

**MINUTES**  
**CITIZENS ADVISORY COUNCIL MEETING**  
**May 21, 2014**

**CITIZENS ADVISORY COUNCIL MEMBERS PRESENT:**

Terry Dayton (Chairman), Greene County  
Cynthia Carrow, Allegheny County  
David Hess, Dauphin County  
William Fink, Bedford County  
Thaddeus Stevens, Tioga County  
Seth Mendelsohn, Dauphin County  
John Walliser, Allegheny County  
R. Timothy Weston, Cumberland County

**CITIZENS ADVISORY COUNCIL STAFF PRESENT:**

Michele Tate, Executive Director

**CALL TO ORDER:**

Chairman Terry Dayton called the meeting to order at 10:03 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

**CHAIRMAN DAYTON'S REPORT TO COUNCIL:**

Chairman Dayton announced that due to a lack of a quorum at the meeting, Council could not take official action on several agenda items.

Chairman Dayton announced the availability of Council's 2013 Annual Report, which was distributed to all Council members present at the meeting. It was noted that the annual report would be distributed to the Governor, DEP Secretary Abruzzo and the PA General Assembly, as statutorily required by Act 275 of 1970. The annual report will also be distributed to other important stakeholders and will be posted on Council's website. Chairman Dayton thanked Marjorie Hughes, Council's former Executive Director, for her efforts in developing the annual report.

Chairman Dayton thanked Council and Duane Mowery, Chairman of the Department's Sewage Advisory Committee, for its collective efforts in drafting a letter to Secretary Abruzzo in which the CAC identified the Act 537 Sewage Planning and Management program as a priority for Departmental review and action in 2014. Chairman Dayton noted the letter, which was drafted in response to concerns expressed by members of the Department's Sewage Advisory Committee and Council members themselves, would be provided to Secretary Abruzzo at today's Council meeting and would be posted on the CAC's website. The letter will also be provided to members of the Sewage Advisory Committee. Chairman Dayton noted that the letter stressed Council's recommendation that the Department in the short term examine its current policies and procedures to facilitate the use of additional proven alternate technology in the onlot sewage planning phase and in the long term to comprehensively examine the Act 537 program as a whole to, among other things, integrate sewage planning with other water-related planning programs. Council also noted pending regulations the Department has drafted to update 25 *Pa Code* Chapters 71, 72, and 73, and urged for their progression given that the sewage disposal program and its associated regulations have not been updated in nearly 20 years.

Chairman Dayton asked for comments from Council on the draft brochure and fact sheet that Holly Cairns disseminated for Council's input at the April 15, 2014, CAC meeting. The draft brochure and fact sheet provide information concerning water supply replacement and subsidence damage repair and the rights and responsibilities of underground coal mine operators, DEP and the public under Act 54. Michele Tate noted to Council that Steve Kunz with Schmid and Company Inc. provided comments to Council on the documents on behalf of the Citizens Coal Council. She further noted that if Council had any additional comments on the documents to provide those to her by email.

Chairman Dayton noted that the Ad Hoc Act 54 Mine Subsidence Report Review Committee would be scheduling a meeting in the near future with Department staff from the California District Mining Office to discuss the draft Act 54 report, which covers the years of 2008-2013. He noted that the Committee had received the report, but that the report is in a draft state and cannot be shared publicly at this time. Chairman Dayton noted that the committee would report its observations and recommendations on the draft report to Council at its next meeting on June 17, 2014, where Council would take action on the draft report. He further noted that any member of Council who was interested in reviewing the report may do so by contacting Michele Tate.

Chairman Dayton announced the appointment of a new member to Council. He stated that John Over was recently appointed to Council by Speaker of the House Sam Smith. Mr. Over's term on Council will be effective through January 17, 2017.

