

**MINUTES
CITIZENS ADVISORY COUNCIL MEETING
September 15, 2015**

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:

Cynthia Carrow, Allegheny County
Mark Caskey, Washington County
Terry Dayton, Greene County
William Fink, Bedford County
Walter Heine, Cumberland County
John Over, Jr., Fayette County
Jim Sandoe, Lancaster County
Joi Spraggins, Philadelphia County
Thaddeus Stevens, Tioga County
Burt Waite, Crawford County
John Walliser, Allegheny County
Donald Welsh, Chester County
Jim Welty, Cumberland County
Timothy Weston, Cumberland County

CITIZENS ADVISORY COUNCIL STAFF PRESENT:

Michele Tate, Executive Director

CALL TO ORDER:

Chairman Bill Fink called the meeting to order at 10:01 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

APPROVAL OF JULY 21, 2015, MEETING MINUTES:

With no corrections or additions recommended by Council, Chairman Fink asked for a motion to approve the July 21, 2015, Council meeting minutes.

Terry Dayton moved to approve the July 21, 2015, meeting minutes as presented to Council. John Over seconded the motion, which was unanimously approved by Council.

CHAIRMAN FINKS REPORT TO COUNCIL:

Chairman Fink introduced two new members to the Council – Jim Sandoe and Jim Welty. Both gentlemen introduced themselves and gave a very brief description of their background. Chairman Fink noted that there are still three vacant seats on Council; two from the President Pro Tempore of the Senate and one from the Governor's Office.

ENVIRONMENTAL QUALITY BOARD ELECTIONS

Chairman Fink discussed the Council elections to the Environmental Quality Board (EQB). The following candidates are available to join the EQB – Bill Fink, Burt Waite, John Walliser, Cynthia Carrow and Donald Welsh. Terry Dayton is currently an alternate to the Board and Jim Sandoe would also consider being an alternate. Chairman Fink asked if any other Council member would consider being an alternate on the EQB.

Timothy Weston made a motion to elect the individuals named to the

positions named on the EQB. John Over seconded the motion, which was unanimously approved by Council.

DEP REPORT TO COUNCIL:

Secretary Quigley stated that he would provide updates on a few items important to the Council.

Secretary Quigley updated the CAC on the status of the Outreach Strategy for the Clean Power Plan. The Plan was announced by the President and EPA on August 3. He stated that DEP is preparing their own plan which would comply with the Clean Power Plan requirements. Currently, there is an open public comment period on the proposal which ends on November 12. Secretary Quigley mentioned the first of 14 listening sessions around the state will occur tonight, September 15, in Harrisburg.

Secretary Quigley discussed the Pennsylvania Climate Impacts Assessment authored by Dr. James Shortle and stated that DEP will be accepting comments on the report through November 4. He stated that the headline on the report is that Pennsylvania has warmed 1.8°F in the past 110 years. By 2050, it is expected that Pennsylvania will be 5.4°F warmer than it was in the year 2000; that will be a one degree increase per decade. Secretary Quigley stated the implications for Pennsylvania's environment, the economy, and quality of life are profound. He stated that the Pennsylvania that he knew will not be the Pennsylvania that his son knows at his age.

Secretary Quigley announced that the Pipeline Infrastructure Task Force has had two meetings and it's "going great guns." He noted that the task force is supported by twelve workgroups comprised of well informed and actively engaged individuals. He noted that the Task Force is on target to draft a report for public comment by November 14 and submit its findings to Governor Wolf by early February 2016.

Secretary Quigley discussed the Act 54 Report and expressed his appreciation to the Council for the comments it developed. DEP hopes to have the final version of the report ready for presentation at either the October or November CAC Meeting.

Secretary Quigley stated that DEP continues to develop a plan to reboot Pennsylvania's Chesapeake Bay cleanup initiative and will be sharing the plan with stakeholders for input in the near future. He stated that DEP is working closely on the strategy with other state agencies, including the Department of Conservation and Natural Resources and the Department of Agriculture. He also noted that the Department of Agriculture is working with 53 public and private organizations to submit an application for additional federal funding to support conservation efforts and the implementation of agricultural best management practices in Pennsylvania. Secretary Quigley stated that he looks forward to making a public statement in the very near future.

