

**MINUTES**  
**CITIZENS ADVISORY COUNCIL MEETING**  
**June 16, 2015**

**CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:**

Cynthia Carrow, Allegheny County  
Walter Heine, Cumberland County  
Terry Dayton, Greene County  
William Fink, Bedford County  
Mark Caskey, Washington County  
Thaddeus Stevens, Tioga County  
Joi Spraggins, Philadelphia County  
John Walliser, Allegheny County  
Donald Welsh, Chester County  
R. Timothy Weston, Cumberland County  
John Hines, Lebanon 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.

**APPROVAL OF MAY 20, 2015, MEETING MINUTES:**

With no corrections or additions recommended by Council, Chairman Dayton asked for a motion to approve the May 20, 2015, Council meeting minutes.

**Thad Stevens moved to approve the May 20, 2015, meeting minutes as presented to Council. Walter Heine seconded the motion, which was unanimously approved by Council.**

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

Chairman Dayton announced that the CAC will be convening its July 21, 2015, meeting in lieu of cancelling it and meeting on August 18, 2015. While the CAC typically does not meet in August, consideration of scheduling an August meeting was discussed at the May 20, 2015, Council meeting in order to align the CAC's meeting schedule with that of the Environmental Quality Board (EQB). Michele Tate noted that she received indication from DEP that it was highly unlikely an EQB meeting in August would be scheduled. Because a number of Council members made other commitments for July 21, 2015, which would preclude them from attending the CAC's meeting, several members asked Ms. Tate to research whether Council members could participate at the July 21, 2015, meeting by conference call and whether their participation by conference call could be counted towards establishing a quorum for the meeting. Ms. Tate replied that she believes prior judicial precedent had been established that provides a meeting quorum could be established through member participation by conference call. She noted she would research the issue further, including consulting the CAC's bylaws, to determine what would be permissible as options for members to participate remotely at Council's July 21, 2015, meeting.

Chairman Dayton noted that Ms. Tate and Jennifer Swan would be assembling guidance for CAC

members on the Commonwealth's travel reimbursement policies and procedures. He noted the information is expected to better inform all Council members on the documentation and related information needed to receive timely reimbursement from the Commonwealth for travel-related expenses of Council members.

Chairman Dayton recognized Mark Caskey who provided comments on recent articles published in the Pittsburgh Post-Gazette that featured his company, Steel Nation. Mr. Caskey is president of Steel Nation, a Washington-based company that specializes in designing and constructing natural gas compression and processing plants. The Pittsburgh Post-Gazette articles were published to highlight Steel Nation's work in reducing noise emanating from the natural gas processing plants it builds in light of DEP's proposed Chapter 78 regulations. In those proposed regulations, DEP is adding requirements that all companies that drill and frack in the Marcellus Shale formation develop and follow site-specific plans to mitigate noise from well pads. Mr. Caskey noted the subjective nature associated with sound and its perceived nuisances, including that the regulation of sound is not an exact science, which could prove to be problematic as DEP attempts to establish requirements in this area through the Chapter 78 rulemaking.

In other topics, Chairman Dayton addressed the need for the CAC to establish more definitive protocols for how and when it accepts comments from the public at its public meetings so that a more fair and equitable process can be established. He noted that several individuals did not have an opportunity to state their comments to the CAC at Council's May 20, 2015, meeting because of time constraints, but that the CAC accepted the written comments of those individuals, which were posted on the CAC's website and reflected and summarized in Council's meeting minutes. Given the number of public commentators at several of Council's most recent meetings, a number of Council members expressed interest in more clearly defining the CAC's role in accepting public comments, including that the CAC only acts in an advisory capacity to DEP and the General Assembly. Based on the suggestions of several Council members, Ms. Tate indicated she would research the issues further, including determining if DEP has guidance on this issue and if other DEP advisory committees have established protocol for accepting public comments at public meetings. Ms. Tate noted she would draft guidelines on the issue for comment by the CAC.

In recognition of his service to the CAC, Chairman Dayton introduced Dave Hess and presented him with a resolution that was developed by Council. Chairman Dayton expressed his appreciation of Mr. Hess's involvement and leadership on the CAC, in particular his involvement on Council's Public Participation Committee.

#### **ELECTION OF CAC CHAIR AND VICE-CHAIR:**

Cynthia Carrow reported that she and Burt Waite served on the CAC's Nominating Committee and obtained interest from two candidates who wished to serve as Chair and Vice-Chair of the CAC.

