

## **Citizens Advisory Council**

February 19, 2013

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

**Members in Attendance:** Cynthia Carrow, Gail Conner, Terry Dayton, William Fink, David Hess, Janet Keim, S. Pat Lupo, Nancy Perkins, Burt Waite, John Walliser.

**Call Meeting to Order** – Chair John Walliser welcomed everyone to the meeting and called the meeting to order at 11:00 am.

**Chair's Report** – Cynthia Carrow moved and David Hess seconded the motion for the approval of the January 15, 2013 CAC meeting minutes. The motion passed unanimously.

Chair Walliser indicated the proposed revisions to the draft CAC 2013 Strategic Work Plan include changes to the committees and the addition of issue review criteria as shown in the draft distributed prior to the meeting. Burt Waite moved and Janet Keim seconded to adopt the work plan as revised. The motion passed unanimously.

**Public Comment** – Roberta Winters, Issues and Action Vice President of the League of Women Voters of Pennsylvania gave testimony from the League's written statement. Ms. Winters affirmed the League support for the protection of public health and the environment in all aspects of Marcellus Shale natural gas drilling by requiring comprehensive regulation, communication, and adequate government agency staffing. Also, she advised that CAC should re-examine the role of the DEP and its potential conflicting missions. Janet Keim asked what action is requested from the CAC. Ms. Winters responded support is needed so the DEP schedules open forums in a timely manner for permitting process activities, establishes full disclosure guidelines for water testing results, and continues its commitment to the overall protection of the environment and of the public.

Jeff Schmidt, Chapter Director of the PA Sierra Club urged CAC to request from the DEP full disclosure of private well water testing results, including results from SAC (Standard Analysis Code) 944 testing. He indicated the determination letter policy needs to be re-evaluated, expressed concern regarding the nondisclosure of water testing results and that DEP has a more extensive set of tests that identify pollutants, but only partial results are disclosed.

Mr. Schmidt mentioned increasing radiation alerts in landfills due to TENORM (Technically Enhanced Naturally Occurring Radioactive Material) and medical waste. He reported on radiation alert data from the DEP, and indicated his concern for where the TENORM is disposed after it is rejected by landfills. Responding to Council member questions, Mr. Schmidt responded the data was divided into medical waste and TENORM.

He commented that the updated 2010 consensus E-Map shows an increase in the number of Environmental Justice (EJ) areas in Pennsylvania. Mr. Schmidt encouraged Council to re-evaluate the EJ policy and recommend removing the exemption of Oil and Gas permits from the EJ trigger list.

Stephen Kunz, Senior Ecologist of Schmid & Company reviewed the damage to Kim Jones' property (Greene County) and water sources and provided a visual presentation. He stated Act 54 was sanctioned to protect property due to mining activities; however, CONSOL's restorative efforts in 2004 and 2005 at Kim Jones' property were ineffective. He commended the DEP in issuing two letters to CONSOL in December 2012 requiring appropriate mitigation or compensation for the loss of Commonwealth resources as well as making the determination that certain affected streams have not recovered from the effects of the underground mining activities of the Bailey Mines. He encouraged CAC's continued support for reforming Act 54. Mr. Kunz did not know if the DEP is seeking natural resource damages.

**DEP Policy on Public Participation in the Permit Application Review Process** - Robert Altenburg, DEP Executive Policy Specialist distributed copies and reviewed proposed revisions to the Public Participation Permit Review Process Policy. He stated the revised policy is scheduled for *Pa. Bulletin* posting by the end of March for a 30 day public comment period. Mr. Altenburg requested that Council provide comments by March 5<sup>th</sup> so the comments could be reviewed prior to publication. Chair Walliser asked interested CAC members provide comments to the CAC Public Participation Committee.

**Public Participation Committee:** Committee Chair Hess stated the Public Participation Committee held a conference call on Feb 12<sup>th</sup> discussing recommendations for the *Development of Regulations and Technical Guidance Policy*, the *Permit Review Policy* and the *Environmental Justice Policy*. He reviewed a draft press release to solicit public and advisory committee member's comments. He also mentioned Holly Cairn's suggestion to schedule a webinar on the existing Public Participation Permit Process Policy. Mr. Hess asked if the DEP would support a joint press release, and Ms. Cairns stated the DEP does not support the joint press release or CAC soliciting public comment on DEP policies outside of the department's existing procedures. Holly stated DEP would organize the webinar, however, requested CAC's participation. She suggested that the webinar be scheduled after the policy draft is published on the *PA Bulletin*. Chair Walliser asked Council members to send comments on the draft press release to him and Mr. Hess. Ms. Lupo motioned to approve the draft approach and the webinar and Ms. Keim seconded. The motion passed unanimously.

