

Citizens Advisory Council

September 18, 2012

Room 105, Rachel Carson State Office Building, Harrisburg, PA

Members in Attendance:

Cynthia Carrow	Michael Krancer
Gail Conner	Pat Lupo
Terry Dayton	Nancy Perkins
William Fink	Thaddeus Stevens
David Hess	Burt Waite
Janet Keim	John Walliser

**Call Meeting to Order** – Chair John Walliser called the meeting to order at 10 am and announced that the agenda order would be revised to accommodate presenters’ schedules. New Council members William Fink and Dave Hess were welcomed. Mr. Walliser reported that the CAC annual report was distributed to the Governor’s office and the Legislature. The CAC Act 54 report analysis, letter and regional report were provided to the department and CAC received a response from Secretary Krancer.

**Dam Safety and Waterways Management (Chapter 105) Fees Regulatory Package** – Kelly Heffner, Deputy Secretary for Water Management, gave a detailed presentation on the Chapter 105 fee proposal regarding dam safety and water management regulations reviewing the various annual and application fees and the justification for the proposed fee amounts. In response to questions from Council members, she clarified that municipalities and state government do not pay these fees, and that total expected revenue is approximately \$1.5 million with the dam safety program being close to full cost recovery.

**HB 1855 – Proposed Water Well Constructions and Standards Act** – John Walliser explained that Representative Ron Miller had been invited to come to Council, however because of commitments in his district, he could not attend. Mark Brown and Eric Ross were available, and provided a history and overview of the initial bill development. They noted that 40% of private water wells fail Safe Drinking Water standards. Based on numerous meetings with the Department and others, they anticipate support from the county health departments, state agencies and the Governor’s Office when it is reintroduced next legislative session. They explained that the bill was designed to establish a simple process where a licensed water well driller would follow specified standards and provide a report to the homeowner. Also,

enforcement would be against the driller, not the homeowner. The bill is designed to allow the Environmental Quality Board (EQB) to fill in the technical requirements with regulations.

Dave Hess offered that, in general, people are more aware of ground water protection now than they were 10 years ago, and he suggested that Council weigh in when the new language is introduced next session. Mark Brown offered that Council endorsed the bill when it was previously proposed. Janet Keim asked if the draft bill addressed groundwater withdrawals. The response was no, groundwater withdrawal is covered by various existing statutes and regulations and administered by river basin commissions and the State Water Plan.

**Public Comment** – Chair Walliser opened the floor for public comment.

Susan Leinberger representing the League of Women Voters of Pennsylvania read a statement applauding the Department's efforts to offer public hearings on various permits. She expressed concerns regarding an August 14<sup>th</sup> hearing at West Chester University regarding a Transco pipeline expansion. Specific concerns raised included the format of the open house conducted immediately prior to the public hearing, as well as the significance of information presented with no opportunity for review by the public. Council directed Marge Hughes to work with the League and the Department regarding these concerns.

Steve Kunz asked if Council had received any feedback from the Legislature regarding Council's Act 54 Report. Chainman Walliser responding that nothing had been received as yet, but that Council intends to follow up.

**Coal Region Headwaters Study** - Chainman Walliser reminded Council that Professor Benjamin M. Stout III of Wheeling Jesuit University testified before CAC at the Southwest Regional meeting last fall. He was invited to present the results of his study on coal region headwaters and the impacts from long wall mining. Dr. Stout reviewed the data in detail including site selection and testing protocols. He noted the changes observed in the biological and hydrological elements. He complimented the Department on its method to assess streams which relies on the May Fly count. He offered that for small headwater streams, using the Stone Fly may be a better indicator of stream health. Dr. Stout explained that their 12 years of data seems to show that long wall mining headwater streams do not recover or stay the same after mining. In reviewing the presented graphics, Burt Waite noted that the data seems to indicate after 8 years of recovery there is a decline. Dr. Stout responded that more data was needed. Dave Hess asked if the data was analyzed in light of the specific state requirements. Dr. Stout indicated no, but it could be done. Commentators noted the importance of knowing specific stream conditions prior to mining. The data was still being reviewed and Dr. Stout

anticipated the analysis would be ready for peer review prior to publication in about 6 months. Council member Gail Conner offered to be part of that review.

