

**MINUTES**  
**CITIZENS ADVISORY COUNCIL MEETING**  
**July 15, 2014**

**CITIZENS ADVISORY COUNCIL MEMBERS PRESENT:**

Terry Dayton (Chairman), Greene County  
Cynthia Carrow, Allegheny County  
Walter Heine, Cumberland County  
David Hess, Dauphin County  
Burt Waite, Crawford County  
Janet Keim, Lehigh County  
Thaddeus Stevens, Tioga County  
John Over, Fayette 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 10:05 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 noted his appreciation of Denny Garman who allowed CAC members to tour his farm in Carlisle, PA, in order to observe first-hand the best management practices that are being implemented by farmers throughout Pennsylvania to reduce environmental impacts from their operations. Speaking on behalf of Council, he noted how informative the tour was and stated that a video of the tour is available on Council's website.

Given the success of the tour and positive feedback received from Council members, Chairman Dayton asked for suggestions on additional site visits or tours Council members may be interested in taking in the future.

**APPROVAL OF JUNE 17, 2014, MEETING MINUTES:**

Chairman Dayton asked for a motion to approve the June 17, 2014, Council meeting minutes.

**Burt Waite motioned to adopt the June 17, 2014, meeting minutes as presented to Council. Seth Mendelsohn seconded the motion, which was unanimously adopted by Council.**

**PENNSYLVANIA NATURAL DIVERSITY INVENTORY ENVIRONMENTAL REVIEW TOOL; PROPOSED ENHANCEMENTS:**

Ellen Shultzabarger with the Department of Conservation and Natural Resources (DCNR), Division of Conservation Science and Ecological Resources presented information to Council on a number of enhancements that will be made to the Pennsylvania Natural Heritage Program's (PNHP) Pennsylvania Natural Diversity Inventory Environmental Review Tool (PNDI ER Tool). She explained that the current PNDI ER Tool was launched in 2005 as a web-based tool to screen

projects for potential impacts to rare, threatened, and endangered species, special species of concern and other ecological resources. She noted that a number of enhancements are needed to the tool to modernize it because it is based on aging technology. Ms. Shultzabarger stated that NatureServe was selected by DCNR as the contractor that will be making the upgrades to the tool. Those upgrades will include enhancements to improve user interface, to combine planning and review functions, and to provide visual information regarding species habitats, with the overall goal of better meeting tool users' needs, while also maintaining the protection of species and their habitats. She noted that changes to the tool are being led by DCNR and its PNHP partners, with feedback and input solicited by DEP, tool users and other stakeholders. She invited Council's comments on enhancements to the tool and noted that work would continue on the system throughout the remainder of 2014, with the goal of finalizing the new tool in early 2015. When completed, Ms. Shultzabarger noted that the updated tool will be the most advanced of its kind in the United States. Following the presentation, Council members discussed the costs associated with the upgrade of the tool, how the tool will result in efficiencies for DCNR, and the importance of providing training for end-users of the new tool.

### **DEP REPORT TO COUNCIL:**

DEP Secretary Chris Abruzzo provided a report to Council in which he elaborated on the recent enactment of the Commonwealth's Fiscal Year 2014-2015 budget, which included an increase of an additional \$11.5 million to DEP, bringing the agency's overall budget to over \$139 million. He noted that the increase in funding to DEP represents the largest increase to the agency since 2009. He also stated that he would continue to advocate for additional funding to the Department, given the critical nature of the Department's work and would strategically increase complement were staff are needed the most in the agency. He mentioned two line item vetoes that were enacted by Governor Corbett that impacted DEP's budget. Those included the elimination of \$150,000 from the Environmental Program Management account to support a study on the effects of natural gas drilling, and the elimination of \$700,000 in Sewage Facilities Planning Grants that were legislatively earmarked for specific projects. Concerning the elimination of funding to support the natural gas drilling study, Secretary Abruzzo explained that funding was appropriated in the agency's budget last year for the study and that the funds were not spent. He also mentioned the additional funding allocated to the Dirt and Gravel Road Program, which came as a result of the Transportation Funding Bill that was passed by the General Assembly and signed by Governor Corbett earlier this year.

