond to both environmental or industry questions and issues. I think the conversations were extremely open, extremely diplomatic and even though the environmental community isn't getting everything it wants and the industry is not necessarily agreeing with everything the Department's proposing to move forward with the EQB in now early February. You can't say the Department didn't listen and consider what was being put forth. Scott said we are more than 5 years removed from the initial discussions on this. We are more than 4 years removed once this goes to EQB and IRRC. This is passage of Act 13 that was the actual impetus for a lot of this. I fully support the Department moving forward both as a representative of the public interest and as a member of the CAC. I would like to talk a little bit about the resolutions that were distributed to you that were passed at the Technical Advisory Board and the Conventional Oil and Gas Advisory Committee meetings. I have a couple of issues with these. As some of you, if not all of you, know, I was named by the Secretary as an advisory to the TAB back in the early part of this year and so most of my attendance at the advisory meetings have been over here, but this year have been sitting right there, next to Brian McConnell, who is the chair – who, by the way, is the Citizens Advisory Council's appointee to the TAB. And I have had some issues with how the TAB has been conducted in terms of information sharing. Despite the fact that we have been having these very long meetings and discussions about the issues, what's been happening is, at the end of these meetings, these pre-baked legal documents have been pulled out by the TAB without any discussion prior to the full membership of the TAB including the advisory members. So I would just offer the observation that it says by unanimous vote but that does not include the four advisory members to the TAB who were not briefed or made aware of this ahead of time. I would also note that TAB is intent on including the observations of the Conventional Oil and Gas Advisory Committee even though they are established by the same authority as the advisory members to the TAB, and when I asked Brian to include our perspective in the report to the EQB, they denied that request. I don't think that's right. I would think that as a representative of CAC on the TAB, I don't think that would sit well with the CAC. I think there should be communication made to Brian on behalf of the CAC that if they are going to incorporate comments of the COGAC, they should also incorporate any comments from the other advisory members of TAB. I have no qualms with them submitting something to the EQB, including COGAC, but they should include observation from all members of TAB. And I do have concerns about the substance of these resolutions, these aren't technical advisory documents, these are legal documents being submitted to the Department under the auspices of TAB. I urge you to take that into consideration as well. So I would make a motion that communication be made to Brian and the TAB that if they are going to include the comments of the COGAC to the EQB, that they also include comments from the advisory members to the TAB.*

Mr. Weston asked since the Secretary created the COGAC, aren't their comments going to the EQB. Mr. Walliser affirmed this is by virtue of the TAB as part of the initial communication from the Department to the EQB.

Mr. Weston asked why did DEP create conventional if they aren't going to get comments and Mr. Perry clarified that TAB is including it. Mr. Weston then stated he understood that TAB is including it, why does TAB even need to do it. He asked if you have a separate advisory committee that you've created as a Department, their comments would go to the EQB, period. Mr. Perry clarified that the Oil and Gas Act actually calls out the TAB as having the ability to present its technical findings to the EQB and other advisory committees have this authority from statute. Ms. Shirley also helped to clarify by stating that during the EQB meeting prior to the CAC meeting, DEP stated their perspective was to provide us with your comments and we'll include it in the regulatory package as it moves through EQB, IRRRC and the standing committees. The COGAC did send a letter to all EQB members requesting to give an oral report to the EQB, so Representative Maher made a motion that EQB allow the COGAC to provide an oral report for ten minutes at the February meeting which was approved. Mr. Walliser remarked that the TAB has precluded the advisory board members the same courtesy.

**The motion that communication be made to Bryan (McConnell) and the TAB that if they are going to include the comments of the COGAC to the EQB, that they also include comments from the advisory members to the TAB was made by John Walliser and seconded by Cynthia Carrow.**

Discussion on motion followed:

Mr. Welsh asked for clarification of Mr. Walliser's comments from the prior EQB meeting on the subject and Mr. Walliser supplied that he asked the advisory members also be given the opportunity to present to the EQB, but given the nature of the discussion and concern about the statutory limitations, he withdrew it with the understanding that he would raise it here today. Mr. Weston commented that given his understanding of what the EQB did the TAB should submit its comments, the conventional group should submit its advisory committee comments and the EQB should listen to whoever they want to listen to. He does not like trying to tell one advisory committee to do something or not do something. An advisory committee should give its comments, period, whatever its comments are, whatever its voting processes are. Ms. Hetherington Cunfer clarified that the concern here is the fact that the TAB members vote, the advisory folks do not and the lack of voting ability to the advisory votes leaves their comments slightly off the table.

