

Citizens Advisory Council

to the Department of Environmental Protection



2011 Annual Report

John Walliser
Chair

Marjorie L. Hughes
Executive Director

Prepared by:
Susan M. Wilson
Executive Director, 2011

**CITIZENS ADVISORY COUNCIL
(2011)**

GOVERNOR'S APPOINTMENTS

Jolene E. Chinchilli – Lancaster Co.; B.S. Biology, Chatham College; M.S.P.H., Environmental Science and Engineering, University of North Carolina; Former Executive Director, Pennsylvania Office of the Chesapeake Bay Foundation; appointed June 27, 1996; current term expires January 2012.

Gail M. Conner, Esq. – Delaware Co.; JD, Widener University School of Law; B.S., University of Wisconsin; Founder and President of G&C Environmental; appointed June 17, 2005; current term expires January 2011.

S. Pat Lupo, O.S.B. – Erie Co.; B.A. Elementary Education, Mercyhurst College; M. Ed. Science Education, Clarion State University; Director, Lake Erie Allegheny Earth Force; appointed June 29, 1988; current term expires January 2013.

Richard J. Manfredi – Bucks Co.; B.S. Public Administration, Shippensburg University; M.S. Public Administration, Marywood College; President & CEO of RJM Public Affairs; appointed June 13, 2002; current term expires January 2011.

John J. Walliser, Esq. – Allegheny Co.; B.A. Political Science, University of Pittsburgh; JD, University of Pittsburgh School of Law; Allegheny Valley Conservancy Board of Directors 2004-Present; Allegheny County Bar Association, Environmental Law Section Council, 2006-present; appointed October 2008; current term expires 2013.

Peter R. Wilshusen, Ph.D. – Union Co.; B.A. Environmental Studies, University of Vermont; M.F.S. Master of Forest Science in Environmental Policy, Yale School of Forestry and Environmental Studies; Ph.D. Resource Policy and Behavior, School of Natural Resources and Environment, University of Michigan; Co-director, Bucknell University Environmental Center 2005-2009; Associate Professor of Environmental Studies 2003 - present; appointed October 2008; current term expires January 2012.

PRESIDENT PRO TEMPORE OF THE SENATE APPOINTMENTS

Cynthia Carrow – Allegheny Co.; B.S. University of Pittsburgh; Executive Vice-President of Western Pennsylvania Conservancy; President of the Board of Directors, Conservation Consultants, Inc.; appointed February 1997; current term expires January 2013.

Joyce Hatala – Lackawanna Co., B.A. Anthropology, University of Notre Dame; M.A. Anthropology, University of Minnesota; CEO of Joyce Hatala Associates; appointed June 2005; replaced July 2011.

Walter N. Heine, P.E. – Cumberland Co.; B.S. Civil Engineering, Drexel University; M.S. Sanitary Engineering, University of Michigan; Chief Executive Officer, Walter N. Heine Associates, Inc. and Township Supervisor; former Director of the Federal Office of Surface Mining, U.S. Department of the Interior; and former Associate Deputy Secretary for Environmental Protection, PA DER; appointed August 11, 1983; current term expires January 2013.

Nancy D. Perkins, Esq. – Allegheny Co.; B.A. Mount Holyoke College; JD, Nova Southeastern University Shepard Broad Law Center. Associate Dean & Professor of Law, Duquesne University Law School; appointed July 28, 2011; current term expires 2014.

Burt A. Walte, P.G. – Crawford Co.; B.A. Geology, College of William & Mary; M.S. Geology, University of Vermont; Senior Geologist in charge of environmental services for Moody & Associates; appointed November 17, 1998; current term expires January 2015.

SPEAKER OF THE HOUSE APPOINTMENTS

James Clauser – Carbon Co.; Associates Degree, Williamsport Area Community College; Environmental Vegetation Specialist, PPL, September 2010 – present; former District Manager, Carbon County Conservation District; Certified Land Management and Water Control Erosion & Sedimentation Control Specialist; Board Member for PA Western Pocono Trout Unlimited; appointed June 2009; current term expires January 2015.

Eric R. Conrad – Cumberland Co.; B.A., Geology, New England College; M.A., Urban and Regional Planning, Penn State University; President, E. R. Conrad and Associates, LLC; appointed November 2009; current term expires January 2014.

Terry L. Dayton – Greene Co.; B.S. Environmental Resource Management, Penn State University; Director of Environmental Affairs, Pennsylvania Land Holding Company; appointed March 2011; current term expires January 2015.

Janet B. Keim – Lehigh Co; B.S., Elementary Education, Kutztown University. Retired Substitute Teacher; appointed August 22, 2006; current term expires January 2013.

Thaddeus Stevens – Tioga Co.; Associate Applied Science, Forestry, Paul Smith's College New York; PA Association of Realtors, Legislative Committee; Delegate to North Central Sewage Agency for Gaines Township, Tioga County; appointed April 9, 1997; current term expires January 2014.

David Strong – Jefferson Co.; B.S. Chemistry, Mansfield University; Independent Environmental Scientist; appointed October 31, 1996; current term expires January 2013.

SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Michael L. Krancer – Montgomery Co.; 1980 graduate of University of Virginia; 1983 graduate of Washington & Lee University School of Law; 1992-1999 Partner, Litigation Department, Blank Rome Comiskey & McCauley; 1999-2011, Administrative Law Judge, Pennsylvania Environmental Hearing Board.

Executive Director - Marjorie L. Hughes
2011 Executive Director – Susan M. Wilson

July 13, 2012

Allegheny County

Cynthia Carrow
Nancy D. Perkins
John J. Walliser, Esquire

Bucks County

Richard J. Manfredi

Carbon County

James J. Clauser

Crawford County

Burt A. Waite

Cumberland County

Eric R. Conrad, P.G.
Walter N. Heine

Delaware County

Gail M. Conner, Esquire

Erie County

Pat Lupo, O.S.B.

Greene County

Terry L. Dayton

Lancaster County

Jolene E. Chinchilli

Lehigh County

Janet B. Keim

Tioga County

Thaddeus K. Stevens

Dear Governor Corbett:

The Citizens Advisory Council (Council, CAC) to the Pennsylvania Department of Environmental Protection (DEP) is pleased to submit its *2011 Annual Report* for your review. As you know, Act 275 of 1971 established the Council, mandating among other things that the Council perform non-partisan, independent oversight of the operations, management and policies of the Department of Environmental Protection. We provide advice concerning environmental matters to DEP, the Governor, the General Assembly, and the Commonwealth's federal representatives.¹

Council's inaugural meeting was held in June of 1971 and I am proud to be a part of the now-40 year history of the CAC. Over these 40 years, Council has benefited from the commitment of the many citizens who have served as members, the vision of those who statutorily created Council when creating the Department, the phenomenal good fortune Council has had in employing a series of highly qualified and dedicated executive directors, and the relationships CAC has forged with each of the Secretaries of the Department.

Council members are a diverse group of citizen appointees from across Pennsylvania, who spend a substantial amount of their time in assisting and advising the DEP. In addition to attending monthly Council meetings and actively participating in committee-related responsibilities, many members also serve on program specific advisory committees and boards. Council annually elects five voting members on the Environmental Quality Board, as well. This report only begins to capture the many volunteer hours spent in reading, analyzing, debating, conference calling, traveling, attending meetings and hearings, and establishing an exemplary record of volunteer service.

In 2011, much of our time and effort focused on the transition to your administration, issues related to development of the Marcellus Shale, and Act 54 as summarized below. In addition to the transition to a new administration, in 2011 Council experienced its own transition. Susan Wilson, CAC Executive Director for 19 years retired at the end of 2011. In early 2012, Council welcomed Marge Hughes as its new Executive Director. Marge brings more than 35 years of state and local government experience in environmental and transportation public policy development and program implementation.

¹ Act 275 of 1971 requires the Citizens Advisory Council to report annually to the Governor and to the General Assembly.

- To follow up on our transition reports from 2010, in February, Council approved a white paper on permitting, *Transforming DEP's Permitting Processes*. DEP's ability to conduct its programs in an efficient and timely manner is clearly linked to environmental, community and economic health, and we hope that this paper has been useful in the Department's review of its internal processes.
- Through regular updates and scheduled presentations, Council continued to track issues and activities related to ongoing drilling boom in Marcellus and related shale plays
- Section 18.1 of the Bituminous Mine Subsidence and Land Conservation Act requires DEP to report its findings regarding the effects of underground mining on overlying land, structures, and water resources to the Governor, General Assembly and Citizens Advisory Council at five-year intervals. The latest report, prepared by the University of Pittsburgh, addresses underground mining impacts for the period August 2003 to August 2008. Council convened several panels related to the report, and on October 3, 4 and 5, Council convened its regional meeting and site visits in southwestern Pennsylvania, to focus on Act 54 and to observe some of the impacts and activities related to deep-mining in the region. A report summarizing what Council heard and saw during that trip has been prepared along with comments and recommendations specific to the department's report and Act 54 itself. That report was transmitted to DEP and all members of the legislature; your copy is attached.

These highlighted activities, in addition to many others, are chronicled in the attached report on the 2011 activities, positions and recommendations of the CAC. The advisory role the Council fills often does not result in a written position or report, but rather brings citizen discussion and opinions to Department staff at critical times of decision-making. Our advice frequently covers the spectrum of opinions, for Council membership is truly diverse. What we do best is bring informed, dedicated and focused citizen participation to bear on the processes of government.

Council continues to welcome open communication with you, the Pennsylvania General Assembly, and the citizens of the Commonwealth with regard to issues of environmental concern to Pennsylvania. Council takes its mandate very seriously, strives to provide a collective and balanced view of the public interest and encourages the citizens of the Commonwealth to be actively engaged in the protection of their air, soil and water.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Walliser', written in a cursive style.