In other developments, Secretary Abruzzo updated Council on a number of bills the agency is monitoring including legislation to amend the state's nuclear fees, a bill that would establish water well construction standards in the state, and legislation that proposes to instill flexibility on the now mandatory use of riparian buffers under the state's Chapter 102 Erosion and Sediment Control regulations. He also provided details on the Commonwealth's Fiscal Code bill which was passed by the General Assembly as part of the budget. In the Fiscal Code bill, he noted certain provisions were included that require the Environmental Quality Board (EQB) to establish separate environmental regulations for conventional oil and gas wells and unconventional gas wells. As a result, DEP is now required to substantively change the format of the proposed Chapter 78 regulations into two distinctive parts, including Chapter 78 which will cover conventional wells and Chapter 78a which will cover unconventional wells. Secretary Abruzzo noted that the required format change to the proposed Chapter 78 regulations will delay the finalization of the regulations by several months. Hayley Book, DEP Policy Office Director, also noted with regard to the proposed Chapter 78 regulations that the Department will advertise an Advanced Notice of Final Rulemaking (ANFR) in early 2015 to solicit public comments on the

proposal, including the substantive changes proposed to the rulemaking in response to the public comments the EQB received on the proposal.

In his closing comments to Council, Secretary Abruzzo invited Council and the Sewage Advisory Committee (SAC) to appoint members to serve on a workgroup that would collectively work with the Department to identify and overcome impediments in the Commonwealth's Act 537 sewage planning and management program that currently restrict the use of alternative technologies in the on-lot sewage planning phase of development. This issue as well as the comprehensive review of the Act 537 program and planning process was earlier identified by Council as top short-term and long-term goals for the Department to address in 2014.

**Dave Hess moved that Thad Stevens, Tim Weston and Janet Keim be appointed to represent the CAC on a workgroup with DEP staff and select members of the SAC to identify options for the use of alternative technologies in the on-lot sewage planning phase of development under the Commonwealth's Act 537 program. John Walliser seconded the motion, which was unanimously passed by Council.**

### **PUBLIC COMMENTS:**

***Bonita Hoke, League of Women Voters of Pennsylvania:*** Bonita Hoke, Executive Director of the League of Women Voters of Pennsylvania, provided comments to Council in which she stressed the importance of the accuracy and credibility of the PNDI ER-Tool as a mechanism for the public to search for and identify potential project impacts. She also emphasized the important role DEP must play in ensuring comprehensive environmental reviews are completed of projects. Ms. Hoke noted the League's strong opposition to the additional leasing of the Commonwealth's state forest and park lands for oil and gas development under Executive Order 2014-03 and urged DEP to take a leadership position in regulating methane emissions, which pose as a significant contributor to climate change, given that methane is more than eighty times as potent as carbon dioxide over a twenty-year timeframe.

### **ENERGY EFFECTS OF EPA'S PROPOSED CLEAN POWER PLAN:**

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided an update to Council on EPA's proposed Clean Power Plan rule and its impact on existing Pennsylvania coal-fired power plants. Deputy Secretary Brisini explained that the proposed regulations seek to reduce carbon dioxide emissions from the power sector by 30% nationwide from 2005 levels. To reach this goal, EPA established state-specific emissions goals that require states to lower the overall carbon intensity of their respective power sector by 2030. He noted that despite EPA's claim that states will have maximum flexibility in choosing measures and tools that reflect each individual state's circumstances and policy objectives, the EPA's proposal in essence forces states to develop individual Energy Plans, including renewable energy portfolios and demand-side energy efficiency measures. Deputy Secretary Brisini also stated that EPA's proposal prevents Pennsylvania from taking credit of the significant carbon dioxide (CO<sub>2</sub>) emission reductions it previously achieved because the proposed emission reduction goals for each state are established using 2012 emissions rates as the baseline.