Secretary Quigley announced that DEP will have a new Chief Counsel starting October 13 – Alex Chiaruttini. Ms. Chiaruttini previously worked with DEP in the Southcentral Regional Office in 1997-2002. Secretary Quigley recognized and thanked Richard Morrison, Acting Chief Counsel, for his tremendous dedication to the agency.

In other updates, Secretary Quigley mentioned that Chapters 78 and 78a were reported out of the Conventional Oil and Gas Advisory Committee and Oil and Gas Technical Advisory Board Meetings.

In response to questions from the Council, Secretary Quigley discussed the review of the State Water Plan to restore the importance of resource planning in reference to the Pennsylvania Climate Impacts Assessment. Secretary Quigley also addressed the issue of the cancellation of the September Sewage Advisory Committee Meeting in regards to the Act 537 issues. He stated that he did not know if the Sewage Advisory Committee Meeting would be rescheduled, but did state that he would be meeting with staff to discuss the sewage regulations. Secretary Quigley mentioned that he hopes to have more information to share at the next Council Meeting.

In response to an inquiry about the Chesapeake Bay Initiative, Secretary Quigley mentioned that there are many consultations that need to take place with key stakeholders to initiate this “reboot.” DEP has been investing a lot of effort in this very complex top priority for the agency. Secretary Quigley also addressed the issue of the Budget Impasse and mentioned the DEP is handling the difficulties as best as can be expected.

PUBLIC COMMENT:

Tom Shuster, Sierra Club: On behalf of the Sierra Club, Tom Shuster provided comments to the CAC expressing concerns with the pending rule known as Reasonably Available Control Technology (RACT) for NO_x and VOCs. He stated that the Sierra Club appreciates the fact that the RACT rule will significantly limit smog-causing NO_x pollution from most coal-fired power plants in the state. However, the Sierra Club still has concerns about the treatment of the large Brunner Island power plant in the RACT proposal. Mr. Shuster mentioned that Brunner Island is the only large coal-fired power plant without SCR or any other post-combustion NO_x controls in the state, and it is the only plant that is not subject to the stricter NO_x emissions limits. At the May CAC Meeting, several Council members questioned whether it is appropriate to define a pollution source category by the presence or absence of post-combustion controls. The Sierra Club believes that it is not appropriate. To define a source category in that way is to essentially say that a pollution control is only “reasonably available” if it already exists at a plant. Mr. Shuster stated this is not the intention of RACT and sets a bad precedent for future RACT determinations in Pennsylvania and other states that impact our air.

The Sierra Club understands that RACT must account for cost-effectiveness, and the argument has been made the SCR installation would not be cost-effective at Brunner Island. Given the fact that all six other conventional coal-fired boilers have installed the technology, this is questionable. Independent of RACT, Brunner Island is currently installing gas-firing capability so it will soon have an alternative with no added capital cost by which it can meet a lower rate. However, there is no permit condition that limits coal firing after this conversion occurs.

Mr. Shuster stated that this one power plant, because it’s NO_x is uncontrolled, has an outsized impact on ozone pollution in the region. Therefore, the Sierra Club requests the CAC to recommend that Brunner Island be held to the same standard as its peer power plants that have SCR installed, as meeting that limit is within its reach. They do not believe that such a change should prevent the rule from being approved by the EQB in October.

Wendy Taylor, public citizen: Wendy Taylor, a citizen interested in the environment, provided comments to the CAC by presenting a picture of Brunner Island taken August 1. Her question is why should Brunner Island be allowed to emit this pollution when there is technology available to reduce it? Telling the citizens that the owners can’t install the best available technology because it is too expensive is not good enough for her. She presented petitions from 200 individuals which

took her more than eight hours to gather. She stated that she understands DEP is in conversations with the owners of Bruner Island about reducing their emissions. Ms. Taylor trusts that Secretary Quigley and his staff want people to breathe clean air.

Bob Wood, current member of the Sewage Advisory Committee (SAC): On behalf of the Pa. Association of Realtors, Bob Wood asked for the continued support of the Council on the available use of alternative sewage treatment technologies in the onlot planning phase of development. In November 2013, SAC unanimously approved moving forward with the request for using the alternative technologies for planning. Mr. Wood stated that the Committee was advised that the requested use of this technology had to be reopened rather than approving it separately. SAC has reviewed Acts 71, 72 and 73 at the Department's request and recently provided recommendations for the second time. The September SAC meeting was cancelled and we hope it will be rescheduled soon. SAC is again requesting the Council's support on alternative sewage treatment technologies. The Pa. Association of Realtors will follow up with a letter to DEP requesting approval of these technologies.

