

**Draft Minutes of the
August 12, 2015, Meeting of the
Water Resources Advisory Committee (WRAC)**

Sean Gimbel called the meeting to order at 9:36 a.m. on Wednesday, August 12, 2015, 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
Jeff Hines, York Water Supply
John Jackson, Stroud Water Research Center
Theo Light, Shippensburg University
Gary Merritt, NSG
Cory Miller, University Area Joint Authority
Stephen Rhoads
Jeff Shanks, Waste Management
Steven Tambini, Delaware River Basin Commission
Robert Traver, Villanova University

The following committee members were not present:

Myron Arnowitz, Clean Water Action
Andrew Dehoff, Susquehanna River Basin Commission
Dean Miller, Pennsylvania Water Environment Association
Jeannie VanBriesen, Carnegie Mellon University
Chuck Wunz, Wunz Associates

The following DEP staff members were present:

Tom Barron, Bureau of Point and Non-Point Source Management
Sean Gimbel, Office of Water Management
Dave Goerman, Bureau of Waterways Engineering and Wetlands
Hayley Jeffords, Policy Office
Rod Kime, Bureau of Point and Non-Point Source Management
Rod McAllister, Bureau of Point and Non-Point Source Management
Kevin McCleary, Bureau of Point and Non-Point Source Management
Jen Orr, Bureau of Waterways Engineering and Wetlands
Dustin Shull, Bureau of Point and Non-Point Source Management
Paula Sviben, Office of Water Management
Kelly Tessier, Bureau of Point and Non-Point Source Management
Gary Walters, Bureau of Point and Non-Point Source Management

The following guests were also present:

Neal Brofee, PennDOT
Liz Deardorff, American Rivers
Michelle Elliott, Independent Regulatory Review Committee

Jim Erb, American Petroleum Institute
Rachel Hurst, Pa Coal Alliance
Eric Jespersen, PaMAGIC
Erin Lynam, Susquehanna River Basin Commission
Aaron Maurer, Waste Management
Renee Reber, Chesapeake Bay Foundation
Bryon Ruhl, PennDOT
Tom Shervinskie, Pa Fish & Boat Commission
Kevin Sunday, Pa Chamber of Business and Industry

Election of Officers – Sean Gimbel opened nominations for Chair from the floor. Robert Traver nominated Robert Cavett as Chair. Jeff Shanks seconded the nomination. Robert Cavett was voted Chair by an 11-0 vote. Robert Cavett then opened nominations for Vice-chair from the floor. Stephen Rhoads nominated John Jackson as Vice-chair. Robert Traver seconded the nomination. John Jackson was voted Vice-chair by an 11-0 vote.

Approval of Minutes – Jeff Hines made a motion to approve the minutes of the February 18, 2015, meeting. The motion was seconded by Stephen Rhoads. The minutes were approved by an 11-0 vote.

eComment and Policy for Development and Publication of Technical Guidance – Hayley Jeffords of DEP's Policy Office offered an overview of revisions made to the Department's *Policy for Development and Publication of Technical Guidance*, as well as the Department's new eComment system. The document was published in the *Pa. Bulletin* as Interim Final on May 30, 2015. DEP accepted public comment on the document through July 14, 2015. Ms. Jeffords highlighted some of the major changes to the policy, which included the following: increasing transparency surrounding the development of technical guidance by engaging advisory committees at conceptual stages of development, requiring additional collaboration between DEP's central office and regional office staffs, and the ability of the public to submit comments on technical guidance via the newly developed eComment webpage. Ms. Jeffords showed the group how to locate the eComment page on DEP's website, how to navigate the eComment page, and how to submit comments on documents open for public comment. eComment also allows the public to view comments as they are submitted to the eComment system, which means the public no longer needs to wait until a final Comment-Response document is developed by DEP in order to see who submitted what comments. Ms. Jeffords also alerted the group to the Non-regulatory Agenda, which DEP will use to alert the public to documents the Department expects to revise or develop within the next 12 months.

Q: How early in the process are committees expected to be involved?

A: As early as practicable.

Q: Are there any size limits to the comments that may be submitted?

A: Comments may be entered into a text box, which is limited to 10,000 characters, or

may be submitted as an attachment, which is limited to 10MB per attachment up to 5 attachments per submission.

