

WATER RESOURCES ADVISORY COMMITTEE

March 17, 2022 9:30 a.m.

Rachel Carson State Office Building – Room 105
400 Market Street, Harrisburg, PA 17105

and

Teams Meeting

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzRIOTAxNzItNWE5NS00MTIzLWI5NmEtYjcwMTAwYWVWNIzTM5%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%22b24d8ba1-e645-4ccd-bbf7-14bcd3de0b76%22%7d

Join by phone

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Agenda

9:30 a.m. Call to Order, Introductions and Attendance – Jenifer Christman, Chair

The meeting of the Water Resources Advisory Committee was called to order by Jenifer Christman at 9:30 a.m., virtually via Microsoft Teams and in-person in room 105, Rachel Carson State Office Building, Harrisburg, PA. A roll call was conducted, and of the 15-member committee, 13 were present and 2 were not present.

The following committee members were present:

Myron Arnowitt – Clean Water Action
Harry Campbell – Chesapeake Bay Foundation
Jenifer Christman – Western Pennsylvania Conservancy
Shirley Clark, Ph.D., P.E. – Pennsylvania State University
Kent Crawford, Ph.D. – USGS (Retired)
Andrew Dehoff – Susquehanna River Basin Commission
John Jackson, Ph.D. – Stroud Water Research Center
Theo Light, Ph.D. – Shippensburg University
Cory Miller – University Area Joint Authority
Dean Miller – Pennsylvania Water Environment Association
Stephen Rhoads – Shell (Retired)
Steven Tambini – Delaware River Basin Commission
Charles Wunz, P.E. – Wunz Associates

The following committee members were not present:

Matthew Genchur – White Township
Jeff Shanks – Waste Management

9:35 a.m. Review and Approval of Minutes from January 20, 2022 Meeting – Jenifer Christman, Chair

No corrections or suggested edits to the January 20, 2022 meeting minutes were proposed by any committee members. Kent Crawford motioned to approve the meeting minutes. John Jackson seconded the motion. The meeting minutes were unanimously approved.

9:37 a.m. Informational Item: Chesapeake Bay Phase 3 WIP Update – Jill Whitcomb, Director, Chesapeake Bay Office

Ms. Whitcomb presented an overview of the progress of the Phase 3 Watershed Implementation Plan. Ms. Whitcomb highlighted the success of the plan focusing on the streambank stabilization and buffer planting in East Cocalico Township and the integration of several BMPs on an equine operation in Franklin County, which were implemented in part by several funding sources including the CAP Implementation grant program and DEP's Growing Greener Plus program. Ms. Whitcomb also discussed a stream restoration project in Huntingdon County, a native wetland project in Union County and a timber mats pilot program in Susquehanna County.

Ms. Whitcomb discussed the funds provided from December 2020 to January 2022. Stephen Rhoads asked if she could give an indication of how much money in the aggregate is being spent annually on the Chesapeake Bay initiative. Ms. Whitcomb responded that every July PA has to report to EPA for the Chesapeake Bay Accountability and Regulatory Act (CBARA), a crosscut report that identifies both state and federal funds that have gone into the Chesapeake Bay watershed restoration activities on a yearly basis. Mr. Rhoads asked Ms. Whitcomb if she knows what that number is for 2020. Ms. Whitcomb was able to direct Mr. Rhoads to one of the slides in the presentation that highlighted the 2020 Annual Report and the infographic that showed the CBARA state funds from FY2020 and also provided follow up information to the public report.

Ms. Whitcomb discussed the block grant funding awarded in December 2021 and key highlights of the 2021 Growing Greener Plus grant program. Ms. Whitcomb mentioned the Chesapeake Bay Office 2022 funding opportunities with DEP, NFWF and EPA. Ms. Whitcomb discussed how counties are involved in the conservation efforts. Ms. Whitcomb presented the 2020 Healthy Waters Healthy Communities Report and realized the answer to Mr. Rhoads earlier question is contained in the report.

Ms. Whitcomb discussed the current status of the plan and highlighted the amendment, which was submitted to EPA the end of December and published to DEP's website. The amendment outlines how PA will meet 100% of its 2025 targets for nitrogen, phosphorus and sediment reduction. Stephen Rhoads asked about the 2025 Planning Target versus the 2025 Reduction Goal and what the WIP is actually accomplishing with these two numbers. Ms. Whitcomb explained the Planning Target is the target that has been set for Pennsylvania to meet for nitrogen and phosphorus and is the goal line. The Reduction Goal is how far we are from the goal line and the plan shows we can meet the goal line. Ms. Whitcomb referenced the file path for the numeric and programmatic milestones. Ms. Whitcomb finished the presentation stating that the majority of the goals are going in the right direction and the goals can be achieved provided the resources are there to meet them.