John Walliser
Chair

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2011 ANNUAL REPORT
CITIZENS ADVISORY COUNCIL
TO THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

COUNCIL OVERVIEW

Since its creation in 1971, the Citizens Advisory Council (Council, CAC) has been actively involved in environmental issues affecting the Commonwealth. The objective for creating the Council in 1971² was to establish a non-partisan body to represent citizen viewpoints and provide objective analyses of the Department of Environmental Protection's (DEP) performance and environmental issues in general. This legislation gave the Council three specific charges:

(a) The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification, and codification thereof.

(b) The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents, and records pertaining to or belonging to the Department.

(c) The Council shall advise the Department on request, and shall make recommendations upon its initiative, for the improvement of the work of the Department.

Council is the only legislatively mandated advisory committee with the comprehensive charge to review all environmental legislation, regulations, and policies affecting the Department of Environmental Protection. In addition, the 1992 amendments to Pennsylvania's Air Pollution Control Act require DEP to consult with Council in developing state plans and regulations to implement the federal Clean Air Act. To carry out these responsibilities, Council by law³ is granted access to all DEP records. Council reports annually to the Governor, the General Assembly, DEP and the public.

Council has 19 members: 18 appointed citizen volunteers and the Secretary of the Department of Environmental Protection. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate each appoint six members, with no more than half from the same political party. Because the appointments originate from different authorities, Council's membership is geographically, politically and professionally diverse. Appointees must be familiar with the work of DEP and willing to commit the time and energy required. Members serve staggered 3-year terms and may serve until successors are appointed.

Council typically meets monthly, except August and December, and at the call of the chairperson. Meetings are open to the public and advertised as required by the Sunshine Act.⁴

Each year, Council holds a regional meeting in a different part of Pennsylvania to gather input about environmental activities and concerns in that area. In 2011, Council focused on Act 54, visiting sites and

² Act 275 of 1970

³ Section 1922-A of Act 275 of 1970

⁴ Act 84 of 1986

hearing from citizens and organizations in southwestern Pennsylvania about the effects of deep mining in that region.

Council elects five members annually to serve as the only citizen representatives to the Environmental Quality Board (EQB), a 20-member independent board that adopts all of DEP's regulations.⁵ In 2011, the EQB only convened two times to consider one petition, one proposed rulemaking and four final rulemakings.

Council elects four members to serve on the Mining and Reclamation Advisory Board.⁶ Council also holds seats on the Air Quality Technical Advisory Committee; Low-Level Radioactive Waste Advisory Committee; Radiation Protection Advisory Committee; and Solid Waste Advisory Committee.

Council is also represented on the Environmental Hearing Board Rules Committee⁷ and the Oil and Gas Technical Advisory Board.⁸

Council is granted the independence to hire its own staff by law.⁹ In 2011, staff included Susan M. Wilson, Executive Director, with support provided by Ms. Marsha Lohr in the Office of External Affairs. The Council's offices are located on the 13th floor of the Rachel Carson State Office Building in Harrisburg.

For more information, you may contact the Council by using any of the following methods:

- Write: P.O. Box 8459, Harrisburg, PA 17105-8459
- Call: (717) 787-4527
- Fax: (717) 787-2878
- Email: mahughes@pa.gov
- Website: <http://www.depweb.state.pa.us/cac>

2011 PRIORITIES

In 2011, much of our time and effort focused on the transition in administrations, issues related to development of the Marcellus Shale, and DEP's latest report pursuant to Act 54 of 1994. These issues are highlighted in the following report on the activities, positions and recommendations of the Citizens Advisory Council, pursuant to its mandates, from January 1 - December 31, 2011.

TRANSITION ISSUES

The first phase of our transition effort, *Key Environmental Issues for the Keystone State*, identified four major areas of critical concern to Pennsylvania's present and future environment: Environmental Protection and Community Health; Environmental Funding; Energy Resources and Development; and Climate Change. The report was distributed to all gubernatorial candidates in early 2010.

The second phase, *Protecting Pennsylvania's Environment: Issues for a Challenging Time*, was a more detailed set of operational recommendations specifically for the official transition to a new

⁵ Sections 471 and 1920-A of Act 275 of 1970

⁶ Section 18 of Act 181 of 1984

⁷ Section 5 of Act 94 of 1988

⁸ Section 216 of Act 223 of 1984

⁹ Section 448 of Act 275 of 1970

administration. It focused on operational and management issues related to DEP, providing the CAC's collective thinking on how to revive and sustain the agency's role and capability to protect the Commonwealth's environmental, community and economic health.

To follow up on our transition reports from 2010, in February 2011, Council approved a white paper on permitting, *Transforming DEP's Permitting Processes*. Pennsylvania's Constitution specifically bestows a right to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of the environment. While economic development is not DEP's mission, protecting our environmental quality and abundant natural resources are also critical to attracting and retaining companies and their employees, as well as tourists, and to protecting the well-being of our communities. DEP's ability to conduct its programs in an efficient and timely manner is clearly linked to environmental, community and economic health.