Implementation of Act 162 of 2014: Riparian Buffer or Riparian Forest Buffer Equivalency Demonstration and Offsetting – Jen Orr of the Bureau of Waterways Engineering and Wetlands summarized the Department’s efforts to adjust the riparian buffer and riparian forest buffer requirements associated with individual NPDES stormwater construction permit applications as a result of the enactment of Act 162 of 2014. Ms. Orr discussed two technical guidance documents (*Riparian Buffer or Riparian Forest Buffer Equivalency Demonstration*) (*Riparian Buffer or Riparian Forest Buffer Offsetting*) developed by DEP to address the requirements of Act 162. The documents were published for public comment in the *Pa Bulletin* on March 21, 2015. The public comment period closed for both documents on May 20, 2015. Ms. Orr gave a summary of the comments received during these comment periods. In sum, DEP received detailed comments from eight legislative commentators and 15 other individual commentators. DEP also received approximately 1,200 form letters from person supporting strong buffer implementation and approximately 150 form letters from individuals supporting comments submitted by the Pennsylvania Builders Association. The major issue throughout the comments involved the decision to remove waivers as an option. Another issue raised involves how the Department will address temporary impacts because the guidance documents, as published, are largely silent on the matter.

Q: Is there potential to develop some type of diagram to assist applicants in working through these rather complex processes?

A: The Department has a draft of a diagram. At this time it isn’t clear how the diagram will be delivered. It might be included in the Frequently Asked Questions part of the Act 162 webpage.

Q: Given all of the functions of riparian buffers, what is an example of a BMP that is equivalent in terms of all those functions?

A: Generally, there will not be a single BMP. Most likely it will be a suite of BMPs or will involve site restoration.

Q: What academic literature or research was used to determine pollutant loading (Total Suspended Solids, Nitrogen, Phosphorus, etc)?

A: Most of the information comes from the Stormwater BMP Manual. However, DEP is open to evaluating other values if an applicant makes such a request.

Q: In a retrofit scenario, such as removing pavement and adding a buffer, does that buffer then need to be regulated and inspected?

A: DEP is working through this difficult issue, which although very important, was not a primary focus of the Act or DEP’s guidance. The Department certainly does not want to discourage this type of restoration work.

Q: Is there any consideration for cumulative impacts? It is entirely possible that a number of sites have negligible or non-detectable impacts individually. However, when

taken together as a whole, they clearly have a negative impact. This is particularly important for EV streams, which are not supposed to experience any degradation.

A: This is an issue facing not just this program, but many other programs in the Department, and we try to be very rigorous in our evaluations of permit applications, especially those in HQ, EV, and impaired waters. In doing so, DEP strives to be sufficiently rigorous to protect water quality on a larger scale.

Q: Is there potential for localized degradation due to the offsetting provision? A project could actually degrade water quality at one site so long as that degradation is offset elsewhere.

A: According to the guidance documents, all equivalency must be met “on-site”. An applicant cannot transfer impacts from one site to another.

Q: Is there a way for a developer to bank credits now for future use?

A: Trading and banking have been discussed. These practices are allowed under Chapter 102 and are worth investigating.

Q: Is it possible to tie this program with the NPDES program and TMDL requirements through trading/banking? It would be extremely beneficial in more urban settings to have such a program.

A: It would require work and commitment, but it is possible and probably very important for MS4s.

Q: Do you anticipate any surge in applications and who will handle the applications? Does DEP have sufficient staff?

A: There will be a bit of an increase in workload because we know of instances where applicants are waiting to see how this unfolds before submitting applications. Since these are individual NPDES permits, most applications will be handled by DEP’s regional offices. However, some county conservation districts are fully delegated to review these permits, develop a record of decision, and make a recommendation to a DEP regional office, which in turn will issue or deny the application. At this point, the Department likely will not be overwhelmed.

Q: Is it possible for a project to be so large and complicated that the permitting process breaks down?

A: Clearly there will be some very large and complicated projects, for example PennDOT highway construction projects, but the Department is committing to working through those scenarios as they arise.

An observation was made that since Act 162 did not affect oil and gas permitting, DEP likely avoided a substantial volume of very large and complicated permits associated with oil and gas pipelines.

Design Standards for Sequencing Batch Reactors (SBRs), Membrane Bioreactors (MBRs), and Ultraviolet (UV) Disinfection Technical Guidance – Kevin McLeary of the Bureau of Point and Non-Point Source Management presented members with rough

drafts of new technical guidance documents pertaining to three separate wastewater treatment technologies: SBRs, MBRs, and UV Disinfection. The Department currently has no guidance regarding these technologies. However, DEP feels it is worthwhile to offer guidance for wastewater utilities who want to explore and/or implement any of these technologies. All three documents are designed to become part of the larger technical guidance document, *Design Standards for Domestic Wastewater Facilities*.