**Department Report** – Holly Cairns, Acting Director, Office of Environmental Advocate noted Council was provided the February Monthly Department Report. Mr. Hess commended the readability and comprehensiveness of the report. Holly indicated that DEP staff are available to provide presentations on the budget, staffing levels and performance report at the next CAC meeting. She stated she would check to see if Council can be provided with the Secretary's testimony to the budget committee as requested by Chair Walliser. Ms. Cairns stated the Governor's appointees for Council are still under review. She mentioned the Little Leigh is in the process of petition, and she will obtain additional information on questions posed by Janet Keim. Ms. Cairns stated the DEP is waiting for the Auditor General's instructions on how they will proceed with their audit of DEP. Ms. Cairns stated the *Development of Regulations and Technical Guidance Policy* and the *EJ Public Participation Policy* will be provided to Council in a draft format, as the *Permit Application Review Process Policy* was provided. Ms. Cairns

reviewed the visual presentation of the 2010 Census Tract E-Map. Chair Walliser referred to Jeff Schmidt's question concerning the exemption of natural gas and drilling operations permits and asked if any such permit falls in the additional consideration if located in an EJ area. Holly responded Oil and Gas permits are not included on the EJ trigger permit list, and are currently exempted from the EJ Policy; however, a recommendation to include this program may be considered. She also clarified the "opt in" section of the policy that could make the policy applicable to any permit. Gail Conner asked about the geographic, demographic and financial information in the EJ areas and if the increase is due to environmental issues. Ms. Cairns offered to provide Ms. Hughes with the requested data and to address any additional questions posed by Council members. Ms. Lupo expressed interest in the Climate Change Report data.

**TENORM Study, Air Monitoring Study and Deputate Program Updates** – Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided handouts of TENORM Study PowerPoint slides and PermaFix Environmental Services' proposal. He announced the study will gather data to assist the DEP in managing and regulating TENORM. Currently, the quality assurance and sampling protocols are in the peer review phase, and final plans will be posted on the website for public comment. He explained that each load of waste transported to PA landfills passes through monitors that can detect low contamination levels and material rejected by landfills is transported by the generator to a federally licensed waste disposal facility in Utah. Mr. Brisini indicated that the increased number of radiation alerts are due to sludge from oil and gas production. Ms. Conner recommended the DEP reevaluate the landfill closing process policy and its enforcement of responsible parties. He stated there are beneficial reuses of drilling cuttings as a cover for Act 2 recycling sites under a Research & Development permit and of well pad liners recycled into plastic forms. Mr. Brisini clarified the TENORM study will also test natural gas for radon, and he expected the study to begin the end of March.

Mr. Brisini stated the south west Air Monitoring Project is in progress and will focus on Volatile Organic Compounds (VOCs) in a rich gas region. He stated there are no results yet. Chair Walliser referred to the Clean Air Council's statement in January questioning why an electric powered generator was selected for monitoring; since, it was presumed it had lower emissions than a typical generator. Mr. Brisini commented the issue relates to nitrogen oxide and to the models conducted in association with the Barto Compressor Station. He offered the DEP will be responding to these issues.

He also commented on the inquiry from Council regarding the single source determination and the Sixth Circuit Court decision. Mr. Brisini stated determinations are made on a case by case basis and EPA's position would not change DEP's approach to aggregation.

**Permit Decision Guarantee Process Update** – Dana Aunkst, Deputy Secretary for Field Operations stated the first permit decision guarantee quarterly report was released last Thursday and posted on the website covering November 14, 2012 to January 31, 2013. Mr. Aunkst commented there is an overall increase of efficiency in the average number of days to process a permit in each deputate. He mentioned approximately 6,500 applications were received during this ten week period with a denial rate of 1.36% and compared this to the nine year period prior to the policy change of over 283,000 permit determinations with a denial rate of 1.3%. The next

quarterly report is due on May 15<sup>th</sup>. Janet Keim had questions on issuing sewer permits in hydro logically overloaded systems. Mr. Aunkst stated equalization basins do not negate the hydro logically overloaded system. He also mentioned the planning regulation under Act 537, Chapter 71 does not allow the DEP to approve additional connections to a system if under Chapter 94 there is a hydro logically overloaded system. He added for an overloaded system, a corrective action plan is created, where the DEP approves and monitors the plan, and then each task completion will determine how many additional connections are allowed. Mr. Aunkst stated there were over 9,900 permits in the backlog since Sept 2012. He stated staff was provided with training and he is hopeful the backlog will be eliminated by June 30<sup>th</sup>.