Under EPA's proposed rule, Deputy Secretary Brisini said Pennsylvania would be compelled to reduce its CO<sub>2</sub> emissions by 31% from 2012 levels using reduction contributions from the redispatch of natural gas and additional nuclear power, renewable energy, energy efficiency programs, and coal-fired heat rate improvements. He also noted that EPA projects coal

consumption for electricity generation will fall in Pennsylvania from 43.4 million tons in 2005 to 10.5 million tons in 2030. After Deputy Secretary Brisini's presentation, Council discussed the importance of the baseline year in which CO<sub>2</sub> reductions would be evaluated against under the rule and whether Pennsylvania, due to economic considerations, would see a reduction in electricity-based coal consumption regardless of EPA's rulemaking. Deputy Secretary Brisini responded that if natural gas continues to be substituted for coal in electricity generation and if the price of natural gas remains constant, he believes coal consumption in the state will decline to approximately the same levels as EPA has estimated, regardless if EPA's regulatory proposal is finalized.

### **DEP UPDATE ON ANALYSIS OF ROBINSON TOWNSHIP, ET AL v. COMMONWEALTH:**

Dennis Whitaker, DEP Chief Counsel, provided an update to Council on the analysis the Department is conducting in response to the Pennsylvania Supreme Court's decision, *Robinson Township, et al. v. Commonwealth*, which overturned key provisions of Act 13, including ruling that some portions of the Act are unconstitutional and a violation of Pennsylvania's Environmental Rights Amendment, as provided in Article 1, Section 27 of the Commonwealth's Constitution. Mr. Whitaker explained that DEP has formed workgroups in each of its program areas and has developed a checklist to evaluate what, if any, impacts the Supreme Court's decision may have on Departmental regulations and permit actions. He noted, however, that since the Act 13 decision was based only on a plurality vote of the justices on the PA Supreme Court, the prevailing opinion in *Payne v. Kassab* still remains the leading case and the standard to which cases seeking interpretation of the Environmental Rights Amendment are evaluated. Mr. Whitaker said that he anticipates the Department will complete its analysis in September and that he would be happy to return to Council in the fall to discuss the progress of that analysis. Upon questions raised by Council, Mr. Whitaker confirmed that several cases have been appealed to the Environmental Hearing Board in which the defendants are using the decision rendered in *Robinson Township, et al. v. Commonwealth* as part of their appeal.

### **CAC COMMITTEE REPORTS:**

**EQB Report:** Walter Heine reported to Council that at the July 15, 2014, meeting of the Environmental Quality Board, the Board adopted the proposed Land Reclamation Financial Guarantees and Crop Bonding rulemaking for a 30-day public comment period and adopted a final rulemaking concerning amendments to the Department's Regulated Medical and Chemotherapeutic Waste regulations. He also stated that the EQB received an update from the Department on its ongoing research relating to the ionic composition of Pennsylvania's surface waters and chloride and sulfate toxicity testing.

**Advisory Committee Meeting Report:** Burt Waite, Council's representative on the Department's Oil and Gas Technical Advisory Board, stated that the Board met on June 26, 2014, and received a presentation from DEP staff on the comments the EQB received on the proposed Chapter 78 regulations. Mr. Waite noted that the Board anticipates receiving a copy of the draft final Chapter 78 regulations this fall to begin its review of the substantive changes proposed to the rulemaking. He reiterated that the Department's goal is to issue an ANFR for the rulemaking in the second quarter of 2015 for a 30-day public comment period. Mr. Waite also noted that the Board received information from DEP on concepts it is considering to amend Chapter 78, Sub Chapter D, which includes regulations associated with subsurface activities for oil and gas drilling, including well drilling and casing, well construction, and well plugging.

**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, Thad Stevens moved to adjourn the meeting. Janet Keim seconded the motion, which was unanimously approved by Council members. The July 15, 2014, meeting of the CAC was adjourned at 1:50 p.m.