Permitting, inspections, compliance and enforcement are core responsibilities of the Department and the primary vehicles for protecting the environment and public health from the adverse effects of pollution. Permitting is a required component of many economic development activities and as such needs to be a well-managed, timely and efficient process. Any revisions to the permitting process must ensure that all these needs are met and be based on an objective analysis of permitting review and processing data rather than anecdotal complaints. Equally important is the management of effective inspection, compliance assistance and enforcement programs that ensure activities are conducted in conformance with the approved permits.

A well-managed permitting program is critical to both environmental and economic interests and progress. The challenge is to provide an efficient process while ensuring adequate protection, transparency, and meaningful, timely public participation. Environmental outcomes should not be forgotten in the attempt to develop an effective process. **Permits should minimize if not eliminate or avoid environmental impacts from the permitted activity and be issued in a timely manner.**

- Rather than relying on anecdotal examples, DEP should evaluate permit review and processing data to document where real barriers and delays exist and whether and where there are inconsistencies among DEP regions. We suggest that DEP utilize the expertise and experience comprised in its various advisory committees to help evaluate permitting processing data and guidance for the relevant program areas. CAC stands ready to assist and advise in defining the parameters of the reviews, as well as with evaluating the result.
- There are inherent tugs-of-war in sharing responsibilities between agencies and between the different levels of government. Clarifying which level of government and which agency(ies) have responsibility and better coordinating permit reviews between them will make these critical relationships more efficient and less divisive in achieving mutual environmental goals, and ensure that environmental policies match the scale of the problems to which they are addressed. There is a need to assess relevant data to identify potential disconnects between reviews and approvals at different levels of government. Such a review may identify opportunities for more timely coordination between review at the local level and state/federal approvals.
- **Through aggressive pollution avoidance there may be opportunities to reduce and even eliminate the need for some permits as well as reduce future permittee liability.**
- A common criticism of DEP is that environmental rules are inconsistently applied and are subject to different interpretations by regional offices and Department bureaus. We recognize the very real need for flexibility in setting site-specific permit conditions. However, once permit conditions are issued, enforcement activity must be predictable and at a level and consistency

that provides a deterrent to future non-compliance. Adequate resources need to be provided to ensure a meaningful inspection and enforcement program.

- Funding should be sustainable, dedicated and workload related. This is a clear place where market forces should apply—program fees should reflect the cost of services provided. Program fees should be dedicated directly back to the relevant program (including staffing and training needed to meet the obligations of the program expeditiously) and the resource it protects. The regulated community’s mantra that “time is money” and that permit delays are, therefore, costly should translate into support for program fees designed to ensure DEP’s ability to conduct its permitting programs in a timely, consistent and efficient manner.

MARCELLUS ISSUES

The Marcellus Shale is a rock formation that underlies approximately two-thirds of Pennsylvania and portions of the states of New York and West Virginia at a depth of 5,000 to 8,000 feet. The Marcellus Shale is believed to hold trillions of cubic feet of natural gas. Advances in drilling technology attracted new interest in this previously untapped formation.

Through regular updates and scheduled presentations, Council continued to track issues and activities related to ongoing drilling boom in Marcellus and related shale plays.

- Council received regular updates on the work of the Marcellus Shale Advisory Commission, comprised of experts (including two CAC members) from within the environmental, conservation, state and local government, academic and natural gas industry communities, and charged to identify, prioritize and craft recommendations regarding the safe, efficient and environmentally responsible extraction and use of unconventional natural gas reserves in Pennsylvania.
- At the March 15, 2011 meeting, Scott Perry, Director of the Bureau of Oil and Gas Management, gave an update on well permitting and inspection activities, and reported on the new well construction regulations that were finalized on February 5, 2011. He also provided overviews on air impact studies, and ethane and radioactivity issues.
- At the July 19, 2011 meeting, Council heard from Mike Lovegreen, district manager of the Bradford County Conservation District regarding Conservation District roles in Marcellus oversight. Even though the conservation districts had previously been removed from the permitting and inspection of drilling sites, they are often involved in many related activities, including public input, planning commission efforts, outreach to landowners, training watershed groups to do water monitoring, etc.

One of the issues raised was that citizens have a distrust of the gas industry, and there is a need for an independent third party to serve as a liaison between DEP and the gas industry. Citizens generally view the Conservation Districts as unbiased, scientific, and trustworthy, and they could serve a pivotal role as the local eyes and ears to ensure that drilling and production activities are conducted safely and fully in compliance. As a result of the discussion, Scott Perry indicated DEP’s intent to work more closely with the Conservation Districts and asked Mr. Lovegreen if he would serve as a liaison to that end.

- At the September 20, 2011 meeting, David Overstreet and George Bibikos from K&L Gates, LLP gave a presentation on property rights, including an overview of the surface, mineral and support estates and legal issues related to competition between ownership of those estates, including competition between coal and gas ownership and extraction activities.