**DEP RECOMMENDED FRAMEWORK; SECTION 111(D) EMISSIONS GUIDELINES ADDRESSING CARBON DIOXIDE STANDARDS FOR EXISTING FOSSIL FUEL-FIRED POWER PLANTS:**

Vince Brisini, DEP Deputy Secretary for Waste, Air, Radiation and Remediation presented an overview of the Department's recently released white paper, which identifies a suggested framework for consideration by the federal Environmental Protection Agency for achieving lower carbon dioxide emissions from existing fossil fuel-fired electric power plants. The EPA, as part of President Obama's Climate Action Plan, is expected to announce its regulatory proposal for existing power plants in June 2014, with a final rulemaking anticipated by June 2015. Deputy Secretary Brisini explained that Pennsylvania's proposal emphasizes the importance of flexibility and state discretion in meeting targeted reduction goals and provides a path that will not only prevent harm to the economies of Pennsylvania and the nation, but will actually provide incentives to improve these economies. He stressed that Pennsylvania's proposal is based on three fundamental principles, including (1) using Section 111(d) of the Clean Air Act to establish emissions guidelines; (2) changing the New Source Review Applicability Test to remove obstacles to the installation and operation of efficiency projects; and (3) providing opportunities for system-wide compliance demonstrations, trading, and banking, without the use of allowances.

After Deputy Secretary Brisini's presentation, Council discussed a number of topics related to the presentation, including the feedback the Department has received from industry and other stakeholders on the white paper, the efficiencies power plants could implement to lower carbon dioxide emissions, the baseline year from which all reductions will be evaluated, and whether certain fuel or electric generating sources, such as coal refuse and coal bed methane, should be excluded or exempted under a Section 111(d) program to reduce carbon dioxide emissions.

**OVERVIEW OF DEP'S OFFICE OF EXTERNAL AFFAIRS:**

Katie Hetherington-Cunfer, the newly appointed Director of the Department's Office of External

Affairs, introduced herself to Council and explained the overall priorities and mission of her office. She emphasized her willingness to help both industry and citizens of the Commonwealth with environmental issues or concerns and noted that she would like to be the “first point of contact” within the Department to resolve problems raised by the public.

**DEP REPORT TO COUNCIL:**

Prior to Secretary Abruzzo’s report to Council, Chairman Dayton presented both the 2013 CAC Annual Report to him as well as the letter written by Council identifying the Act 537 Sewage Planning and Management Program as a priority for review by DEP. Secretary Abruzzo thanked Council for its comments concerning the Act 537 program and stated that he would review Council’s letter and provide feedback on the recommendations contained in it.

In his report to Council, Secretary Abruzzo first elaborated on the recently released Oil and Gas Annual Report. He noted that the report is the first of its kind by DEP and will now be issued annually by the Department to highlight the work of DEP’s Oil and Gas Program. Highlighted in the report is information on program structure and processes, permitting, inspections, compliance and enforcement, regulatory and policy developments, and program innovations. He also noted that a video highlighting clips of DEP staff while conducting work under the Oil and Gas Program was also released and is available on the Department’s website.

With respect to the Department’s Oil and Gas Program, Secretary Abruzzo also commented on the status of the Environmental Quality Board’s proposed rulemaking on Environmental Performance Standards at Oil and Gas Well Sites. He noted that a summary of the public comments received on the proposed rulemaking would be discussed at the upcoming June 26, 2014, meeting of the Oil and Gas Technical Advisory Board and that the Department hopes to finalize the rulemaking by the end of 2015.

In other matters, Secretary Abruzzo discussed the Department’s finalization of the Community Environmental Projects Policy, which provides protocol for the Department’s acceptance of Community Environmental Projects in lieu of a portion of penalty assessments. The final policy and accompanying Comment and Response document were advertised for availability in the April 19, 2014, issue of the *Pennsylvania Bulletin*. Secretary Abruzzo stated that he would like to receive input from Council on how to identify projects across the state that may be viable options under the protocols included in the policy. In response, Council suggested other avenues the Department could utilize in order to identify projects, including working with its Regional Community Outreach Coordinators to determine what projects may be appropriate. Other suggestions included advertising the availability of a database where community groups and other interested parties could directly input information about their projects. It was noted that such a database would need to be updated every six months to ensure the projects in the database are current.