Mr. Walliser remarked that he recognized there's nothing we can do at the end of the day, but given the fact that the chair of TAB who dismissed the request is an appointee of the CAC and that's not representative of the CAC's purpose, it should be communicated to the chair that comments of everyone, all the advisory members, including COGAC, including advisory members of TAB, should be included in the report to the EQB. Burt Waite followed commenting that he struggled with that sentiment because TAB had their deliberations and the advisory members had a say. At the end of the day, they voted for an action and that's their prerogative. He commented that COGAC has done a better job at drawing the advisory members into the discussion, we've had some good input from advisory members, but this one vote didn't go the way of the non-voting advisors. Mr. Stevens commented that if the report was a product of action items, that's what needs to be forwarded for making a comprehensive report of committee proceedings that would be different product and he wanted clarification on the requested action.

Mr. Walliser addressed Mr. Waite's comments stating that Mr. Waite was correct in his assessment but despite repeated requests, the voting members of TAB did not give any audience

to advisory members, they did give it to COGAC. Secondly, these resolutions were obviously pre-determined and not the result of the discussions that happened at the meetings. Mr. Waite replied that he now serves on COGAC and has not attended TAB meetings. The resolution that was brought to COGAC was brought by a member, presented at COGAC, discussed at COGAC, and then passed. It wasn't a collaborative effort, where members of COGAC draft this thing and then bring it and spring it on at the meeting, it was drafted by a single member. That member did distribute that in the mass of the meeting and pulled in the nonvoting members, but it was his motion.

Mr. Stevens requested the motion be reread and Ms. Hetherington Cunfer's capture of the motion before the completion of the minutes was for the Chapter 78 comments from the TAB and from COGAC also to include commentary of the advisory members in their presentation to the EQB with Mr. Walliser clarifying this is just recommendation of the Council and Ms. Hetherington Cunfer clarifying that it would result in a letter of recommendation from the Council to include those comments.

Mr. Stevens sought clarification as to whether the comments that were brought to the EQB all issues voted at the advisory committees or were what they're discussing at the proceeding. Ms. Hetherington Cunfer supplied that these comments haven't been brought to the EQB yet, that will be in February, but there will be both another TAB and COGAC meeting in between, in January, before the EQB meeting happens. This would be a letter in advance of those meetings to get those comments from the advisory members recognized.

Mr. Weston sought further clarification on the motion asking does it make a difference if instead of saying that the TAB is to include comments from certain people, just ask that EQB consider comments submitted by the non-voting advisory members. Does CAC have to tell another advisory committee what to do, or can we suggest that the comments from those advisory members be submitted to the EQB to be considered? Mr. Walliser clarified that the motion is not directing TAB to do anything, CAC is making a request.

Voting for the motion was Mr. Walliser, Jim Sandoe, Ms. Carrow, and Mr. Welsh.

Opposed included Mr. Waite, Jim Welty, and Mr. Fink.

Abstentions included John Hines, Mr. Weston, and Mr. Stevens.

Mr. Hines explained his abstention because his company has a member on TAB and he disagrees with DEP's handling of this process in creating these advisory committees that has created this consternation that doesn't need to be. Mr. Weston also abstained because he believes the advisor's comments should go to the EQB regardless of how. Mr. Stevens abstained because he could not find the reports that were part of the electronic packet submitted to members before the meeting.

\*Note: Ms. Hetherington Cunfer incorrectly counted votes, missing one vote for the motion and the CAC believed the motion died because of a tie. This was later clarified after reviewing with additional DEP administrative staff and CAC members. The tie designation was not correct, but the discussion of a secondary motion is included to accurately reflect the actions of the CAC.

**Tim Weston offered a motion that CAC recommend to the EQB that the comments by the advisory committees should be submitted and circulated to the Board and was seconded by Burt Waite.**

Mr. Walliser was asked to clarify his role on the TAB, and he is not the CAC appointment, that is Bryan McConnell. Mr. Stevens asked Mr. Weston to clarify his motion and he supplied that he doesn't care how the comments get to the EQB, but that the EQB receive the non-voting advisor members' comments, even if they are dissenting. Mr. Stevens commented that he had no objection to the comments being included but if a matter has been voted by a body, that body ought to make a report and if there is dissent, it seems like that ought to be noted as a minority or a non-voting comment which all of us are allowed to do, it's a public participation meeting. Mr. Walliser commented that his original motion sought that very purpose.