- At the November 15, 2011 meeting Council heard from a team of DEP staffers on a variety of gas related issues:
 - Sid Freyermuth, Environmental Group Manager with the Bureau of Watershed Management, Office of Water Management, gave a presentation on the proposed changes to General Permit 8: Temporary Crossings and Environmental Testing Activities. Marcellus drillers use GP8 as one of the permits for road crossings; changes are being proposed to better address needs related to piping water from centralized impoundments to well drilling sites.
 - Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of the proposed air aggregation policy. This deals with the process of determining whether two or more stationary air emissions sources should be aggregated together and treated as a “single source” when it comes to air permitting programs.
 - Duke Adams, Executive Assistant with the Office of Water Management, gave a report on the final guidance for Total Dissolved Solids. He also gave an overview on the pending white paper on using Acid Mine Drainage Water (AMD) for hydrofracturing shale deposits.

ACT 54 ISSUES

Section 18.1 of the Bituminous Mine Subsidence and Land Conservation Act requires DEP to report its findings regarding the effects of underground mining on overlying land, structures, and water resources to the Governor, General Assembly and Citizens Advisory Council at five-year intervals. The latest report, prepared by the University of Pittsburgh, addresses underground mining impacts for the period August 2003 to August 2008.

The report was delivered to the Governor, General Assembly and CAC on December 21, 2010, and released to the public on January 3, 2011. Greg Shuler, Geologist with the Bureau of Mining and Reclamation, provided a summary of the findings of the report at the January 15, 2011 CAC meeting, ranging from the number of acres of area permitted for mining, the number of structures undermined/impacted, impacts on water supplies, resolution times, etc. He also identified some shortcomings (data and other) and mentioned that the department is compiling a list of changes they want to see for the next reporting period.

Discussion ranged from the possibility of preparing an interim report addressing some of the identified shortcomings, the sufficiency of permit fees to cover the cost of the program, the sufficiency of staff to adequately operate the program (only three field inspectors cover deep mines in 10 counties); how the area of impact was calculated (200' from the permitted area vs. 35 degree angle of draw); how water quantity for low yield wells is measured; stream mitigation; access to private property to inventory and measure structures and water, and access to data (some of the GIS data generated by the University of Pittsburgh is considered proprietary).

The next report will cover the 2008-2013 time period and DEP is considering a contract to start collecting data on an ongoing basis, with the intent of completing the next report by December 2013.

At the April 19, 2011 meeting¹⁰, Council convened a panel to solicit input on the report:

¹⁰ In addition to CAC members and staff, the following were in attendance: George Ellis, Pennsylvania Coal Association; Josie Gaskey, Pennsylvania Coal Association; Richard Fox, Senate Environmental Resources and Energy Committee; Kurt Leitholf, CNRAC; Thomas Au, Sierra Club; Raina Rippel, Center for Coalfield Justice; Jeff Schmidt, Sierra Club; James A. Schmid, Schmid and Company; Aimee Erickson, Citizens Coal Council; Jeff McNally, ARIPPA; Rod Fletcher, DEP Bureau of Abandoned Mine Reclamation.

- Schmid and Co. was retained by the Citizens Coal Council and others to assess the 5-year report. Stephen Kunz, Senior Ecologist with Schmid and Co. summarized their assessment of the report.
- George Ellis, President of the Pennsylvania Coal Association, provided an industry perspective on the report
- Aimee Erickson, Executive Director, Citizens Coal Council participated in the discussion, and provided follow up comments
- Tom Au, Conservation Chair, Pennsylvania Sierra Club, raised concerns about the need to assess and address water quality impacts, especially with regard to special protection waters.
- Raina Rippel, Center for Coalfield Justice participated in the discussion, and provided follow-up comments.

At the May 18, 2011 meeting, Tom Callaghan, Director of Mining & Reclamation shared with Council that the staff spent the last several months reviewing the Act 54 report. He stated that there has been steady improvement in the quality of the reports, but identified some areas that need improvement, such as baseline data collection and use. In addition, the last report emphasizes data gathering rather than data analysis. He reiterated that they plan to get the process started earlier; the contracting process has already started for the fourth 5 year report with the goal of having a contractor in place by fall so the data gathering can start during the five year reporting period rather than after it. They are developing new task descriptions for the contractor, including long term impact on streams and wetlands and groundwater surface water interactions as opposed to structures and damage. He briefly discussed complaint resolution timeframes, and noted that sometimes resolution has to wait on completion of adjacent mining. To date, the focus has been on water supplies and stream segments; DEP needs to look at cumulative hydrological impacts which will require groundwater geologist expertise. He referenced a cumulative hydrologic assessment Technical Guidance Document.

At the June 21, 2011 meeting, Steve Kunz of Schmidt and Company pointed out the historical significance of June 22, which was the 17th anniversary of the passage of Act 54 and the 74th anniversary of the passage of the Pennsylvania Clean Streams Law, which took effect in June 22, 1937. Mr. Kunz stated that these two laws should provide adequate protection for streams and water resources in the Commonwealth from damage and degradation from underground coal mine activities, but unfortunately this isn't the case as the latest Act 54 5 year report demonstrates. Mr. Kunz stated that Act 54 ignores impacts to water resources and that the Clean Streams Law should pick up the slack. He stated that the Bureau of Mining and Reclamation operates the underground coal permitting program as though the Clean Streams Law doesn't apply. Mr. Kunz said that he looks forward to working with the CAC during the upcoming months to find some practical ways to fix the deficiency of Act 54.