**Cynthia Carrow moved to approve the nominations of Bill Fink as Chairman and Don Welsh as Vice-Chairman of the CAC. John Hines seconded the motion, which was unanimously approved by Council.**

#### **PUBLIC COMMENTS:**

**Stephen Kunz, Senior Ecologist, Schmid & Company, Inc.:** On behalf of the Citizens Coal Council, Stephen Kunz provided comments to the CAC concerning the most recent Act 54 Report

issued by DEP. As the CAC finalizes its comments on the Act 54 Report, Mr. Kunz asked the CAC to keep the following four points in mind:

- The latest Act 54 Report, and other previous reports, demonstrates that Act 54 is not working and has changed the framework for regulating underground mining from one where impacts are prevented through avoidance and minimization to one where impacts are allowed with the expectation that damages will be fixed. While this approach may be logical for the restoration of homes, highways and utility lines, this approach doesn't work for complex natural systems like aquifers and stream networks.
- Act 54 states that it doesn't supersede the Clean Streams Law, other environmental laws, or the PA Constitution. For proper environmental protections to be in place in face of the impacts from underground coal mining activities, DEP needs to adhere to strict environmental protection measures, including denying activity where mine operators cannot assure that irreparable damage will not occur, such as the stream dewatering that occurred in 6 streams during the most recent 5-year period.
- One method - longwall mining - causes a disproportionate amount of impacts associated with underground coal mining; however, regardless of the method used, the overriding goal should be to avoid or minimize damage.
- DEP needs to be held accountable to providing specific actions it plans to implement to strengthen its regulations, technical guidance and permitting requirements in light of the findings included in the latest Act 54 Report.

### **CAC COMMITTEE REPORTS:**

**Act 54 Report Ad Hoc Review Committee:** Terry Dayton distributed the committee's draft comments on the Act 54 Report to Council. He noted that the comments were organized based on specific areas of needed action, including Act 54 itself, DEP regulations, DEP permitting procedures, DEP resources, DEP policies, and DEP public engagement and transparency. The committee's draft document also included a number of questions the CAC has posed in order to clarify sections of the Act 54 Report, DEP's practices and protocols, and DEP's anticipated responses to the findings included in the report. Mr. Dayton noted that it is Council's intention to finalize its comments on the Act 54 Report at its July 21, 2015, meeting. Mr. Dayton asked that Council direct any comments, suggestions or modifications on the draft comments to Michele Tate by July 14, 2015. He noted Ms. Tate would prepare the final comments for action at the CAC's July 21 2015, meeting.

**Legislative Committee:** Cynthia Carrow updated Council on the committee's recent meeting with Representative Vitali on June 15, 2015, where CAC members shared Council's priorities with the Representative and discussed legislative initiatives that are of priority to Representative Vitali.

Ms. Carrow also reported that the committee held a conference call on June 9, 2015, where it discussed bills pending in the General Assembly that call for the creation of statewide water well construction standards, including H.B. 48, H.B. 81, and S.B. 653. She noted that the committee discussed in detail the previous failed attempts by the State Legislature to adopt legislation on statewide water well construction standards and discussed whether a different approach needs to be crafted to assure passage of the legislation in this session.

To that end, she noted the committee discussed in detail the successful passage of amendments to the Water and Wastewater Systems Operators' Certification Act in 2002 which created a Water and Wastewater Systems Operators' Certification Board to assure the competency of qualified

water and wastewater systems operators. She noted that committee members discussed whether a similar approach that led to the successful passage of amendments in 2002 to the Water and Wastewater Systems Operators' Certification Act need to be followed now concerning the certification of water well drillers.

Council members elaborated that the problems precipitating the need for the current legislative proposals include that Pennsylvania does not have a designated process for the certification of water well drilling operators and also does not have defined statewide standards on how water wells are to be designed and constructed. Using the success of the legislation passed in 2002, Ms. Carrow noted that committee members discussed whether it would be more conducive to advocate for legislation that would authorize the creation of a certification board for water well drilling operators so that experts in the field could be appointed to a board that would be tasked with developing statewide water well drilling operator certification protocols and water well construction standards. Ms. Carrow noted that the committee would continue to examine this alternative legislative approach and report back to Council with their final recommendations.