Secretary Abruzzo updated Council on a lawsuit filed by the Pine Creek Valley Watershed Association, Ray Proffitt Foundation and the Delaware Riverkeeper Network against the U.S. Environmental Protection for EPA’s failure to take action on Act 41. Act 41 was signed into law in 2013 by Governor Corbett and amended the Pennsylvania Sewage Facilities Act (Act 537) by establishing that individual on-lot sewage systems and community on-lot sewage systems, when designed and approved in accordance with Act 537 and its regulations, satisfies the antidegradation requirements of the Clean Streams Law. The lawsuit claims that in passing Act 41, Pennsylvania revised its antidegradation regulations and policy and therefore needed to follow

certain steps to ensure that the revisions would not adversely affect water quality, including receiving approval from EPA on the enacted changes. Secretary Abruzzo noted that DEP has been in contact with EPA who has advised that they do not believe Act 41 changed or imposed new antidegradation requirements in Pennsylvania and that Pennsylvania's program continues to meet federal Clean Water Act standards. Secretary Abruzzo noted that EPA will be filing a response to the lawsuit, which was filed in the U.S. District Court, Eastern District of Pennsylvania, in the coming weeks. He noted that he would continue to update Council on any new developments associated with the lawsuit.

Secretary Abruzzo noted that the Department recently testified before the U.S. House of Representative's Transportation and Infrastructure Committee on a proposed rulemaking by EPA and the U.S. Army Corps of Engineers that clarifies the types of water protected under the federal Clean Water Act. He noted that he believes the proposed rulemaking will have little effect on Pennsylvania's programs because the state's water quality programs already exceed minimum federal requirements. He noted that the deadline to submit comments on the federal rulemaking is July 21, 2014, and that the Department could provide more detailed information about the proposed rulemaking at a future Council meeting.

Secretary Abruzzo advised Council on a recent U.S. Supreme Court decision that reversed a lower court's vacature of the Cross-State Air Pollution Reduction Rule (CSAPR). As background, he explained that the EPA had promulgated CSAPR in 2011 to replace the Clean Air Interstate Rule (CAIR); however, CSAPR was challenged on the grounds that EPA did not follow the Clean Air Act properly in developing and implementing the rulemaking and was struck down in 2012. Currently, CAIR is being implemented in Pennsylvania. With the Court's recent decision, he noted that CAIR was not repealed and that CSAPR was remanded to the lower court for further proceedings. Secretary Abruzzo noted that at this time it is premature to speculate on the impact the Supreme Court's recent rulemaking will have on Pennsylvania's program but stated that EPA is reviewing the Supreme Court's decision and has noted that no immediate action from states or affected sources is expected. Secretary Abruzzo stated that the Department will continue to monitor this topic closely and will update Council on any new developments.

Lastly, Secretary Abruzzo updated Council on DEP's recent Growing Greener Grant announcement. He announced that DEP is accepting applications for Growing Greener grants for watershed protection and abandoned mine drainage projects and that a total of \$16 million is available through the program. He also noted that the PA Energy Development Authority is expected to have about \$10 million available to help fund alternative and clean energy projects this year and will be soliciting proposals in the near future.

### **PUBLIC COMMENTS:**

#### **Stephen Kunz, Schmid and Company, Inc.:**

Stephen Kunz, with Schmid and Company, Inc., provided comments to Council on the draft revised brochure the Department developed on citizens' rights and responsibilities under Act 54. Mr. Kunz prefaced his comments by noting that he prepared the comments on behalf of the Citizens Coal Council. He noted that while such a brochure will help landowners understand their rights and responsibilities, he believes additional details need to be added to it. He noted several points, including that it should be clarified in the brochure that the document is applicable to all types or methods of underground coal mining, not just longwall mining; the brochure should include information on the consequences a landowner will encounter if they enter into a private

agreement for damage resolution with a mine operator; and that the brochure should include information clearly stating that landowners should carefully review the pre-mining surveys and advise the mine operator and DEP about any discrepancies or inaccuracies in the survey.