Stephen Rhoads asked if the numbers that Pennsylvania is trying to achieve equate to what EPA wants Pennsylvania to achieve. Ms. Whitcomb responded yes, the WIP documents and quantifies how Pennsylvania would meet the 2025 planning target and that is what EPA had requested.

Dean Miller stated that Stephen Rhoads question is important because what is being conveyed to the public is that Pennsylvania is behind in their efforts and they are not achieving those numbers. Ms. Whitcomb responded that there are two different things happening. The original plan that was finalized and complete in August 2019 is the plan that people have identified as the plan, which did not demonstrate through quantification of cumulative effect what Pennsylvania has achieved so far and how we're going to meet the planning targets. At the end of December 2021, they went through that process and quantified using the modeling tools and demonstrated that way. Ms. Whitcomb agreed there is a public perception that Pennsylvania is off track and some of that relates to where Pennsylvania stands with the modeled progress. Each time Pennsylvania submits its progress, it undergoes an EPA review where the information is verified and validated and credit is received for what is submitted, sometimes partially. In that case, that is what shows up on the report which is released by the Bay Program and EPA. In these cases, people may say Pennsylvania is off track because we are not tracking close enough to the trajectory.

Dean Miller asked if there is any intention by DEP to provide positive information to the public. Ms. Whitcomb responded that, since June 2020, each month an e-newsletter is distributed that highlights and spotlights what is happening from the state agencies side, from the funding side, each county, etc. There was a press release in January as well as a media event that showcased current events and topics.

Kent Crawford asked if the level of funding is steady from where we are now, will Pennsylvania achieve the 2025 goal. Ms. Whitcomb replied no, due to the funding gap and a need for additional funds and resources.

Kent Crawford asked if additional funds are available, are there landowners/farmers waiting to use these funds for crop rotation, fencing, etc. Ms. Whitcomb responded yes, there is a demand for funding, resources and technical assistance and they need to be able to prioritize where they go with the funding they currently have and then expand that out as more funds become available.

Kent Crawford asked about the Conowingo Dam and if the numbers/projections include the loss of the lake (a phosphorus and nitrogen sink) behind the dam. Ms. Whitcomb responded that a WIP has been developed specifically for the Conowingo Dam. Mr. Crawford asked if part of the plan includes the owner of the dam help pay for the increased amount of nutrients that will be released. Ms. Whitcomb replied that the plan includes a finance strategy and the Exelon settlement is part of that but will not wholly fund the practices.

John Jackson stated that the Chesapeake was unique in Pennsylvania in that the conservation districts had an enforcement action and asked what has changed regarding enforcement actions. Ms. Whitcomb replied that conservation districts conduct inspections, they do not conduct enforcements. Enforcement is carried out by the department. Conservation districts have been asked to assess, through site inspections, the status of farmers in compliance with their planning obligations and those that are on track for implementation. Those farmers who are out of compliance come back into compliance at the end of their allocated time period, which is generally 90 days. Even the farms that are identified as out of compliance at the time of inspection, will generally work to come back into compliance after the site inspection.

John Jackson asked Ms. Whitcomb to clarify the term in compliance regarding implementation of the plan. Ms. Whitcomb replied there are two phases of the ag inspection program. The first phase is to identify if the landowner has the required plan and if it is complete. The second phase is to go back to

the farm and identify if they are on schedule for implementation. The initial phase has been what has transpired up through last year in all counties. In 2019-2020, there was a pilot Phase 2 program that was tested in a handful of counties. Moving into 2022, other counties have conducted all their Phase 1 inspections and are moving into their Phase 2 part of the program. The ag inspection program was split into two phases which was part of the 2016 Chesapeake Bay Restoration Strategy developed and evaluated by EPA in order for DEP to continue to receive funds for these activities.

Stephen Rhoads requested to follow up on the issue of enforcement and what DEP has available to them in enforcement authority under this program, where it applies, where it is lacking, and the capital investments that are made in private property to ensure compliance with the goals and objectives of the program are met and maintained. Ms. Whitcomb responded that it comes down to reinspections and reassessments of BMPs. Ms. Whitcomb used an example of a farmer meeting with a conservation district staff person to conduct an inspection. The staff person asks the farmer to look at all the different practices already implemented on their farm in an effort to document it. The staff person verifies the practices have been on the landscape. The farmer states they have a barnyard heavy-use area protection lot that was installed in 2000. The conservation district staff person looks at it, it's functioning as intended and it's documented that it was installed in 2000 and it's now 2022 so it's 12 years past its intended credit duration in the model. This BMP is able to be re-reported. What has been found through documentation is that most of these structural BMPs are still functioning and in existence past their assumed credit duration in the Chesapeake Bay Model. Based upon data that is collected in the field, they are able to identify and extrapolate that these projects that have been put in place are actively being used and are functioning. Having the farmer involved in the decision-making process and providing options to assess and address the resource concerns as opposed to prescribing specific BMPs leads to long-term function, progress and positive impact.