At the September 2011 meeting, David Overstreet and George Bibikos from K&L Gates, LLP gave a presentation on property rights, including an overview of the surface, mineral and support estates and legal issues related to competition between ownership of those estates. Topics addressed included property ownership, surface and mineral rights, rights of owners, laws, royalties, coal statutes and limitations, gas rules and limitations and regulations.

On October 3, 4 and 5, Council convened its regional meeting and site visits in southwestern Pennsylvania, to focus on Act 54 and to experience and observe some of the impacts and activities related to deep-mining in the region. A report summarizing what Council heard and saw during that trip has been prepared along with comments and recommendations specific to the department's report and Act 54 itself. This report was submitted to DEP and legislators.

COMMITTEE ACTIVITIES

ADMINISTRATIVE OVERSIGHT COMMITTEE

The Administrative Oversight committee held several meetings and conference calls (1/4/2011, 1/19/2011, 2/1/2011) to develop a white paper on permitting, *Transforming DEP's Permitting Processes*, which was approved by the full Council at the February meeting. DEP's ability to conduct its programs in an efficient and timely manner is clearly linked to environmental, community and economic health, and we hope that this paper has been useful in the Department's review of its internal processes. In addition, the committee held a conference call (6/18/2011) to discuss the need to develop a matrix of measurable outcomes that could provide a mechanism to track implementation and effectiveness of changes to DEP's permitting processes.

AIR COMMITTEE

Pennsylvania's air quality has continued to improve and considerable progress has been made. However, the Commonwealth continues to face new challenges. At times, these challenges require innovative, aggressive action to protect Pennsylvania citizens and the environment. The department must be poised to identify these challenges and be prepared to utilize creative solutions to meet the demands of Pennsylvania's ever-changing air pollution issues.

Rulemakings

The Air committee held conference calls (1/24/2011, 10/19/2011, 11/15/2011) to consider rulemaking packages being developed by the Bureau of Air Quality. On the committee's recommendation, Council approved the following:

- Concurrence letter: flexible package, lithographic and letterpress printing. This proposed rulemaking is based on a control technique guideline issued by the U.S. Environmental Protection Agency to provide states with recommendations on how to control volatile organic compounds from a specific type of product or source category in ozone nonattainment areas and the Ozone Transport Region. (2/16/2011).
- Concurrence letter: final-omitted rulemakings repealing the employer trip reduction regulation, the portable fuel container regulation, and the alternative sulfur dioxide emission standard for St. Joe Resources in Beaver County. (11/15/2011)

ENVIRONMENTAL STANDARDS COMMITTEE

The Environmental Standards Committee primarily handles regulatory and policy issues for mineral resources, waste, land recycling, and energy. The five-year report required by Act 54 was identified as a full Council priority for the year, spearheaded by the Environmental Standards Committee. Both the committee and the full Council held numerous discussions of aspects of Act 54, as presented in the section on 2011 Priorities.

PROSPECTIVE AND STRATEGIC PROJECTS COMMITTEE

The Prospective and Strategic Projects Committee plans, coordinates and develops the proactive, overarching work of the Council. On January 14, the Prospective and Strategic Projects committee re-transmitted Council's second transition report, *Protecting Pennsylvania's Environment: Issues for a Challenging Time*, to then-acting Secretary Krancer, Acting Executive Deputy Hines and Acting Deputy Secretary for Administration Logan. This phase two report provided a more detailed set of operational recommendations specifically for the official transition to a new administration. It focused on operational and management issues related to DEP, providing the CAC's collective thinking on how to revive and sustain the agency's role and capability to protect the Commonwealth's environmental, community and economic health.

On a June 15, 2011 conference call, the committee discussed proposed priorities for the full Council and also discussed Senate Bill 263 (PN 240), which purports to promote fact-based decision making in the regulatory process. The committee's discussion raised a number of issues which were raised with full Council at its June 21, 2011 meeting. As a result of the discussion, Council approved a memo to legislators outlining its concerns and opposing the bill.

While Council supports transparent and fact-based decision-making, the bill is not in the best interest of DEP accomplishing its mission or in the best interest of protecting the public's health and safety. Instead, as recommended in Council's transition statement to the Corbett Administration, transparent and fact-based decision-making can best be fostered by institutionalizing decision documents for major agency decisions. Decision documents would lay out the decision trail, science and information used in developing proposed regulations and initiatives. The document should include such information as the legal and regulatory history and rationale for the proposal; a compilation and summary of the scientific and economic data, models, studies, and evidence used to support the decision-making as well as those which were dismissed (and why); and an explanation of the decision trail and intent, validating that the approach was well considered, evidence based and not arbitrary. Such a document would be issued along with the proposed regulation and be subject to public review and comment and would accompany the proposed regulation through the review process.