**Water Testing Protocol General Information** – Barbara Hall, Account Executive for TestAmerica Incorporated presented information on private water well testing. She reviewed the draft *Recommended Practices for Pre-Drill Water Supply Surveys*, the *Site Survey Form* and the *Recommended List of Parameters* developed by the Marcellus Shale Coalition (MSC) and the regulations of Title 25, Chapter 78. She addressed many questions from Council. Ms. Hall clarified the SAC (Sample Analysis Code) is a short hand method of specifying a list of parameters the laboratory tests. She stated Pennsylvania has no regulations for private water testing parameters. She stated she would research SAC 942, 944, and 946 and provide information to Council at a later date. Ms. Hall mentioned safe drinking water MCLs (Maximum Contaminant Levels) only pertain to public drinking water. She also explained each laboratory machine is calibrated to test certain parameters. Results requested from the client are the only ones reported back to the client. TestAmerica's protocol is that all results are retained for seven years. Ms. Hall commented TestAmerica may advise the client to consider testing other constituents depending on their concern.

**CAC Director's Report** – Marjorie Hughes, CAC Executive Director asked Council members to submit comments on the CAC draft 2012 annual report within two weeks so it may be finalized and acted on at the March CAC meeting. She announced there is interest from students attending Duquesne University and Widener Law School for summer volunteer internships. Ms. Hughes thought a PA Management Associate may be available in March and April.

**CAC Committee Reports** –

**Policy & Regulatory Oversight Committee:** Chair Nancy Perkins stated the committee had a conference call on February 6<sup>th</sup> with Randy Bordner and Elias Rivera of the Bureau of Air Quality regarding the final rulemaking on particulate matter testing and proposed regulation revisions on VOCs and NOCs. She explained the rule follows the federal guidelines. In addition, the Chapter 121 and 139 revisions are a major rewrite for the DEP. Janet Keim motioned and Gail Conner seconded that Council accept the Committee's recommendation that both regulations move along to EQB for action. The motions passed unanimously.

**Nominating Committee:** Cynthia Carrow stated two candidates have indicated interest in being nominated for the positions of CAC Chair and Vice Chair for next year, and anyone else interested should contact her or Burt Waite.

**Legislative Committee:** Chair Cynthia Carrow requested Ms. Hughes organize a committee conference call for next week. The committee will focus on rebuilding relationships with the House and Senate Environmental Resources Committees and deciding on which legislation to track. Ms. Hughes suggested one of the legal interns may work with this committee if he or she holds legislative expertise. Also, Ms. Conner stated she received positive feedback from a House legislator regarding support for considering alternatives that may allow alternative approaches to RACT compliance.

**New or Unfinished Business** – Mr. Hess presented information on the DEP’s budget. He also reviewed the written response from Secretary Michael Krancer and Secretary Richard Allan regarding his review of the last ten years of environmental funding and of the State Performance Report. Ms. Carrow asked who creates the State Performance Report, and Mr. Hess responded the Governor’s budget office completes the report.

Ms. Lupo informed Council of the Great Lakes Water Quality Agreement and the Water Quality Board (WQB). She stated the WQB previously consisted of state and federal personnel; however, the new agreement calls for broadening its membership. A letter with 45 signatures was sent to the International Joint Commission providing a set of criteria to select members for the WQB.

Janet Keim motioned for drafting a letter of support on some of the positions raised in the League of Women Voters of PA’s testimony in January. Ms. Hughes recommended the Strategic Committee review a draft letter and then present to Council for approval. Ms. Lupo seconded and the motion passed unanimously.

Chair Walliser mentioned a study is currently being conducted by the DEP and the Army Corps of Engineers in Bradford County for GP3 and countywide permits to address stream cleaning permits. Mr. Hess added the study examines stream structure to establish a baseline. Chair Walliser suggested someone from Bradford County or from the DEP could provide Council with an update at a future meeting.

**Adjourn** - Chair Walliser adjourned the meeting at 3:30 p.m.