

MINUTES
CITIZENS ADVISORY COUNCIL MEETING
October 21, 2014

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:

Cynthia Carrow, Allegheny County
Walter Heine, Cumberland County
David Hess, Dauphin County
Burt Waite, Crawford County
Terry Dayton, Greene County
William Fink, Bedford County
Janet Keim, Lehigh County
Thaddeus Stevens, Tioga County
John Over, Jr., Fayette County
Seth Mendelsohn, Dauphin County
John Walliser, Allegheny County
Don Welsh, Chester County

CITIZENS ADVISORY COUNCIL STAFF PRESENT:

Michele Tate, Executive Director

CALL TO ORDER:

Chairman Terry Dayton called the meeting to order at 10:09 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 provided a report to Council by elaborating on several topics. He first discussed the status of the Act 54 Report, which is being completed for the Department of Environmental Protection (DEP or Department) by the University of Pittsburgh in order to evaluate the effects of subsidence resulting from underground bituminous coal mining on surface structures, features and water resources, covering the years from 2008-2013. He noted that the report has been completed and is being reviewed by the Department. He noted that he expects the report to be released soon or prior to the end of this year.

Chairman Dayton noted that the EPA has extended the comment period deadline for the proposed Waters of the US Rulemaking to November 14, 2014. He stated that DEP had submitted comments on the rulemaking, which Council received on October 9, 2014. Given the concerns expressed by DEP in its comments on the rulemaking, Chairman Dayton noted that Michele Tate would be scheduling a conference call with DEP staff so that Council could better understand the full extent of DEP's concerns on the proposal.

Chairman Dayton also noted that EPA has extended the public comment period deadline for the proposed Clean Power Plan regulations to December 1, 2014. He reminded Council of a letter Michele Tate circulated to members that was written to President Obama by Pennsylvania and 14 other states outlining their concerns with the proposal. Council noted the valid questions raised in the letter and agreed to continue to monitor and track the EPA's progress in the development of the rulemaking.

Chairman Dayton updated Council on a regulatory proposal being developed by DEP to overcome

current regulatory impediments that restrict the consideration of alternative technologies in the onlot sewage planning phase of development under the state's sewage management program. He noted that the workgroup convened by Council and the Sewage Advisory Committee is reviewing the proposal and hopes to discuss it with DEP staff to more fully understand its scope and rationale. The Sewage Advisory Committee is scheduled to discuss the proposal at its November 5, 2014, meeting.

Chairman Dayton asked Vice-Chairman Bill Fink to discuss with Council a recent field day he attended in Hershey that was sponsored by PA 4Rs Alliance and GROWMARK FS. Vice Chairman Fink stated the purpose of the field day was to highlight promising nutrient stewardship technologies and practices that will lead to nutrient efficiency by Pennsylvania farmers and to enhance water quality in Pennsylvania's waterways and the Chesapeake Bay. He noted the event was well attended by regulatory, environmental and legislative partners and was an opportunity for the public to see first-hand the number of best management practices that are being implemented by Pennsylvania's farmers.

In concluding his comments, Chairman Dayton noted that Council has previously developed and submitted transition reports to the Department to highlight issues and recommendations for consideration by DEP. Chairman Dayton expressed that Council should consider developing a transition report, regardless of the outcome of this year's gubernatorial election, in order to recommend areas of focus for DEP over the next four years. Michele Tate noted that Tim Weston, as Chair of Council's Policy and Regulatory Oversight Committee, expressed interest in coordinating Council's efforts in developing a transition report, but emphasized that all Council members are encouraged to contribute to the report.

APPROVAL OF SEPTEMBER 16, 2014, MEETING MINUTES:

With no corrections or additions recommended by Council, Chairman Dayton asked for a motion to approve the September 16, 2014, Council meeting minutes.

Thad Stevens motioned to adopt the September 16, 2014, meeting minutes as presented to Council. Cynthia Carrow seconded the motion, which was unanimously adopted by Council.

