

**Minutes of the
May 10, 2017, Meeting of the
Water Resources Advisory Committee (WRAC)**

Robert Cavett called the meeting to order at 9:30 a.m. on Wednesday, May 10, 2017, in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA.

The following committee members were present:

Harry Campbell, Chesapeake Bay Foundation
Robert Cavett, Merck & Co.
Kent Crawford
Andrew Dehoff, Susquehanna River Basin Commission (SRBC)
John Jackson, Stroud Water Research Center
Chuck Wunz, Wunz Associates
Steven Rhoads
Steven Tambini, Delaware River Basin Commission (DRBC)

The following committee members were present (via phone):

Jeff Hines, York Water Company
Garry Merritt, NSG
Theo Light, Shippensburg University

The following committee members were not present:

Myron Arnowitz, Clean Water Action
Cory Miller, University Area Joint Authority
Dean Miller, Pennsylvania Water Environment Association
Jeff Shanks, Waste Management
Robert Traver, Villanova University

The following Department of Environmental Protection (DEP) staff members were present:

Lee McDonnell, Bureau of Clean Water
Ken Murin, Bureau of Waterways Engineering and Wetlands
Hayley Jeffords, The Policy Office
Cheryl Snyder, Bureau of Clean Water
Jesse Walker, Bureau of Regulatory Counsel
Diane Wilson, Bureau of Clean Water
Ramez Ziadeh, Bureau of Waterways Engineering and Wetlands

The following guests were also present:

Abbey Jones (via phone)
David Hess, Crisci Associates

Thomas Au, Sierra Club PA
Beth Kern, Chesapeake Energy
Renee Reber, CBF
Paul Bishop, CCLC
Grant Guilbon, PA Farm Bureau
Ellie Salahub, LPA
Jim Erb, API
Rachel Gleason, PA Coal Alliance
William Ratcliffe, Williams

Approval of Minutes – Steven Rhoads made a motion to approve the minutes of the March 29, 2017, meeting. The motion was seconded by John Jackson. The minutes were approved by unanimous vote.

Remarks – Patrick McDonnell, DEP Secretary, spoke to WRAC on the importance of public participation and advisory committee processes to the agency. As a part of its public participation effort, DEP is conducting Environmental Justice listening sessions across the state and updating policy documents on advisory committees, the regulatory process, the technical guidance process, and public participation. Additionally, the Chesapeake Bay focus has given Pennsylvania tools that are more broadly applicable in terms of conservation. With the need for 80% of pollutant reductions in the Bay to come from farmers, DEP is looking for ways to effectively interact with that part of the community. Budget constrictions over the past decade have caused DEP to lose 750 positions; however, DEP is constantly working ensure that both staff and managers have the proper tools needed and proper training to do their jobs successfully.

In response to Secretary McDonnell’s remarks, WRAC members stated the following:

- Public participation should be a high priority;
- WRAC members look forward to remaining engaged;
- There has been a backlog of National Pollutant Discharge Elimination System (NPDES) permits and reissuances, for a variety of reasons, like the manpower issue just mentioned; and
- Permit by rule process is something to revisit as a mechanism to streamline processes and help with issues of funding and staff issues

Chesapeake Bay Phase 3 Watershed Implementation Plan Development – Veronica Kasi, Chesapeake Bay Office, presented an overview of the progress made on the Phase 3 Watershed Implementation Plan (WIP) and the path forward. The plan needs to:

- Be implementable to achieve the TMDL nutrient and sediment load reduction allocations for PA.
- Result in local water quality improvement while restoring the Chesapeake Bay.
- Address the US Environmental Protection Agency’s expectations as described in their finalized “Expectations for the Phase III Watershed Implementation Plans”.

- Address the additional special conditions and expectations EPA has delineated for PA due to the Commonwealth’s current “backstop” status for the agriculture and urban sectors.
- Include stakeholder input, public engagement and comment.

Chapter 102 Erosion and Sedimentation Control and NPDES Permitting Process Listening Sessions – Lee McDonnell, Bureau of Clean Water, presented a second update of the Chapter 102 listening sessions DEP held in the Regions for invited members of the regulated community, who participated in the morning sessions, and the County Conservation District staff, who attended the afternoon sessions. These sessions were held in response to receiving comments and complaints about the Chapter 102 Erosion and Sedimentation Control and NPDES Permitting process.

Issues that arose from the listening sessions include: General permits; possibility of a low impact, small project type of permit; need to update BMP manual; 2 year/24-hour storm benchmark; accounting for evapotranspiration; interaction between MS4 and Chapter 102 permitting; defining responsibilities for municipalities; minimum control measures in MS4; and PCSM.

There are certain federal rules that apply in urbanized areas, and some that do not. There is a need to tie Act 167 plans together with the 102 and MS4 permit process and compliance activities. DEP is seeking to streamline and eliminate redundancy.

Discussion points brought up by various committee members included: MS4s not getting to the required reductions for phosphorous and nitrogen due to focus on sediment reduction; Changes that DEP institutes, such as a new general permit and regulation changes, need continuous public participation; emerging contaminants.

Proposed Draft Policy for State Water Quality Certification for Federal Energy Regulatory Commission (FERC) - Regulated Natural Gas Pipelines Projects - Ramez Ziadeh, Bureau of Waterways Engineering and Wetlands, discussed this draft policy, which DEP will publish as draft, likely for a 60-day timeline, in June.

The purpose of the policy is to explain the DEP review process when an applicant requests a State Water Quality Certification (SWQC) for a FERC-regulated interstate natural gas transmission pipeline project.