**Matt Walker, Clean Air Council:**

Matt Walker, Outreach Director for the Clean Air Council, provided comments on the Department's white paper for implementing the carbon rule and the Department's recently released Emissions Inventory for Marcellus Shale natural gas operations in Pennsylvania. Concerning the white paper, Mr. Walker noted the Clean Air Council's concern that the Department's plan as it stands will not be enough for reducing carbon pollution. He emphasized Council's concerns about the white paper, including system-wide averaging and the fact that coal waste facilities would be exempt under the Department's plan. He also stressed that companies should gain credits for renewable energy and energy efficiency within their fleet if they cannot meet the reduction standard. Concerning the Emissions Inventory, he noted that Council believes that companies may have significantly under-reported emissions and that the Department's reliance on using data that is self-reported from gas companies can result in inaccuracies and the misrepresentation of emissions data. Mr. Walker also asked the Department to explain discrepancies it found in the Department's inventory, whereas DEP provided information for 400 compressor stations, while data the Council obtained shows that approximately 700 compressor stations or processing facilities associated with shale gas operations currently operate in Pennsylvania and should have reported emissions data. Council questioned how the air pollution from these missing compressor stations might change the overall emissions totals for the state.

**Bonita Hoke, PA League of Women Voters:**

Bonita Hoke, Executive Director of the League of Women Voters of Pennsylvania, expressed support for the EPA's proposed standards for both new and existing power plants and urged the Department to look for incentives rather than flexible guidelines to accelerate pollution control under the proposal. The League also called upon the Department to address the loss of methane from natural gas operations and other sources and noted that methane is 34 times stronger than carbon dioxide as a heat trapping gas over a 100-year timeframe. She noted the League's hope that the natural gas emissions inventory will provide the public and policy makers with the data needed to guide decision-making in this critical area. She further suggested that the Department provide ongoing air-quality monitors in known regions of such emissions so that cumulative impacts can be accessed and noted that emissions data should be reported in meaningful ways beyond averages, such as range, medians and specific time intervals of exposure to accurately access public health impacts.

**Robert Altenburg, PennFuture:**

Robert Altenburg, Senior Energy Analyst with PennFuture, noted that while the Department's white paper on the Section 111(d) program is a positive sign that the Department is willing to determine how best to control emissions from existing fossil fuel-fired electric power plants, he stressed that any gains won may be easily erased if the Department doesn't address the issue of methane leakage. He provided statistics from the EPA that show that 29% of the methane emissions nationwide are coming from the oil and gas sector, but noted that the EPA may be significantly underestimating the global warming potential of methane. He pointed out current efforts by the Department relating to leak detection and repair for methane, including provisions in Exemption 38 and GP-5, but noted gaps in their coverage which may hamper their overall effectiveness. He pointed to the state of Colorado, which recently declared in its new Regulation 7 that hydrocarbon emissions, including methane and ethane, are subject to state regulations and

urged Council to be cognizant of methane issues as it advises the Department from both programmatic and regulatory development perspectives.

**Joanne Kilgour, Sierra Club (Pennsylvania Chapter):**

Joanne Kilgour, Director of the Sierra Club of Pennsylvania, noted the Sierra Club is pleased that Pennsylvania is in agreement with EPA that Section 111(d) of the Clean Air Act is the appropriate section under which to regulate carbon dioxide from power plants, but noted that it had concerns with the Department's white paper. Chief amongst those concerns include that electric generators using coal refuse and coal bed methane would be exempt under Pennsylvania's plan, and the Department's proposal to redefine the New Source Review provisions to be based on emissions rates rather than total emissions.

**2012 NATURAL GAS EMISSIONS INVENTORY:**

Dean Van Orden, Assistant Director of the Department's Bureau of Air Quality, provided an overview of the 2012 Natural Gas Emissions Inventory completed by DEP. Mr. Van Orden noted that the inventory includes 2012 emissions data from Marcellus Shale natural gas production and processing operations as well as compressor stations that receive gas from traditional oil and gas well sites. To compile the 2012 inventory, he noted that DEP received data from 56 Marcellus Shale operators covering 8,800 natural gas wells and 70 operators of 400 compressor stations, which received gas from Marcellus Shale and traditional oil and gas well sites.

Following Mr. Van Orden's presentation, Council inquired why conventional operators were not included in the scope of entities required to report emissions data to the Department. Staff responded that conventional operators lack the technology required to report such emissions inventory data to the Department.

