

**Draft Minutes of the
September 21, 2016, Meeting of the
Water Resources Advisory Committee (WRAC)**

Robert Cavett called the meeting to order at 9:37 a.m. on Wednesday, September 21, 2016, in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA.

The following committee members were present:

Myron Arnowitt, Clean Water Action
Robert Cavett, Merck & Co.
Kent Crawford, USGS - retired
Andrew Dehoff, Susquehanna River Basin Commission
Jeff Hines, York Water Company
John Jackson, Stroud Water Research Center
Gary Merritt, NSG
Cory Miller, University Area Joint Authority
Chuck Wunz, Wunz Associates
Steven Rhoads, Shell - retired
Jeff Shanks, Waste Management
Steven Tambini, Delaware River Basin Commission

The following committee members were not present:

Dean Miller, Pennsylvania Water Environment Association
Harry Campbell, Chesapeake Bay Foundation
Jeanne VanBriesen, Carnegie Mellon University
Theo Light, Shippensburg University
Robert Traver, Villanova University

The following DEP staff members were present:

Dana Aunkst, Water Deputate
David Goerman, Bureau of Waterways Engineering
Ramez Ziadeh, Bureau of Waterways Engineering
Sidney Freyermuth, Bureau of Waterways Engineering
Ken Murin, Bureau of Waterways Engineering
Jesse Walker, Bureau of Regulatory Counsel
Hayley Jeffords, The Policy Office
Alex Chiaruttini, Office of Chief Counsel
Katie Hetherington Cunfer, Office of the Secretary
Laura Edinger, The Policy Office

The following guests were also present:

Neal Brofee, PennDOT
Josie Gaskey, Pennsylvania Aggregates and Concrete Association
Kevin Sunday, Government Affairs - Pennsylvania Chamber

Renee Reber, Chesapeake Bay Foundation (CBF)
Rachel Gleason, PA Coal Alliance
Coleen Engvall, JLCC
Stephanie Applegate, JLCC
Robert Maiden, RES

Robert Cavett asked each presenter to indicate whether they are asking for a vote on their subject.

Approval of Minutes – Chuck Wunz made a motion to approve the minutes of the March 24, 2016, meeting. The motion was seconded by John Jackson. The minutes were approved by unanimous vote.

Aquatic Resource Functional Assessment Protocols – Dave Goerman of the Bureau of Waterways Engineering and Wetlands indicated that he will need approval from the Committee to proceed with the finalization of the Technical Guidance. Mr. Goerman presented an overview of the Chapter 105 Resource Condition Level 2 Rapid Assessments. The committee was informed that the three technical guidance documents were previously published for a 105-day public comment period. Comments were received, taken into consideration and final edits to the draft technical guidance were made.

Q: Is the Instream Habitat Index included?

A: The Instream Habitat Index is not utilized when assessing intermittent water courses.

Q: So the significant revision applies to the intermittent part and not to perennial waters?

A: Correct. To further clarify, for perennial water courses, the Department removed the riparian zone of influence for those that are greater than 100 square miles.

Q: Did the Bureau have discussions with the Mining Reclamation Program on this whole program?

A: Staff members involved with the implementation of the Chapter 105 through the Mining Reclamation Program were also involved in the development of the Technical Guidance over the past several years.

Q: Has there been outreach to PennDOT and other sectors of the regulated community?

A: The Department has presented the draft guidelines at various environmental professional organization conferences along with filed exercises with stakeholders.

Q: Regarding the 2000 square miles for the provisions of the lacustrine standards: how was this derived? Is that a new standard?

A: The cut-offs for both the riverine and the lacustrine were based on the Pennsylvania Department of Conservation and Natural Resources classification project that was performed by the Western Pennsylvania Nature Conservancy. They are the result of research that was done and the products of that large project which evaluated the both the chemical, physical, and biological, attributes of different sized resources and developed a meaningful classification system for riverine resources.

Q: What is the increase in Human Resources to do this assessment versus the older, historical assessment?

A: The Department doesn't have an historical assessment. Traditionally, the environmental assessment has been primarily narrative driven and subjective. The intent is for these to replace a narrative driven process to with a standardized process.

Q: When this originally went out for comment, there was a fourth technical guidance document that dealt with Wetlands Compensation. These three protocols are part of that Wetlands Compensation determination that was outlined in that other guidance document. Where is that guidance document?

A: The Department is currently revising that and addressing the public comment. These documents, while related, were always intended to be stand-alone.

Myron Arnowitz made a motion that the committee approves the three documents for final processing and publication.

Kent Crawford seconded the motion.