**Status of the 4th Act 54 Report Contract, and DEP's response to CAC comments on the 3rd Act 54 Report** - Tom Callaghan, Director, Bureau of Mining Programs, Office of Mineral Resources Management reported that the contract for the 4<sup>th</sup> Report (covering August 2008-August 2013) has been signed with the University of Pittsburgh with a draft report expected in April 2014. Copies of the contract were distributed. He reported that all data would be provided to the Department and none would be considered proprietary and held back by the contractor as in previous years. He also reported that there would be more data analysis in addition to data collection and reporting and that hydrology and long term impacts will be considered.

Mr. Callaghan indicated that all data will be considered if comparisons are appropriate, and the review will consider data as far back as possible, however the Department may not have appropriate baseline data prior to 2007. John Walliser asked if an annual report rather than a five year report could be produced. Mr. Callaghan responded that the Act requires a five year report. Council members strongly encouraged the Mining Program to consider preparation of a supplemental cumulative impact review of structures and the environment. They observed that data gathering without analysis was not valuable.

Mr. Callaghan reminded Council of Secretary Krancer's August 20<sup>th</sup> response to CAC's Act 54 review and offered to provide program experts and information if questions remain. He also offered to consider Dr. Stout's report when it is available if it strengthens the Department's protocol.

**Commercial Fuel Oil Sulfur Limits for Combustion Units Final Rule** - Arlene Shulman, Environmental Program Manager, Bureau of Air Quality reported that she had met with the CAC Air Committee on August 29 and reviewed this final rule. She also presented it to AQTAC on September 12<sup>th</sup> and they voted to send it along to EQB for consideration. The rule would lower the allowable sulfur content limits of commercial fuel oils used in oil-burning combustion units and replace the existing geographic area-specific sulfur content limits for commercial fuel oils with statewide sulfur limit. Pat Lupo made a motion and Burt Waite seconded it to support the movement of this final form rulemaking to the EQB for consideration. The motion passed unanimously.

**Susquehanna River Update** - Rob Kime, Environmental Program Manager, Water Quality Standards Division provided Council with an update on the Department's actions since designating the Susquehanna as an impaired waterway was discussed at the May 15<sup>th</sup> Council meeting. He reported on area testing conducted from Sunbury to Harrisburg, the sampling analysis, coordination with the Fish and Boat Commission and the comprehensive sampling by the Susquehanna River Basin Commission. As a result of this effort, he expects that USGS will probably move a few of their sampling toward the middle of the river channel. In addition, it will take several months to review all the data. He explained that once the analysis was

complete, the Department would make a determination regarding designation. He added that a comment/response document was under development and when complete and sent to EPA, it will be posted on the DEP website.

**Asian Carp Threat to the Ohio Basin** – After seeing other presentations on this invasive species, Cynthia Carrow suggested that Council hear from Tim Schaeffer of the PA Fish and Boat Commission. Mr. Shaffer reviewed the movement of the Asian carp up the Mississippi River. He reported that in the Illinois River it has been determined that Asian carp have consumed 80% of the biomass in those areas. He indicated that the US Fish and Wildlife have prepared an Asian Carp Control Plan and that the Mellon Foundation recently approved funding for an Ohio River Asian Carp Action Plan that is expected to consider how the river locks and dams, as well as how the commercial fishing industry can assist. Pat Lupo noted that at the recent Great Lakes meeting, it was reported that Asian carp eDNA had been found in Lake Erie. Council members expressed concern for the significant environmental and economic impact that may result in PA as this invasive species moves into the watershed and potentially into the Great Lakes.

**DEP Permit Decision Guarantee & Permit Coordination Policies** Alisa Harris, Special Deputy for External Affairs, provided CAC with a full briefing on the Governor's Permit Decision Guarantee Program Executive Order and discussed the two draft policies currently out for public comment. (Copies were provided to Council members.) She thanked Council for their February 2011 white paper *Transforming DEP's Permitting Processes* and indicated that it had been helpful in developing the draft policies.

She reviewed the webinars, and numerous internal and external meetings that all were part of the policy development. She encouraged Council and the public to review the Department website and the Frequently Asked Questions document and submit any comments prior to the close of the public comment period on October 1<sup>st</sup>.

Dave Hess offered that it was good to re-visit permit review issues based on experience and the importance of laying out the obligations of the applicant and the department. Gail Conner expressed concern about the third party review concept, the lack of credibility of those reviews and the probable conflict of interest that would be present in any consulting firm. Ms. Harris indicated that the Department hoped to realize efficiencies with the new policies and third party reviews may not be needed.