Steven Tambini made a motion for DEP to move the SBR guidance document for publication as draft for public comment. Stephen Rhoads seconded the motion. Discussion followed regarding the appropriateness of needing a motion from the Committee in order to allow DEP to publish a draft technical guidance. Mr. Gimbel explained that even though DEP seeks motions from the Committee in order to advance regulations, historically DEP has not requested motions from WRAC in order to publish technical guidance documents for public comment. Further, DEP is not bound by any motions made by WRAC, whether those motions involve regulations, permits, guidance, etc. In other words, DEP may still move forward with a regulation, permit, guidance document, or other policy matter even if WRAC passes a motion recommending the Department not move forward. With that in mind, these three guidance documents were placed on the agenda as part of the Department's new *Policy for the Development and Publication of Technical Guidance* discussed earlier in the meeting by Ms. Jeffords, which encourages DEP staff to consult with advisory committees in the pre-draft stage of development. The Committee further discussed the role of the Committee with respect to when motions from the Committee are required. A comment was made that even if a motion isn't required, a favorable motion from the Committee was worthwhile because it would serve to legitimize the actions of the Department. After additional discussion, Mr. Tambini withdrew his motion.

Members agreed that the Design Standards for SBRs was sufficiently developed for DEP to seek public comment on a draft version of the guidance. Members recommended that additional work be done with respect to the MBR and UV Disinfection guidance documents, particularly with respect to outreach with wastewater treatment facility operators. Other comments included using ranges of numbers rather than absolute numbers when specifying parameters, and being careful in the development of UV Disinfection and MBR guidance because these two technologies are advancing rapidly and any guidance should be flexible to accommodate innovation. Mr. Gimbel encouraged members to contact Mr. McLeary with any questions or comments they may have concerning any of the three guidance documents.

Stroud Study: Impact of Chloride on Mayflies – Rod Kime of the Bureau of Point and Non-Point Source Management presented a summary of results from a study DEP contracted with Stroud Water Research Center. The study was designed to determine the acute and chronic impact of chloride on several mayfly species (*Neocloeon triangulifer*, *Anafroptilum semirufum*, *Procloeon fragile*, *Maccaffertium modestum*, *Ephemerella invaria*, *Leptophlebia cupida*) using water obtained from Pennsylvania streams of varying water hardness (Spruce Run – Union County, Unnamed Tributary to House Run – Greene County, Cedar Run – Clinton County, and White Clay Creek – Chester

County). Mr. Kime presented the acute and chronic testing study design, and the acute and chronic test results. DEP will use these results in conjunction with additional data from EPA to develop specific acute and chronic criteria for chloride, which will be presented to the Committee at the next meeting in November.

Q: What is the schedule for the next Triennial Review?

A: DEP hopes to present numbers to WRAC at the November 18, 2015, meeting.

Q: How much time will DEP need to develop this package? And will the Department be able to provide WRAC with sufficient time to review the material and provide constructive feedback?

A: The package includes more than just the chloride criteria and will take some time to develop. November is likely the earliest the Department can turn around numbers for WRAC.

Q: What is the difference between acute and chronic? Is it a matter of time and exposure?

A: Yes. Acute is typically a one- or two-hour exposure. Chronic is usually a four-day exposure.

Q: Will this be used to establish in-stream water quality standards for aquatic life and will it be a formula rather than a number because of water hardness?

A: The chloride criteria will be for in-stream water quality and apply to aquatic life. DEP is still working out the details, but the criteria will have to account for water hardness.

Q: DEP is not allowed to account for economics while developing this standard, correct?

A: That is correct as per federal law.

General Discussion – The August 8, 2015, edition of the *Pa Bulletin* contained a list of DEP technical guidance documents on the Non-regulatory Agenda that the Department intends to revise or draft. A significant number of those documents fall under the purview of WRAC, many of which are slated for publication as final in the fourth quarter of 2015, and there is concern among the members of the Committee that DEP will not be able to fulfill its obligations to involve WRAC in the development of technical guidance given the current number and short length of meetings. In the future WRAC either will need to meet more often or for longer periods of time, possibly even both.

Mr. Gimbel alerted the group about changes to the next meeting, which originally was scheduled to be held in 105 Rachel Carson Building. Unfortunately, the room reservation was revoked. As a result, the Susquehanna Room of DEP's Southcentral Regional Office was reserved. However, this room reservation was also withdrawn. As a result, we will need to work behind the scenes to either locate a new room or set a new date for the November meeting.

Members would like to be involved in the process the Department uses to address the comments raised by EPA in their letter to DEP regarding Pennsylvania's failure to meet

the goals of Chesapeake Bay Program. Beyond simply being offered status reports, the Committee would like to help DEP in addressing EPA's concerns.

A further discussion on e-publications would be worthwhile in helping the Department keep its guidance documents up-to-date.

Public Comment Period – No comments were made by the public.

Adjourn – The meeting adjourned at 12:39 p.m.

Next Meeting Date – Details about the date and location of the next meeting will be forwarded to members prior to the next meeting.