Fee Packages Related to NPDES Permits (Chapter 92a) and Water Quality Management Permits (Chapter 91)

– Dana Aunkst presented information to the Committee on proposed fee increases for Chapter 91 and 92a. He explained that fee increases are needed due to increased workload, more complex work, changes in policies, need for more compliance assistance and enforcement, and new applications. In addition, a provision in the recently finalized NPDES rule says that administratively extended permit can continue to operate under their existing permit as an administrative extension until the Department processes the permit. Right now, due to the workload, there are over 2,600 permits that are administratively extended. Of those, over 1,500 have been extended more than 2 years and over 1,000 have been extended over 5 years. The new federal rule provides EPA the authority to step in, object to a permit and possibly issue the permit themselves.

Robert Cavett confirmed that he is looking for a recommendation to move this forward to the EQB for proposed rulemaking.

Q: Of the \$20 million of costs to operate the program, what percentage is General Fund, federal application, and clean water fund?

A: Fee revenue is approximately 17%. The EPA Grant received is about 33-34%. Approximately half is from the general fund.

Q: What is the total number of NPDES permits?

A: Over 11,000 facilities and activities covered under NPDES permits in Pennsylvania. That is total general permits and individual permits.

Q: With these fees, what are you trying to do in terms of staff compliment? Where do you intend to go over 5 years?

A: The idea is that we need to first, have a sustainable staff, we need to have a sustainable program because all this work continues to come in. These renewals are required every 5 years, so shore up what we have now. As we move forward, the goal is to recover some of the staff losses that we have felt over the last 9 years. The goal is to recover staff positions that were lost and to increase efficiency through electronic resources.

Q: How do the proposed increased fees relate to the Chesapeake Bay Initiative?

A: In part, the Department's workload has increased because of the need to comply with the Chesapeake Bay TMDL. The Department and conservation districts are performing inspections of farms in response to a requirement from EPA for 10% of the farms in the watershed each year. There are approximately 33,600 farms in the PA portion of the Bay watershed. In addition the Department is modifying the Nutrient Credit Trading Program along with other activities related to NPDES permitting or permits in the bay watershed. For example, there are certain conditions that attached to Sewage Treatment Plant NPDES permits in the bay watershed that aren't in other permits outside the bay watershed. Monitoring and maintaining compliance with those conditions is extra work that's not done outside the bay watershed.

Q: How many FTE's is \$9 million over 10 years supposed to bring in for staffing increase?

A: It is estimated that it will bring funding for 65 FTE's.

Q: What are the timeline and next steps for this process?

A: The Department is looking for a recommendation to move forward to proposed rulemaking at the EQB in February, at the earliest.

Robert Cavett asked for approval from the committee to send the presentation to the EQB as proposed rulemaking. John Jackson motioned to approve the fee increases. Myron Arnowitt seconded.

After further discussion a suggestion was made by a committee member to include a short paragraph as a preamble to the rule. Dana Aunkst suggested a motion for a subcommittee who would work to draft and send a letter to the Department with the details. The committee agreed. Gary Merritt, Kent Crawford, Steve Rhoads, Jeff Hines, John Jackson, E. Charles Wunz, and Cory Miller volunteered to be on the subcommittee. This subcommittee will send a letter to Dana by 10/30/16.

Steven Rhoads moved that the small group write a letter to the Department to express their concern that the issue of permitted and unpermitted non-point source pollution has been substantially underfunded for decades. The letter could recommend that the Department, in its ongoing efforts to address these concerns, consider establishing appropriate programs and fee mechanisms to address this. In addition, the committee could suggest that language to this effect be included in the preamble to ensure that readers understand the proposed fee increases do not address these concerns. The motion was seconded by Cory Miller.

The committee agreed that the sub-committee can send the letter, but the entire committee will need to weigh in on it before it goes to the Department. The committee agreed that the letter will

be drafted by the subcommittee by October 5. Cory Miller will then send the letter to the entire group. The committee members will then have one week, until October 12, to respond to the draft letter with any concerns or proposed changes. Once comments are received, the subcommittee will then have another week to respond to and incorporate any changes they deem appropriate. The final draft will be sent to Robert Cavett on October, who will distribute the letter to the committee for a vote. The vote will be requested by 10/ 21/16

The committee voted on the motion for the subcommittee to write the letter. The vote was unanimous.

General Discussion –

A committee member inquired about the WRAC's roles in the Chesapeake Bay watershed implementation plan. Dana Aunkst explained that the Department is beginning to prepare for the critical, third version of the watershed implementation plan. It's supposed to remind us all of the things we learned from the first two versions and must get us to 2025. We need to pull together teams and workgroups of the right people on the right subjects, like we did back in 2006 and we need to make sure that we have all interested parties now. So those discussions and the formation of those workgroups and committees are just beginning. The Department will make sure that WRAC has the opportunity to give feedback. The Department recognizes the value of input from WRAC.

Public Comment Period –

No comments from public.

Steven Rhoads motioned to adjourn the meeting.
Cory Miller seconded the motion.

Meeting was adjourned at 11:40.