Janet Keim asked Secretary Krancer if the Department had reviewed the material she provided him at the February Council meeting regarding the Little Lehigh. Ms. Harris indicated she would check on that review.

Gail Conner reported on numerous calls she has received recently regarding a Waste General Permit and the use of natural gas well brines on public roadways for dust suppression and road stabilization. She asked the Secretary if the Department had responded to the Harvard Law Review analysis of brine use. Ms. Harris indicated she would check on that review.

Secretary Krancer expressed surprise at the apparent loss to Pennsylvania of approximately \$200 million in Federal Mine Cleanup funds as a result of the Baucus Amendment. He indicated that he was not aware of the amendment as it was being developed and he was hopeful the PA delegation would weigh in soon to resolve the funding loss.

**Chair's Report** – Chairman Walliser asked for comments or corrections to the May 15<sup>th</sup> and July 17<sup>th</sup> CAC meeting minutes. Burt Waite moved and Thad Stevens seconded a motion to approve the May 15<sup>th</sup> meeting minutes as presented and the July 17<sup>th</sup> meeting minutes as corrected to identify the “Union County” gas well blowout as being correctly located in “Union Township in Tioga County”. The motion passed unanimously.

**CAC Elections** – Nominations Committee Chair Cynthia Carrow moved to nominate John Walliser as CAC Chair and Burt Waite as Vice-Chair. There were no other nominations offered. Janet Keim seconded the motion and it passed unanimously.

**CAC Executive Director's Report** – Marge Hughes introduced PA Management Associate Tom Mainzer who will be working in the CAC office until November 2<sup>nd</sup>. His focus will be assisting Council with strategic planning. Tom gave an overview of his plans to reach out to Council members prior to the next meeting.

Marge Hughes reported that the **CAC Meeting dates for 2013**, if Council stayed with the third Tuesday of the month would be January 15, February 19, March 19, April 16, May 21, June 18, July 16, September 17, October 15, and November 19. However, she noted that the PA municipal primary election day is May 21, 2013. When a meeting date falls on an election day, she explained that EQB moves its meeting to the next day (Wednesday), which in this case would be May 22, 2013. Council agreed to set their 2013 meeting dates as the third Tuesday of the month with the exception of May which will be Wednesday, May 22, 2013 to avoid a conflict with primary election day.

Marge Hughes read a September 17<sup>th</sup> email from former CAC member Gail M. Rockwood to Council which encouraged them to keep PA citizens and the environment as CAC's first priority.

**Committee Reports – Oil & Gas TAB** - Burt Waite reported that the Chapter 78 regulatory changes are expected to be discussed with TAB in November/December.

## **New/Unfinished Business**

Thad Stevens asked if any Council member was aware of the Game Commission's proposal to place a 6-month moratorium on areas where 3 endangered bat species are located. He asked Marge Hughes to contact DCNR for their position. Terry Dayton offered that this proposal may be part of their effort to control diseases impacting these bat populations.

Pat Lupo distributed a press release and reported on the signing of the Great Lakes Water Quality Protocol signed on September 13, 2012. This Protocol covers a variety of issues including cleanup, restoration, water quality, habitat destruction and harmful substances. She reviewed the Great Lakes areas of concern, which included Asian carp. She encouraged Council members to review the report *The Carbon Footprint of Water* found at <http://www.rivernetnetwork.org>

She also reported that the memorandum of understanding between DEP and the Department of Education had been signed and that a replacement to fill Patty Vathus' Environmental Educator position had been posted.

Dave Hess reminded Council of the extensive recommendations in the Marcellus Commission Report and that no 1-year update had yet been issued. He expressed concern that the public does not have a clear path to receive information on this resource development.

Council members discussed agenda items for the next meeting including reviewing Act 13 (recent court decisions, confidentiality provisions, eminent domain, air monitoring etc.), review of the Harvard Law review of the Bureau of Waste Management's proposed modifications of General Permit WGMR064 for the use of natural gas well brines on public roadways for dust suppression and road stabilization and CAC's five year activity report.

## **Adjourn**

Burt Waite made a motion and Pat Lupo seconded that the meeting be adjourned. The motion passed unanimously and the meeting was adjourned at 2:59 p.m.