PUBLIC PARTICIPATION AND OUTREACH COMMITTEE

At the February meeting, Nora Carreras, DEP's Environmental Advocate, reported on recent environmental justice activities including development of a plain language summary of public participation in the regulatory process which several members of the Public Participation and Outreach committee had commented on.

At the May meeting, Special Deputy for the Office of External Affairs, Alisa Harris, provided an overview of the deputate and relevant activities including plans for the reinstatement of regional roundtables.

WATER COMMITTEE

The Water Committee held several conference calls and committee meetings to discuss water and wastewater issues.

- On a September 12, 2011 conference call, the committee heard about concerns regarding recent communications and policy changes from DEP relative to alternative on-lot sewage systems, and about elimination of funding for classroom training for Sewage Enforcement Officers. As a result of the call, the committee drafted a letter to Acting Water Deputy Kelly Heffner outlining the issues. The committee's letter was approved by the full Council at the September 20, 2011 meeting.
- On November 15, 2011, John Diehl, Environmental Group Manager of Planning and Permitting provided a status report and response to the committee.

COUNCIL NEWS/UPDATES

Membership—New appointees in 2011 are Terry Dayton (House), and Nancy Perkins (Senate). Curtis Kratz resigned in May.

Elections—In February Burt Waite and Dave Strong were re-elected to two-year terms on the Mining and Reclamation Advisory Board (MRAB). In September, Cynthia Carrow was elected to fill the remainder of Curtis Kratz' term on the MRAB, due to Curtis' resignation from CAC.

Council leadership and Environmental Quality Board (EQB) elections were held at the June meeting. The results of the leadership elections were: Joyce Hatala, chair, and John Walliser, vice chair. The following individuals were elected to represent Council on the EQB: Jolene Chinchilli, Walter Heine, Richard Manfredi, David Strong and Terry Dayton. Council's EQB alternates are Cynthia Carrow, Gail Conner, Pat Lupo, and John Walliser. In September, Joyce Hatala was replaced on the Council; John Walliser assumed the responsibilities of the Chair, and Burt Waite assumed responsibility as interim-Vice Chair.

Staff—On December 30, Sue Wilson, CAC Executive Director since March 1993, retired from Commonwealth service. The announcement of a replacement will be made in early 2012.

COMMITTEES AND BOARDS
(as of December 2011)

Chair: John Walliser

Vice Chair: Burt Waite

CAC STANDING COMMITTEES

Administrative Oversight

Eric Conrad, Chair
Cynthia Carrow
Jolene Chinchilli
Richard Manfredi
Janet Keim
Thad Stevens

Air

John Walliser, Chair
Gail M. Conner, Esquire
Walter Heine, P.E.
Nancy Perkins

Environmental Standards

David Strong, Chair
Terry Dayton
Nancy Perkins
Thad Stevens
John Walliser

Prospective and Strategic Projects

Jolene Chinchilli, Chair
Cynthia Carrow
Janet Keim
Richard Manfredi
Thad Stevens
Burt Waite
John Walliser

Public Participation and Outreach

Cynthia Carrow, Chair
Jim Clauser
Gail M. Conner, Esquire
Pat Lupo, O.S.B.
Nancy Perkins

Water

Thad Stevens, Chair
Cynthia Carrow
Jolene Chinchilli
Jim Clauser
Gail M. Conner, Esquire
Terry Dayton
Walter Heine, P.E.
Janet Keim
Pat Lupo, O.S.B.
Richard Manfredi
David Strong
Burt Waite

OTHER BOARDS & COMMITTEES
(as of December 2011)

Environmental Quality Board

Members:

Jolene Chinchilli
Walter Heine
Richard Manfredi
David Strong
Terry Dayton

Alternates:

Cynthia Carrow
Gail M. Conner
Pat Lupo, O.S.B.
John Walliser

Mining and Reclamation Advisory Board

Members:

Cynthia Carrow
Eric R. Conrad
David Strong
Burt A. Waite

Alternates:

Susan Wilson
Mark Killar, Western Pa.
Conservancy

Air Quality Technical Advisory Committee (AQTAC)

Appointee: vacant

Alternate: Susan Wilson

Environmental Hearing Board Rules Committee (EHB)

Appointee: Thomas Scott, Esq.

Low-Level Radioactive Waste Advisory Committee (LLWAC)

Member: Susan Wilson

Oil and Gas Technical Advisory Board (OGTAB)

Appointee: Burt Waite

Radiation Protection Advisory Committee (RPAC)

Appointee: Susan Wilson

Solid Waste Advisory Committee (SWAC)

Member: David Strong

Alternate: Susan Wilson

Council Staff

Executive Director – Susan Wilson

REPORTS, STATEMENTS, AND RESOLUTIONS
(January – December 2011)