PUBLIC COMMENT:

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 expressed the League's concern and disappointment over the recent passage of H.B. 1565, which alters the now mandatory placement of riparian buffers or riparian forest buffers in the state's special protection waterways. She noted the legislation, once enacted, will degrade the Commonwealth's pristine streams, threaten our source water, and cost taxpayers who will pay the price to insure properties that will now be susceptible to flooding and other damage. In other topics, Ms. Hoke noted that the League supports measures to reduce pollution in order to protect surface water, ground water and drinking water so that Pennsylvania can continue to make progress in meeting its Chesapeake Bay TMDL commitments. Given Pennsylvania's increase in natural gas operations and commercial agricultural feeding operations, she also noted that the League believes it is important that Pennsylvania expand its efforts to disclose other pollutants flowing into the Bay. With regard to Council's anticipated discussion on the Department's Oil and Gas Program's Compliance and Enforcement Policy, she noted that the League strongly

advocates for increased DEP staffing to identify, track and resolve oil and gas violations and emphasized that penalties must be enacted by DEP that actually deter violators. In conclusion, noting the recent legislative activity, the on-going threats to public health and welfare and the responsibilities of the Department, she asked what role DEP should be playing in providing non-partisan advisory information on legislative matters.

Joanne Kilgour, Sierra Club, Pennsylvania Chapter: Joanne Kilgour, Director of the Sierra Club, Pennsylvania Chapter, provided comments to Council in which she identified deficiencies associated with DEP's Regional Marcellus Shale Short-Term Ambient Air Sampling Reports that were conducted in 2010 and 2011. Ms. Kilgour explained to Council that the deficiencies were highlighted as a result of the depositions of two DEP air program employees, which were recently filed as part of a civil lawsuit against Range Resources in Washington County and were highlighted in a recent Pittsburgh Post-Gazette article. In the depositions, the DEP employees testified that the regional Marcellus Shale short-term air study completed in Pennsylvania's southwest region did not include measurements of key air toxics and only included the calculated health risks of just two of more than two dozen pollutants. Ms. Kilgour noted that the depositions were filed as evidence in other pending cases before the Environmental Hearing Board and the Washington County Common Pleas Court.

Ms. Kilgour stated that state regulators and industry representatives over the past four years have repeatedly used the regional studies to support their positions that air emissions from drilling, fracking wastewater impoundments, and compressor stations pose no public health risk. She also noted that despite the concerns and limitations raised about the regional studies, DEP continued to rely on them and assure the public that natural gas facilities did not pose an air quality threat to human health. She asked the CAC to request that DEP withdraw the studies – in particular the Department's 2010 Southwestern PA Marcellus Shale Short-Term Ambient Air Sampling Report and the Department's 2011 Notheastern PA Marcellus Shale Short-Term Ambient Air Sampling Report - and issue a statement alerting the public as to the reason for their withdrawal. She emphasized that these studies may have wrongly encouraged the public living near natural gas development that the air they breathe is safe and poses no health risk to them or their families.

PA WATERSHED IMPLEMENTATION PLAN (WIP) AND CHESAPEAKE BAY TMDL COMMITMENTS; AND EPA EVALUATION OF PA'S 2012-2013 AND 2014-2015 MILESTONES

Andy Zemba, Director of DEP's Interstate Waters Office, provided a presentation to Council on EPA's evaluation of Pennsylvania's progress in reducing phosphorus, nitrogen and sediment pollution as a part of the state's obligations under the Chesapeake Bay Total Maximum Daily Load (TMDL). The presentation highlighted pollutant reduction progress achieved by Pennsylvania during the 2012-2013 milestone period, which indicated that while Pennsylvania surpassed its 2013 milestone target for phosphorus, it did not achieve the 2013 milestone target for nitrogen and sediment. Mr. Zemba noted that while EPA acknowledged the reductions achieved by the Commonwealth's wastewater sector, EPA stated further progress is necessary from the agriculture sector and in improving the capacity, implementation and reporting associated with its stormwater sector. He further noted that as a result of the EPA's evaluation, the agency has downgraded the Pennsylvania agriculture sector to "Backstop Actions Level" and will further maintain "Backstop Actions Level" for the stormwater sector.

Mr. Zemba stated EPA also commented that Pennsylvania must continue efforts to review and correct data on BMPs previously reported across all sectors. Mr. Zemba emphasized that

Pennsylvania's strategy moving forward will not only be to ensure more Best Management Practices (BMPs) are implemented on the ground, but to count those BMPs that are on the ground more effectively and efficiently. To that end, Mr. Zemba discussed various ways the Commonwealth plans to improve the reporting of BMPs including working with a contractor to improve data quality and partnering with the Natural Resources Conservation Service on a geospatial data collection pilot project in the Potomac Basin.

In his closing comments, Mr. Zemba highlighted Pennsylvania's 2014-2015 milestone commitments by providing a chart to Council that contained a number of specific actions DEP and its partners will undertake. Mr. Zemba noted that EPA expects that 60% of the BMPs will be on the ground and in place in Pennsylvania by 2017.