Stephen Rhoads stated this is precisely his concern. The ability to enforce and maintain is not there. The simple fact of reporting the continued duration of a BMP should fall on the farmer not on someone going out and inspecting. Mr. Rhoads suggested that it would be helpful to the committee to have a presentation specifically detailing what the scope of DEP's ability as an agency is to ensure the ongoing viability of BMPs and other practices that are put in place to ensure we maintain compliance with the program. Ms. Whitcomb responded that this can be built into the Ag Inspection Program and overall view of the agricultural programs presentation that can be provided to the committee.

Myron Arnowitt commented that it would be an interesting discussion for the committee to examine the overall enforceability in an ongoing way of stormwater BMPs.

10:55 a.m. Informational Item: Erosion and Sediment Control General Permit (ESCGP) Prioritized Review Draft Guidance Document – Joe Kelly, Environmental Program Manager, Bureau of Oil & Gas Planning and Program Management

Mr. Kelly presented an overview of program goals, stakeholder workgroup, draft document and current status of the draft Technical Guidance Document (TGD). He mentioned the primary goal was to develop a program to replace the existing ESCGP expedited review process with a new prioritized review process. The prioritized review process will replace the time-based review process by prioritizing the review of environmentally enhanced projects first.

Workgroup stakeholders include state agency representatives, environmental advocacy groups and consultants and oil and gas industry representatives. The workgroup met six times between 2019 and

2020. The first draft version of the document was developed after the first three meetings and the document was reshaped during the last three meetings. The prioritized review program will only be available for those projects that will have permits reviewed by the district DEP Oil & Gas staff.

The document was published for public comment in the PA Bulletin for a 30-day comment period ending in September 2021. A total of 195 comments were received from 9 separate individual commenters. The comments are currently being reviewed and responses drafted. The draft TGD will be revised based on the comments received.

Mr. Kelly discussed the prioritized review standards and submission requirements which include resource assessment (wetlands/streams, ecological survey and environmental impact assessment), Pennsylvania Natural Diversity Inventory (PNDI) Clearance, an administratively complete and accurate Notice of Intent (NOI), compliance status and pre-application meetings which are encouraged but not required at this time.

Mr. Kelly highlighted the scoring categories which are comprised of Group A, Group B and a preconstruction meeting. Applicants must have a minimum of three points from Group A which includes, but is not limited to forest conservation, species protection and invasive species management. The scoring categories in Group B include, but are not limited to carbon neutrality, renewable energy and air quality controls. The prioritized review process does not offer specific permit review timeframes and the project applications that qualify are determined to be prioritized for both the administrative and technical reviews of the NOI and the associated documents and attachments. Otherwise, prioritized review projects are treated the same as standard review projects with regard to any other aspect of the project, i.e., technical review of the E&S and PCSM Plans, project inspection, termination, major/minor modification.

Mr. Kelly mentioned the current status of the project includes reviewing the public comments and drafting responses. The stakeholder workgroup will reconvene to discuss the comments and how they will change the document. The final step will be to publish the document as final in the PA Bulletin and update the oil and gas ESCGP NOI instructions and oil and gas erosion and sediment control policy and the training of department staff and industry.

John Jackson asked about the history of this project and what is being fixed.

Mr. Kelly responded the expedited review process was set up so that an oil and gas operator would be able to attend an erosion control training and submit an ESCGP and stamp it with a PE stamp. The department made the commitment that the technical review would occur in 14 business days if these conditions were met. The department realized that if a PE stamped plan came in from someone who had proven to have been through an erosion and sediment training within the last year, permit review staff were still finding a lot of projects were getting kicked out of the 14-day permit review timeframe and the project would take longer to review. There was an idea the expedited review was not necessarily the best way moving forward with these projects. The prioritized review is a way to get more done environmentally.

Stephen Rhoads asked how long delays will be for the normal permit applicant when oil and gas activity increases. Mr. Kelly responded that the number of earth disturbance ESCGP NOIs have decreased over the years and at some point they will increase due to the up and down nature of the industry. Mr. Kelly said this is an issue the department has struggled with; essentially how do you keep the standard review

project that is 10 or 15 down in the stack from always being 10 or 15 down in the stack. This issue will need to be addressed and the next draft version of the document is likely to have more language addressing this issue.

11:32 a.m. General Discussion/Agenda Topics Request – Jenifer Christman, Chair

No requested topics were made.

11:33 a.m. Public Comment Period – Jenifer Christman, Chair

No public comments were made.

11:34 a.m. Adjourn – Jenifer Christman, Chair

Andrew Dehoff moved to adjourn the meeting. Theo Light seconded the motion. The motion to adjourn the meeting was unanimously approved.

DRAFT