

Citizens Advisory Council Meeting – July 16, 2013

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

Citizens Advisory Council (CAC) Members in Attendance: Terry Dayton, William Fink, Walter Heine, David Hess, Janet Keim, Seth Mendelsohn, Nancy Perkins, Thaddeus Stevens, Burt Wait, Donald Welsh, R. Timothy Weston.

Call Meeting to Order: Chair Terry Dayton called the meeting to order at 10:55 a.m.

The Chairman asked for comments or corrections to the May 22, 2013, minutes. Seth Mendelsohn moved and Thad Stevens seconded the motion to approve the minutes as presented. The motion passed unanimously.

Chair Dayton asked for a motion to accept two resolutions to recognize the contributions of former CAC members Gail M. Conner and Jolene Chinchilli. Tim Weston moved and Bill Fink seconded the motion. The motion passed unanimously.

On behalf of Council, Chair Dayton thanked summer legal interns, Monica Adams (Widener Law School) and Peter Lyle (Duquesne Law School), for their pro bono service to the CAC Legislative and Public Participation Committees in May, June and July.

The Chairman announced an agenda revision. Tom Callaghan, Director of the Bureau of Mining Programs presentation on the CONSOL Long Wall Mining Impact Determination, has been cancelled.

Public Comments: There were five members of the public who spoke to Council.

League of Women Voters: Roberta Winters read a statement praising former and present Council members and expressing gratitude to Council for being receptive to the League's comments. She also reported on the League's Great Lakes Ecosystem Position and their interest in several topics on the meeting agenda. Ms. Winters also stated that the League applauds CAC member David Hess for leading CAC's outreach to gather ideas to improve public participation. She requested that the Department provide options and protocols in the event of power shortages, computer glitches, weather conditions or other unforeseen events that may negatively impact citizens' ability to provide input within set deadlines.

Schmidt and Company: Steve Kunz, Senior Ecologist with Schmidt and Company noted that DEP's July report to CAC indicates new field work by the Act 54 Report contractor. Mr. Kunz believes that the Act 54 Five-Year report should not be conducting new field work, but should be analyzing data that has already been compiled by the department. He indicated that prior to the meeting he received an explanation from the Department that the field work being conducted is only spot checking DEP data. Mr. Kunz agreed spot checking was appropriate, but reminded Council that a problem with the previous two Act 54 Reports was that the preparers took it upon themselves to collect new information. Mr. Kunz asked if the current Five-Year Plan work plan had been revised to address some concerns he raised from previous reports. Mr. Kunz also

suggested a presentation at the September CAC meeting to provide an update on the current Five-Year Plan development and a review of work plan revisions. Mr. Kunz suggested that CAC should review if special protection waters in Pennsylvania actually receive special protection from the department's regulatory programs. He noted various general permits and waivers and suggested special protection waters are treated no differently than ordinary waters.

Sierra Club: Jeff Schmidt, Director of the Sierra Club, PA Chapter, thanked the Department for scheduling a productive discussion between DEP laboratory staff and a coalition of environmental groups regarding the water testing protocols of wells that are suspected of being polluted by oil and gas drilling activities. He noted that the 25 individual determinations of wells that were contaminated by oil and gas drilling activities (information included in an April 2013 letter from Secretary Krancer) was actually 161 separate determinations as established by a Right-To-Know request submitted by the *Scranton Times Tribune*. He also expressed concern that the new acting secretaries for DEP and DCNR don't have any direct experience in the agency or programs that they oversee. Dave Hess suggested the resumes be reviewed again by the Sierra Club as Acting Secretary Ellen Ferretti had managed environmental programs for many years and Secretary Abruzzo has practical experience as a Derry Township Supervisor dealing with a number of DEP programs.

Clean Air Council: Matt Walker, Communications Director for the Clean Air Council thanked the CAC for taking initial public input on DEP's proposed changes to the public participation process. Mr. Walker expressed concern regarding air quality general permits (GP-5) because there is no opportunity for public comment.

Center for Coal Field Justice: Joanne Kilgour, Legal Director of the Center for Coal Field Justice in Washington, PA. Ms. Kilgour stated that she was attending the CAC meeting only to hear the presentation by Tom Callaghan on the subject of CONSOL Long Wall Mining Impact Determination. She expressed concern that it was removed from the agenda without notice and she requested more notice for future agenda changes. Marge Hughes apologized for those attendees who travelled for this presentation and noted this agenda change had been posted on the website where the CAC agenda is posted as soon as she was aware that the presentation was cancelled.

PA Costal Zone Program: Don Benczkowski, Environmental Group Manager, DEP Interstate Waters Office, gave a detailed presentation on the program goals, funding, projects (Lake Erie and Delaware River estuary) and grants as well as the proposed Lake Erie Zone boundary expansion. He responded to questions regarding program consistency and regulatory implications.

State Review of Oil and Natural Gas Environmental Regulations (STRONGER): Jim Erb, STRONGER Administrator, reviewed the history and goals of this multi-stakeholder collaborative effort to: benchmark state regulatory programs; develop recommended state program guidelines; establish a review process; and to evaluate state regulatory programs against those guidelines. He noted that the Pennsylvania oil and gas program is currently under review and he anticipates the PA final report to be issued in September or October 2013. This review was requested by the state because of the new oil and gas program law and regulations.