**2014 PA INTEGRATED WATER QUALITY MONITORING ASSESSMENT REPORT AND 2013 ASSESSMENT METHODS:**

Gary Walters from the Bureau of Point and Non-Point Source Management, provided a summary of the draft 2014 PA Integrated Water Quality Monitoring Assessment Report and 2013 Assessment Methods. As background, Mr. Walters noted that the assessment methods were previously published for a 60-day public comment period last year, where comments were requested for 12 new or revised protocols. He noted that comments were received by four commentators who mainly requested clarification on how or in what circumstance the methods are used. He noted that the final 2013 assessment methods were finalized and announced in the April 19, 2014, edition of the *Pennsylvania Bulletin*. Concerning the draft 2014 PA Integrated Water Quality Monitoring Assessment Report, he noted that the report satisfies the requirements of both Sections 305(b) and 303(d) of the federal Clean Water Act and contains summaries of various water quality management programs including water quality standards, point source and nonpoint source controls. The report also includes descriptions of programs to protect lakes, wetlands, and groundwater quality, a summary of the use support status of streams and lakes, and the water quality status of Pennsylvania's waters using a five-part characterization of use attainment status. Mr. Walters noted that DEP is currently accepting public comments on the draft Integrated Report until June 10, 2014.

**CAC COMMITTEE REPORTS:**

**Legislative Committee:** Cynthia Carrow reported that the Committee met by conference call on

May 1, 2014, and discussed three bills, including House Bill 1576, relating to endangered species protection, House Bill 1565, which calls for the elimination of the mandate for stream buffers in certain areas and Senate Bill 411, relating to the reuse of mine water in gas well development and other industrial uses. She noted that the Committee is continuing to monitor the bills but had no formal recommendations for Council at this time.

**Nominating Committee:** Cynthia Carrow reported that the Nominating Committee had secured the interest of two members to respectively serve as Chair and Vice-Chair of Council. She noted that Michele Tate would circulate the names of the candidates by email to Council prior to the next meeting and that Council would vote on these nominees, as well as members to serve on the Environmental Quality Board. With respect to the EQB members, Cynthia Carrow asked Michele Tate to contact the 5 Council members who currently serve on the EQB to determine their interest in continuing to serve on the Board.

**Policy and Regulatory Oversight Committee:** Tim Weston reported the Committee met by conference call on May 6, 2014, and reviewed two draft proposed Air Quality regulations, including VOC Emissions for Industrial Cleaning Solvents and VOC Emissions for Automobile and Light-Duty Truck Assembly Coatings. While the Committee recommends Council approve the regulations to move forward to the Environmental Quality Board for public comment, Council did not take action on the Committee's recommendation due to a lack of a quorum. Mr. Weston noted the Committee would report again at the June 17, 2014, meeting, so that Council could take official action on the two draft proposed rulemakings.

**Public Participation Committee:** Dave Hess reported that the Committee met by conference call on May 5, 2014, and recommended Council focus its future public participation efforts on revisiting a previous report from 2004 that identified a number of recommendations to the Department to enhance its working relationships with its various advisory committees. It was noted that a number of recommendations in that report are still valid and should be revisited in order to provide recommendations to the Department on how it can better utilize its advisory committees.

The Committee also discussed plans for Council to directly solicit feedback from the Department's advisory committees on how they are being utilized by the Department. This would involve a two step-process, including first asking each of DEP's advisory committees a short series of questions about how DEP could better utilize their expertise, how well is the committee supported by DEP in getting timely agendas and meeting packages posted and their ideas for improving the Advisory Committee Guidelines, and second, inviting Chairs of the advisory committees as a group in the fall to review the information received from the questionnaires with Council and develop final recommendations for the Department. The tentative schedule for these steps is providing the questionnaire in September for advisory committee responses, convening the meeting with the advisory committee chairs in October, and supplying final recommendations to Council at its November meeting. Due to a lack of a quorum, Council did not take formal action on the Committee's recommendations.

#### **EXECUTIVE DIRECTOR REPORT:**

Michele Tate announced that the Department is soliciting ideas on ways to improve its monthly report to Council. She noted that if any members of Council have suggestions on either the form or content of the report to provide those recommendations to her by email.

**NEW/UNFINISHED BUSINESS:**

Chairman Dayton as well as Council noted that they did not have any new or unfinished business to discuss.

**ADJOURN:**

With no further business, Chairman Dayton requested a motion to adjourn the meeting. Seth Mendelsohn motioned to adjourn the meeting, which was seconded by Thaddeus Stevens. The May 21, 2014, Council meeting was adjourned at 2:12 p.m.