PENNSYLVANIA NATURAL DIVERSITY INVENTORY (PNDI) ENVIRONMENTAL REVIEW TOOL:

Ellen Shultzabarger, DCNR's Division of Conservation, Science and Ecological Resources, provided Council with a demonstration of the PNDI tool which will now be known as the PA Conservation Explorer. She stated the tool provides two things; combining the county natural heritage inventory map and PNDI tool. Ms. Shultzabarger stated the goal of the new tool is to be able to support conservation project planning and PNDI environmental review with map enhancements. The conservation planning side of the tool is open to anyone to review and run reports. The environmental review side requires login information and a cost will be attached to the search. She stated that the tool works like the GIS system. DCNR is still working with DEP and other groups to include various data presented in the tool, such as wilderness trout streams, abandoned mines, etc. Ms. Shultzabarger stated that DCNR is still receiving feedback from users and rollout is expected in mid-November.

At the conclusion of Ms. Shultzabarger's presentation, an inquiry was made as to who would use this tool. Ms. Shultzabarger stated that the tool is used by county planners and for DEP permitting and federal or state funding purposes. Council members also inquired about earlier restrictions on the use of the website and the expedition of problems with PNDI receipts.

Ms. Shultzabarger stated that there are no restrictions and that PNDI receipts will be expedited with this new tool. A Council member asked how often the species data will be updated and Ms. Shultzabarger responded that it will be updated regularly. The question was asked if you can search by address and Ms. Shultzabarger stated that you can. A Council member inquired if you will need to pay if you just want to review a few possible sites and the answer was no. An inquiry was made if special concerns and critical habitat show up in the tool. Ms. Shultzabarger responded that the information will be there to make the necessary decisions.

DEP DRAFT FINAL-FORM RULEMAKING: ADDITIONAL REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) REQUIREMENTS FOR MAJOR SOURCES OF NITROGEN OXIDES (NO_x) AND VOLATILE ORGANIC COMPOUNDS (VOCs):

Krishnan Ramamurthy, DEP's Bureau of Air Quality, joined by Joyce Epps, Director for the

Bureau of Air Quality and Robert “Bo” Reiley, DEP Regulatory Counsel, provided a presentation to the CAC on the final draft additional RACT requirements for existing major stationary sources of NO_x and VOCs in ozone nonattainment areas including the Ozone Transport Region (OTR).

Section 182 of the Federal Clean Air Act (CAA) requires States to adopt RACT requirements for existing major stationary sources of NO_x and VOCs in ozone nonattainment areas including the OTR, established under Section 184 of the CAA. The CAA requires a re-evaluation of RACT and submission of a State Implementation Plan (SIP) revision to EPA following the promulgation of new national ambient air quality standards (NAAQS) including the 8-hour ozone standards. RACT for affected major sources must be implemented statewide in Pennsylvania because the entire Commonwealth is included in the Ozone Transport Region. The OTR is treated as a “moderate” ozone nonattainment area for NO_x and VOCs. RACT is one of many tools used in controlling emissions and is defined as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” The term “reasonably available” rather than “best available” is intended to indicate greater flexibility for States to take into account the remaining economic life of the unit as well as factors that could increase the cost of installing a technology on an existing unit, when determining the appropriate control technology. RACT, while enforced in the OTR is not a “Transport Rule.”

The CAA requires States to submit SIP revisions for RACT to the EPA within two years after the effective date of designations for NAAQS. The RACT SIP revision was due to EPA by June 20, 2014. Re-evaluation of RACT will also be necessary following EPA’s adoption of revised ozone standards, expected by October 1, 2015. The proposed additional RACT requirements for the control of NO_x and VOC emissions from major sources (“RACT II”) were published in the Pennsylvania Bulletin EQB on April 19, 2014. (44 Pa.B. 2392) The public comment period closed on June 30, 2014. DEP received comments from 134 commentators. Commenters included: EPA, IRRC, concerned citizens, environmental groups, regulated industries, power generators, natural gas transmission companies, Portland Cement and other states including New Jersey, Maryland, Delaware, and Connecticut.