DEP REPORT TO COUNCIL:

In response to questions posed by Council, Acting Secretary Dana Aunkst provided an update on several Departmental issues. In response to Ms. Kilgour's comments that DEP omitted certain sampling results from its regional Marcellus Shale short-term air quality studies from 2010 and 2011, Mr. Aunkst stated that the Department was developing a written response to the news article but acknowledged that the regional studies were only to be snapshots of limited scope regarding air contaminants at surveyed sites and did not represent a comprehensive study of emissions. He noted that some results were inadvertently left out of the short-term studies, but that more comprehensive results would be included in the longer-term Marcellus Shale air quality study DEP is conducting.

Mr. Aunkst also updated Council on the development of the Department's TENORM Study, which was initiated by the agency in 2013 in order to analyze the naturally occurring levels of radioactivity in materials associated with oil and gas development, production and distribution operations. He said that the draft final report is complete and will be peer-reviewed in November. He noted that he believes the report will be finalized and available to the public in December. He also noted that none of the samples collected by the agency as a part of the study triggered mandatory public health reporting or response requirements under the state's Radiation Protection Act.

Concerning comments DEP recently submitted to EPA and the U.S. Army Corps of Engineers on the proposed Waters of the U.S. rulemaking, Mr. Aunkst stated that the agency's comments on the proposal largely reflected their opposition to a "one size fits all" proposal, which they believe the proposal has been crafted into. While he acknowledged that the proposed rulemaking may not have any real or substantial impact on when water quality permits will be required in Pennsylvania because the Commonwealth's laws are broader than the proposed federal rule, he noted that DEP has significant concerns regarding the implementation of the rulemaking, in particular the additional oversight and review of state permit actions if the rulemaking is adopted as proposed.

Regarding the recent passage of H.B. 1565, Mr. Aunkst stated that the legislation would take effect 60 days after it is signed by the Governor and that the Department would be ready as necessary to implement the legislation. He noted, however, that he is uncertain at this point whether the Department would have to amend its regulations or develop technical guidance in order to implement the legislation.

In response to questions concerning the Department's pending onlot sewage regulations which are being amended to allow for the consideration of alternate systems in the planning phase of

development, Mr. Aunkst responded that a proposal had been drafted and was submitted for consideration by the Department's Sewage Advisory Committee, who will be meeting on November 5, 2014.

DEP ENVIRONMENTAL ADVOCATE OFFICE:

Kimberly Morewood, the newly appointed Director of DEP's Office of Environmental Advocate, introduced herself to Council and provided an overview of her office, including its history and the services it provides to the public who wish to be engaged in permit decisions by DEP, particularly those in prescribed environmental justice areas in the state.

STANDARDS AND GUIDELINES FOR IDENTIFYING, TRACKING, AND RESOLVING OIL AND GAS VIOLATIONS; DEP TECHNICAL GUIDANCE

3550-3000-001:

Kurt Klapkowski, Director of DEP's Bureau of Oil and Gas Planning and Program Management, provided an overview of the changes the Department is proposing to its Oil and Gas Program Enforcement Policy. He noted that the policy had not been updated since 2005 and explained that there were a number of reasons that compelled the Department to revise the policy, including the advancement of unconventional well development in Pennsylvania and the enactment of the 2012 Oil and Gas Act. He stated that the revised policy follows the Department's current policy with the exception of new sections that were added to cover topics regarding when inspections are to be conducted and when the results of those inspections are to be posted in DEP's eFACTS system. Other substantive revisions to the policy include the addition of procedures for investigating water damage complaints and additional guidance on data and reporting requirements. Mr. Klapkowski noted that the deadline for the public to submit comments to the Department on the policy has been extended to November 18, 2014. He also noted that the Department anticipates finalizing the policy prior to the end of this year.

CAC COMMITTEE REPORTS:

Public Participation Committee: Dave Hess reported that the Committee is continuing to review the Department's 1998 Advisory Committee Guidelines policy (ID #012-1920-002) in response to input it received from the survey of DEP's Advisory Committee Chairpersons. He also noted that at the conclusion of today's council meeting, the committee is hosting a roundtable meeting with DEP's Advisory Committee Chairs to discuss the survey responses more fully and to identify additional recommendations to make the Department's advisory committee process more effective.

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 adjourned the meeting at 1:07 p.m.