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

Secretary Quigley provided a report to Council in which he elaborated on several topics. He first discussed DEP's Pipeline Infrastructure Task Force and noted that he expects the 34 members of the task force will be announced by mid-July. He elaborated that the task force, through a transparent process, will develop policies, guidelines and tools to assist in natural gas pipeline development in Pennsylvania, including issues associated with planning, permitting and construction and long-term pipeline operation and maintenance. He stated that so far, DEP has received 150 applications from individuals interested in serving on the task force, which he envisions will comprise representatives from state agencies, the legislature, federal and local governments, the pipeline and natural gas industries and environmental groups, and others. He also noted that he will serve as Chairman of the task force and that it will be modeled after a successful collaborative effort he led at the Department of Conservation and Natural Resources, which led to the establishment of voluntary wind turbine siting standards. He noted that he expects the task force will convene its first meeting in mid-July and will be charged with providing a final report detailing its findings to Governor Wolf by February 2016.

In other topics, Secretary Quigley updated Council on several regulatory proposals from EPA, including the recently finalized Clean Water Rule. He noted the final rule was initiated by EPA to more clearly define the waters protected under the federal Clean Water Act and stated that he doesn't anticipate the rulemaking will significantly impact Pennsylvania's permitting processes, given that the Commonwealth already has similar protections in place through the state's Clean Streams Law. He noted that the rulemaking has not been published in the Federal Register to date but that DEP will be reviewing the regulation once it is published. Secretary Quigley also noted the status of the EPA's Clean Power Plan rulemaking and stated that EPA expects to finalize the rulemaking in August.

Secretary Quigley announced that DEP is soliciting comments from stakeholders through a survey to evaluate the effectiveness of its Abandoned Mine Reclamation Program. He noted that input obtained through the survey will supplement DEP's internal review of the program. He stated that the survey is posted on DEP's website and that the Department will accept survey responses until June 30, 2015. As a result of both the internal and external review of the program, Secretary Quigley stated that DEP would publish an evaluation document about the program in the near future.

Secretary Quigley updated Council on Pennsylvania's current drought conditions, including that an additional 10 counties were added to the drought watch list, which now comprises a total of 37 counties. While Pennsylvania has received rainfall, he noted that the rain events have not been sufficient to recharge groundwater and that low groundwater and low surface water levels are being reported in the 37 counties on the drought watch list.

In his closing remarks, Secretary Quigley announced the 20<sup>th</sup> anniversary of the Commonwealth's Land Recycling Program and noted the achievements of the program, including that more than 5,700 sites have been remediated under the program since 1995. He also noted the economic development and job creation benefits resulting from the program and that DEP hopes to invigorate the program in coming years, including placing more emphasis on sustainable development.

At the conclusion of Secretary Quigley's report, Council inquired about the status of DEP's proposed rulemaking to address deficiencies in the Commonwealth's onlot sewage management regulations that restrict the consideration of alternative technologies in the onlot planning phase of development. Secretary Quigley advised that he was familiar with the rulemaking and its purpose but was unaware of its status. He stated that he was agreeable to working with the CAC and the Sewage Advisory Committee to reinitiate discussions on the regulations. Council also inquired about Secretary Quigley's views on the future of the natural gas industry in Pennsylvania, including the regulation and taxation of that industry and its potential to restore the middle class in the Commonwealth through job creation and investments in public education.

**DEP INTERIM FINAL POLICY ON THE DEVELOPMENT AND PUBLICATION OF TECHNICAL GUIDANCE (DEP ID #012-0900-001):**

Laura Henry, Executive Policy Specialist with DEP's Policy Office, provided Council with an overview of recent changes DEP made to its guidance that establishes procedures and protocols for the development of technical guidance. She noted the changes to the policy were made as a part of DEP's overall efforts to be more open and transparent in its policy development and review process, and emphasized that the revisions to the policy focus on how DEP will develop technical guidance and how it will seek public input before finalizing technical guidance.

Ms. Henry noted several key revisions to the policy. Those included changes that require DEP to increase its consultation with advisory committees when developing a technical guidance document; the establishment of Lead DEP Regional Directors in the internal review of a technical guidance document to enhance regional awareness and coordination; and the establishment of a Non-Regulatory Agenda to be published twice a year in the *Pennsylvania Bulletin* to advertise those technical guidance and other documents DEP intends to develop or revise within the coming year.