Water Topics: Lisa Daniels, Director for the Bureau of Safe Drinking Water provided a State Water Plan update. She noted Act 220 requires a five year review of the Plan, and the five-year date for triggering that review is February 2014. She explained the Act is not specific regarding the scope of the update, and the program is seeking persons interested in serving on the Potomac and Ohio Regional Committees. She also reviewed the preparation of three Critical Area Resource Plans (CARP); one in the Potomac Basin and two in the Ohio Basin. She noted that there were four watersheds placed on a “watch list” for potential future action- the Little Lehigh Creek and Brodhead Creek in the Delaware Basin, and Sugar Creek and Spring Creek in the Upper/Middle Susquehanna Basin. Looking ahead, Ms. Daniels anticipates exploring amendments to Act 220, completing the three CARPs, implementing the public process for Laurel Hill Creek/Back Creek Plans, completing the regional committee re-nominations and approval process, developing, in coordination with PEMA, a DEP Drought Emergency Response Plan, and updating the water use reporting policies and practices to require the reporting to DEP of daily values on a monthly basis. She explained that this information would provide a better basis for water use analysis, especially during times of drought/low flows. The program is also looking into ways to improved public access to water use data and CAC’s ideas were solicited along with nominations to the regional committees.

Ms. Daniels noted the Department’s long standing support for private water well construction standards and their concern that without properly sited and constructed wells, individual water well contamination can spread between aquifers.

Department Report: Daniel Lapato, Deputy Director for the Office of External Affairs, addressed the CAC on behalf of Holly Cairns. Mr. Lapato informed CAC of several funding opportunities currently open to the public, including the Small Business Advantage Grant, the Alternative Fuels Incentive Grant and rebate program for the purchase of alternative fuel vehicles. He indicated that the DEP budget for the 2013 fiscal year was considered straightforward with no DEP layoffs or furloughs. He was not aware if DEP lost any vacancies with the new budget and offered to get back to Council with that information. Mr. Lapato reported that the 40-hour work week concept has been tabled for at least a year.

CAC Committee Reports:

Oil & Gas Technical Advisory Committee: Burt Waite reported on the Oil & Gas Technical Advisory Committee (TAB) regarding their Chapter 78 regulations review. These proposed regulations are scheduled to go to EQB on August 20, 2013. TAB has formed four workgroups and scheduled a series of three two-day public meetings to discuss public resource protection, pre-hydraulic fracturing assessment, well site waste management and water supply restoration standards.

Legislative Committee: Peter Lyle provided a report on the proposed legislation he has reviewed along with a status of each bill.

Policy & Regulatory Oversight Committee: Nancy Perkins reported on a June 21st Committee conference call with the Bureau of Air Quality to review the final Title V annual emission fee rulemaking. By motion, Ms. Perkins moved that Council support moving this final

rule along to EQB for action and that the Bureau of Air Quality be encouraged to continually look for every opportunity for program cost reductions through efficiencies in program administration or reductions in regulatory requirements in future rulemakings. Bill Fink seconded the motion. Tim Weston abstained from the vote. The motion passed.

Public Participation: David Hess reported on a July 1st Public Participation Committee call during which Monica Adams reviewed the draft Permit Review Public Participation Policy. Mr. Hess invited members to comment on a draft letter circulated prior to the meeting and prepared by the Committee for consideration by Council. The draft letter includes general comments on the importance of public participation, as well as recommendations regarding substantial changes to an application, access to the file and extension of the public comment period. Comments also address the addition of web based public hearings which should supplement, not be a substitute for, an in-person public hearing.

Council members noted the value of public hearings during which local residents often provide site specific information to the Department and provide a more complete picture for DEP's review of the submission. Thad Stevens suggested that during the public hearing or as part of the recommended companion piece to this Policy (a simple easy-to-understand brochure designed to inform the public how and when they can be part of the permit process, the resources available to them, and the key times for input) DEP also cover the Department's authority to require changes to a project, or lack of authority to deny a permit if the application meets all regulatory requirements. It is misleading for the Department to seek public comment if those comments would have no impact or standing in the permit review. Tim Weston thanked the Committee for their review and moved that the comment letter be revised based on Council's discussion and sent to the department prior to the July 22nd comment period closing date. Janet Keim seconded and the motion passed unanimously.

CAC Executive Director's Report: Marjorie Hughes distributed copies of a map she intends to include with her letters to the CAC appointing authorities providing information on the existing CAC member distribution across the state. She reported that she has been invited to speak to two advisory committees, DCNR's Advisory Committee and the DEP Small Business Assistance Compliance Advisory Committee on Council's public participation efforts. Ms. Hughes also requested CAC members review their biographies posted on the CAC website to see if all the information is correct and current.

New/Unfinished Business: Ms. Hughes reminded Council that that on September 17th the Environmental Justice Advisory Board (EJAB) would like to meet jointly with CAC. Suggested topics for the joint portion of the meeting include public participation, a Department of Health speaker on health equity and the Right-to-Know Law. Suggestions for other agenda ideas included the STRONGER review of PA's program and the department's response; update on meeting the Bay program goals; and data on hydraulic fracturing and water well impacts.

Adjourn: The meeting was adjourned at approximately 2:30 pm.