The draft policy also encourages the applicant to consult with DEP regarding a proposed project prior to any FERC submission, to increase review efficiency and coordination between all state and federal regulatory and resource agencies.

Before FERC can authorize construction of an interstate natural gas pipeline project within PA, each applicant must obtain a SWQC from DEP.

Mr. Ziadeh explained where the SWQC plays a role during the FERC review process, which is outlined in the draft policy. As part of its environmental review under the National Environmental Policy Act (NEPA), FERC will identify the required Federal, State and Local Environmental Authorizations that the applicant will need prior to construction, including the appropriate SWQCs. Upon completing the NEPA process, FERC will issue a Certificate of Public Convenience and Necessity, inclusive of environmental conditions that must be satisfied before FERC will authorize construction. Applicants then receive field access to all resources impacted by the pipeline project located on private lands enabling gathering of data required of all DEP permit allocations and authorization requests.

The SWQC process is outlined within the draft policy as well. When submitting the application to FERC, the applicant needs to identify the need for the SWQC, as well as any State environmental permits, authorizations, and approvals that would be identified through the initial consultation with DEP. The applicant should submit the request for SWQC as early in the process as possible. DEP will then publish a draft SWQC with conditions in the PA Bulletin. The public comment period is 30 days and a sample notice of the public notice is included as Appendix A in the draft policy. DEP then evaluates any public comments and determines if any further changes are applicable. DEP will publish a notice of its issuance of the final SWQC in the PA Bulletin, included as Appendix B of this draft policy.

When the applicant has obtained all necessary information to apply for state permits and authorizations as required by the SWQC, the applicant must then submit complete permit applications, permit requests, etc. An application form is being worked on and will be posted on DEP's website.

Natural gas pipeline projects regulated by FERC typically also require permits from the Army Corps of Engineers (ACOE) for the discharge of dredged and fill material under Section 404 of the Clean Water Act. The SWQC issued by DEP for the project will satisfy the need for SWQC for both the FERC authorization and the USACE permit. FERC will not authorize construction before the SWQC and all necessary environmental permits have been obtained.

Discussion points brought up by various committee members included: a need to separate construction from pre-clearing; the need for a flow chart to be added to the draft policy showing the step by step application process; Sunbury Pipeline; the need for DRBC and SRBC coordination.

Comprehensive Environmental Assessment of Proposed Project Impacts for Chapter 105 Water Obstruction and Encroachment Permit Application – Technical Guidance

Document Update – Ramez Ziadeh, Bureau of Waterways Engineering and Wetlands provided an update on this interim final technical guidance document that was discussed at the last WRAC meeting (3/29/17).

Mr. Ziadeh thanked everyone for their comments and advised that the document has been simplified.

The purpose of the guidance is to assist permit applicants proposing water obstructions or encroachments and demonstrating compliance with their regulatory requirements related to the environmental assessment.

The second paragraph was updated to clarify that projects in either a single or multiple counties should include a comprehensive environmental assessment that analyzes alternatives, impacts, mitigation and anti-degradation for all structures and activities associated with the projects in accordance with Chapters 93, 95, 102 and 105.

Under Chapter 105.13(d), if the project includes water obstructions and encroachments located in multiple counties, the applicant needs to submit an application for each county, but each application should include a comprehensive environmental assessment for the entire project. An applicant that only provides an environmental assessment for the water obstructions and encroachments in a single county, and not for the entire project, will not provide the comprehensive assessment necessary to evaluate different alternatives.

Mr. Ziadeh also explained that the fourth paragraph was revised to clarify how to identify existing and potential projects with wetland impacts. Due diligence language included in the previous version has been removed. In addition, language recommending that applicants identify proposed permanent wetland impacts associated with other projects currently under review by DEP was removed. DEP should be able to identify when multiple applications impacting the resource simultaneously are under review.

In addition, the document was revised to clarify that resources available to the applicant to facilitate searching for and identifying any other existing and potential permanent wetland impacts proposed by other entities beyond the applicant's control include, but limited not to, field observation, remote sensing, digital geo-spatial data, geographic information systems (GIS), light detection and ranging (LiDAR), eMapPA, the *Pennsylvania Bulletin*, and other readily available resources.

General Discussion – A question was raised about WRAC's role in the Chesapeake Bay Phase 3 WIP. A discussion about this will be included on the 8/9/17 WRAC meeting agenda.

Public Comment Period – Rob Cavett asked for comments from the public in attendance regarding current agenda items.

Thomas Au, Water Quality Chair of the Sierra Club, PA Chapter provided comments on the Proposed Draft Policy for State Water Quality Certification for FERC-Regulated Natural Gas Pipelines Projects. He believes the process is inappropriate, in that certifications are issued before individual water permits. The whole purpose of state water quality certification is to ensure statewide quality standards were complied with and the state is given 1 year from application date to make that determination.

Ellie Salahan, from North Cornwall Township, Lebanon County provided comments on the Proposed Draft Policy for State Water Quality Certification for FERC -Regulated Natural Gas Pipelines Projects. Ms. Salahan indicated that the 30-day public comment period is inadequate

and should be extended to 90-120 days. Lebanon County is being impacted by 2 pipelines, one FERC and one intrastate. Ms. Salahan stated that residents have been marginalized throughout the process and it is human arrogance to think even temporary wetland impacts can be mitigated. PA right now is set to have numerous pipelines, DEP is understaffed, and lacks resources to monitor the industry. Ms. Salahan stated that it is naive to think that DEP can depend on industry subcontractors to do good work and protect our resources, as defined in our constitution.

Steven Tambini motioned to adjourn the meeting.

Steven Rhoads seconded the motion.

The meeting was adjourned at 12:15 pm.