A vote was called on the motion by Mr. Weston. Ms. Carrow commented that she preferred the original motion by Mr. Walliser. **All members voted in favor for the motion made by Mr. Weston, none opposed or abstaining.**

### **CAC COMMITTEE REPORTS:** **DEP Advisory Committee Reports:**

#### Oil and Gas Technical Advisory Board

The majority of Mr. Walliser's report is reflected in the above minutes.

#### EQB Report

Mr. Walliser reported that the RACT regulations that CAC had proposed to go before the EQB with some concerns passed the EQB on a vote of 10-2 to proceed to IRRC. Mr. Waite commented that the comments offered by the CAC Policy and Regulatory Oversight Committee were not incorporated into the RACT package.

DEP also approached EQB with a Safe Drinking Water regulation package related to public water disinfectants out for public comment and to include public hearings which passed EQB unanimously. EQB also passed several stream water quality re-designations unanimously.

The next EQB meeting will be held in early February to give EQB members additional time to look at the materials related to the Oil & Gas Chapter 78 and 78(a) regulations package.

#### Conventional Oil and Gas Advisory Committee (COGAC) Report

Mr. Waite believed materials for his report were adequately covered.

#### Mining Reclamation Advisory Board (MRAB) Meeting

Mr. Waite reported that MRAB is also in the process of reviewing the permit fees that increased three years ago and will be looking at another increase because current permit revenue is insufficient to cover program costs. MRAB, along with MAAB, are working with DEP and the EPA to try to streamline the National Pollution Discharge Elimination System (NPDES) permitting reviews, including a possible checklist to assist with review.

#### Mining Aggregate Advisory Board (MAAB) Meeting

Ms. Hetherington Cunfer reported that a similar discussion as the MRAB on fees is being conducted by the MAAB. DEP is trying to ensure adequate funding for inspections and other

processes. DEP also made a presentation on how the District Mining Office permitting staff is meeting the requirements of the Permit Decision Guarantee/Permit Review Process. The policy office gave presentations on the Clean Power Plan and an overview of the regulatory process since MAAB is a newer board.

#### Air Quality Technical Advisory Committee (AQTAC)

Mr. Walliser reported that the October meeting of the AQTAC was cancelled.

#### Regional Report

Ms. Hetherington Cunfer, at the request of the Chair, has been reaching out to DEP regional roundtables to get feedback at the regional level. Ms. Hetherington Cunfer talked to the Northwest Regional Roundtable on November 12 and explained the role of the CAC and let the roundtable members know they can reach out to us at any time to offer comments and make suggestions on topics. Roundtable members were very interested in revisions to Act 537, Sewage Facilities Planning, and alternative systems.

#### **NEW/UNFINISHED BUSINESS:**

Mr. Stevens brought to the CAC's attention a Senate Environmental Resources and Energy hearing on Act 537 and alternative systems. Mr. Stevens was asked by the chairs of the committee to testify as a CAC member, using the CAC transition documents as his resources.

**Burt Waite made a motion and Jim Sandoe seconded that CAC endorse Thad Stevens testifying on behalf of the CAC at the upcoming Senate Environmental Resources and Energy hearing on Act 537 and alternative systems. All were in favor.**

The proposed 2016 CAC dates include a January and February meeting, but EQB moved their date to February 3. Ms. Hetherington Cunfer was asked to survey the council for a preferred date for the next meeting.

The CAC included several topics that they would like to see at future meetings including a presentation on the DEP disinfectant rule and the science behind the levels for public drinking water, Act 54 report responses, OSM stream protections rule, Chesapeake Bay reboot, and the draft Clean Power Plan to include PJM and grid reliability discussions.

#### **ADJOURN:**

**With no further business, Chairman Fink requested a motion for Council to adjourn the meeting. Tim Weston moved to adjourn the meeting, which was seconded by John Himes. The November 17, 2015, meeting of the CAC was adjourned at 1:30 p.m.**