Ms. Henry also emphasized that as part of the revisions to the policy, DEP was launching a new *eComment for Policies* system. The system enables the public to submit comments electronically to DEP on a number of policies and other documents open for public comment through an online comment system. As part of the new system, Ms. Henry noted that all public comments will be publicly available for review in the eComment system within 5 business days of their receipt, and will remain available until respective documents are finalized.

Following Ms. Henry's remarks, Council inquired whether a list of Lead Regional Director assignments could be made available to the CAC for future reference. Council also inquired

about the recent rescission of a technical guidance document that provided direction on how civil penalties were calculated by DEP for effluent violations. It was noted that the guidance document was removed from DEP's technical guidance document inventory and that a new document was created covering the subject matter but that the new document was considered to contain internal standard operating procedures and therefore was not made available to the public. Council expressed concern that the information contained in the standard operating procedures document is not available to the public and cautioned DEP whether restricting public access to the document upholds DEP transparency and accountability. Last, with regard to the new *eComment for Policies* system, Council inquired whether the system allowed users to express their support of comments already submitted and posted online, such as the "like" feature that is used on Facebook. Council noted that the addition of that feature to the system may aid system users and help DEP staff in managing comments.

**DRAFT NPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (PAG-13):**

Lee McDonnell, Director of DEP's Bureau of Point and Non-point Source Management, presented an overview of the substantive changes proposed to PAG-13. He explained that PAG-13 is intended to provide NPDES permit coverage to existing or proposed regulated small municipal separate storm sewer systems (MS4) for discharges of stormwater to surface waters of the Commonwealth. He noted that the current PAG-13 is in effect until March 15, 2018, and that DEP is proposing the changes to PAG-13 now to gain public input in anticipation of announcing the reissuance of PAG-13, which will become effective on March 16, 2018. He noted that DEP will accept comments on the changes proposed to PAG-13 until July 29, 2015.

Mr. McDonnell first provided background information that highlighted why changes to PAG-13 were initiated. He explained that the changes were developed in response to the Department's settlement with PennFuture who filed a lawsuit against DEP contesting its authorization of PAG-13 coverage to a municipality in southeast Pennsylvania without providing an opportunity for public participation or comment on the general permit application.

Concerning the significant changes proposed to PAG-13, Mr. McDonnell emphasized that MS4s that have been allocated an individual or aggregate wasteload allocation in a TMDL for nutrients and/or sediments will not be eligible for PAG-13 coverage under the reissued general permit and will be required to obtain an individual NPDES permit. He also noted that under the proposed changes, all MS4 permittees will be required to submit an MS4 Annual Status Report to DEP by September 30 of each year.

Mr. McDonnell also emphasized the measures provided in Appendices A, B, and C in the proposed PAG-13 General Permit that would need to be implemented by small MS4s to address specific impairments, including metals or pH associated with acid mine drainage and pathogens and priority organic compounds in stormwater discharges. He also emphasized the importance of a Pollutant Reduction Plan to reduce pollutant loading of nutrients and sediments and referenced Appendix D in the proposal which would require the implementation of a PRP over a 5-year period for discharges to surface waters in the Chesapeake Bay watershed. In addition, Mr. McDonnell referenced Appendix E of the proposal which would also require implementation of a PRP to reduce nutrient and/or sediment loadings over a 5 year period for discharges to impaired surface waters of the Commonwealth and that the PRP would need to be submitted to DEP as part of the PAG-13 Notice of Intent.

Following the conclusion of Mr. McDonnell's presentation, Council discussed the importance of outreach to the Commonwealth's municipalities to inform them of their anticipated responsibilities under the reissuance of PAG-13, including the importance of outreach to the state's municipal elected officials. Council provided the Department with several suggestions on groups and organizations it may contact, including the PA Bar Association to assure municipal solicitors are aware of the changes included in PAG-13. Council and Mr. McDonnell also discussed opportunities by municipalities to address pollution proactively, including the use of pairing GIS technology with DEP data on impaired waterways to identify the source or sources of impairments.

**NEW/UNFINISHED BUSINESS:**

No new or unfinished business was presented by Council members for further discussions.

**ADJOURN:**

With no further business, John Walliser moved that the June 16, 2015, meeting of the CAC be adjourned. Bill Fink seconded the motion. The June 16, 2015, meeting of the CAC was adjourned at 1:04 p.m.