Administrative Reports and Issues	
Transforming DEP's Permitting Processes	Adopted 2/15/2011
Statement of Opposition Regarding SB 263 (PN 240)	Adopted 6/21/2011
Water Issues	
Letter regarding alternate on-lot sewage system issues and SEO issues	Adopted 9/20/2011
Air Issues	
Concurrence letter re: Flexible Package, Lithographic, and Letterpress Printing Proposed Rulemaking	Approved 2/16/2011
Concurrence letter re: final omitted rulemakings (Employee Trip Reduction, Portable Fuel Containers and St. Joe Resources SO2 standard)	Approved 11/15/2011
Miscellaneous	
2010 Annual Report	Adopted 1/19/2011

LEGISLATIVE MANDATE

ACT 275 OF 1971

Section 448. Advisory Boards and Commissions

(p) The Citizens Advisory Council shall consist of the Secretary of Environmental Protection, six members who shall be appointed by the Governor, no more than three of whom shall be of the same political party, and six members who shall be appointed by the President Pro Tempore of the Senate, no more than three of whom shall be of the same political party, and six members who shall be appointed by the Speaker of the House of Representatives, no more than three of whom shall be of the same political party. The appointed members of the Council shall be citizens of the State who, during their respective terms, shall hold no other state office to which any salary is attached except that of membership of the Environmental Quality Board.

The term of office of each appointed member shall be three years, measured from the third Tuesday of January of the year in which he takes office or until his successor has been appointed.

The Citizens Advisory Council shall include persons knowledgeable in fields related to the work of the Department of Environmental Protection such as, but not limited to, ecology, limnology, toxicology, pharmacology, organiculture, and industrial technology.

The Council shall annually elect one of its appointed members as Chairman and shall elect a Secretary who need not be a member of the Council. Meetings of the Council shall be held at least quarterly or at the call of the Chairman.

The Council shall have the power to employ and fix the compensation of such experts, stenographers, and assistants as may be deemed necessary to carry out the work of the Council, but due diligence shall be exercised by the Council to enlist such voluntary assistance as may be available from citizens, research organizations, and other agencies in Pennsylvania or elsewhere, generally recognized as qualified to aid the Council.

Section 1922-A. Citizens Advisory Council

- (a) The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification and codification thereof.
- (b) The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents and records pertaining or belonging to the department.
- (c) The Council shall advise the department on request, and shall make recommendations upon its initiative, for the improvement of the work of the department.
- (d) The Council shall report annually to the Governor and to the General Assembly and may make such interim reports as are deemed advisable.

ACT 95 OF 1992, THE AIR POLLUTION CONTROL ACT

Section 7.6. Advice to Department

- (a) The department shall consult with the Citizens Advisory Council established under Section 448 of the Act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929," as appropriate, in the consideration of State implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. Nothing in this section shall limit the Council's ability to consider, study and review department policies and other activities related to the Clean Air Act implementation as provided under Section 1922-A of "The Administrative Code of 1929." This section shall not apply to state implementation plans or portions thereof comprised of permit emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations. The requirements of this section shall not apply to State implementation plans submitted by a local air pollution control agency.

Section 4.3. Evaluation

Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the Clean Air Act. The evaluation shall include:

- (6) A summary of the activities undertaken by the Citizens Advisory Council and the air technical advisory committee under Section 7.6.

INFORMATION REQUEST FORM

**Pennsylvania Constitution
Article I, Section 27**

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

If after reading this report you would like to receive more information about the Council *or* would like to be added to our electronic mailing list, please use the form provided below and send it (i.e. mail, fax or electronic mail) to:

Citizens Advisory Council
P.O. Box 8459
Harrisburg, PA 17105-8459
Phone No. (717) 787-4527
Fax No. (717) 787-2878
Email: epcontactcac@state.pa.us

-
- YES, I would like to be added to the CAC's **electronic** mailing list.
 - YES, I would like to receive more information about the Council or a particular issue.

I am interested in _____

Name _____ Organization _____

Address _____

City _____ State _____ Zip Code _____

Phone No. (____) _____ Fax No. (____) _____

Internet/other electronic mail address _____



**MISSION STATEMENT OF THE
CITIZENS ADVISORY COUNCIL**

It is the mission of the Citizens Advisory Council to strive to ensure that all people of the commonwealth enjoy the benefits included in Article I, Section 27 of the Pennsylvania Constitution.

This mission specifically states that the Council is to carry out the mandates of Act 275 of 1971 and Act 95 of 1992, by:

- *Performing non-partisan, independent oversight of the operations, management and policy of the Department of Environmental Protection;*
- *Evaluating environmental issues and laws;*
- *Participating in the development of environmental regulations; and*
- *Providing advice concerning environmental matters to the department, the Governor, the General Assembly, and the Commonwealth's federal representatives.*

The council strives to represent all people of the Commonwealth and endeavors to bring a collective view of the public interest in environmental protection and natural resources, forged from the Council's own diversity of personal experiences and perspectives.

(Unanimously Adopted: November 20, 1989; Amended: November 12, 1996;
Reaffirmed: March 15, 2005; Amended: April 17, 2007.)

CITIZENS ADVISORY COUNCIL

to the Department of Environmental Protection
13th Floor, Rachel Carson State Office Building
P.O. Box 8459
Harrisburg, PA 17105-8459