The comments submitted had a wide range and included: any source that has an emissions control device already installed should be required to operate the control device, the timing for compliance is too short, a company should not have to prove that averaging is not possible to apply for a case-by-case determination, and certain NO_x and VOC emission limits for turbines cannot be met without add-on controls, which may not be available for smaller turbines. The EPA’s comments included: DEP reevaluate RACT limits for boilers currently equipped with add-on controls, that the EQB to reevaluate the proposed presumptive RACT emission limits against current NO_x emission limits currently in effect in other states for municipal waste combustors, and the EQB amend the averaging provisions to preclude averaging among sources inside and outside designated nonattainment area boundaries.

The final rulemaking establishes presumptive RACT requirements and emission limitations for approximately 810 major stationary sources of NO_x and VOC emissions including the following source categories: combustion units, boilers, process heaters, turbines, engines, municipal solid waste landfills, municipal waste combustors, cement kilns, and other sources that are not regulated elsewhere in 25 Pa. Code, Chapter 129. The key changed from proposed to final include:

- The definitions of “Major NO_x emitting facility” and the “Major VOC emitting facility” definitions in §121.1 were revised.

- The 25 tons per year (TPY) major source NO_x and VOC thresholds do not apply in Bucks, Chester, Delaware, Montgomery, and Philadelphia counties for major sources that will be subject to the RACT II requirements in 25 Pa. Code §§ 129.96 - 129.100 because these counties are “marginal” nonattainment areas for the 2008 ozone standard.
- The 25 TPY major source NO_x and VOC thresholds will continue to apply to sources subject to the existing RACT requirements in 25 Pa. Code §§129.91 - 129.95.
- An exemption is provided for sources located at a major NO_x or VOC emitting facility that emit less than one TPY of NO_x or VOC emissions (§129.96(c)).
- Section 129.97(b)(1) requires tune-ups for combustion units to be consistent with EPA’s tune-up requirements in 40 CFR 63.11223.
- Section 129.97(c) also requires compliance with manufacturing specifications and good operating practices for sources with potential NO_x emissions less than 5 TPY and potential VOC emissions less than 2.7 TPY.

The final-form regulation includes revised presumptive RACT limits for the following categories:

- Municipal Waste Combustors;
- Natural gas-fired combustion unit or process heater with a rated input equal to or greater than 50 million Btu/hour;
- Coal-fired circulating fluidized bed combustion unit with a rated input equal to or greater than 250 million Btu/hour;
- The residual oil-fired combustion unit or process heater category now includes other liquid fuel-fired units; and
- Certain combustion units firing solid fuel (such as Biomass, Tire-derived fuel) other than coal.

DEP conducted further review and analysis of the NO_x RACT emission limit for coal-fired electric generating units (EGUs) to assure approvability of the RACT II final-form regulation as a SIP revision. Based on the review of historical continuous emissions monitoring systems (CEMS) emissions data for coal-fired EGUs equipped with selective catalytic reduction (SCR) technology, DEP determined that the NO_x limit for these coal-fired units should be revised.

Based upon these analyses, the presumptive RACT limits now require:

- Any combustion unit with a selective catalytic reduction (SCR) system installed that is operating with an inlet temperature equal to or greater than 600°F, must meet a NO_x emission limit of 0.12 lb NO_x/million Btu. (§129.97(g)(1)(viii))
- Compliance with this emission limit is also applicable when by-passing the SCR system. (§129.97(g)(1)(viii))
- Any combustion unit with a SCR system installed that is operating with an inlet temperature less than 600°F, must meet a NO_x emission limit of 0.35 lb NO_x/million Btu heat input for a tangentially fired unit or 0.4 lb NO_x/million Btu heat input for other types of units. (§129.97(g)(1)(vi))
- Any combustion unit with a selective non-catalytic reduction (SNCR) system installed must operate the SNCR system with the injection of reagents including ammonia or other NO_x-reducing agents, when the temperature at the area of the reagent injection is equal to or greater than 1600°F. (§129.97(g)(1)(ix))
- A circulating fluidized bed coal-fired combustion unit with a rated heat input equal to or greater than 250 million Btu/hour must meet a 0.16 lb NO_x /million Btu emission limit. This limit must be met at all times.

- A combined cycle turbine with a rated output equal to or greater than 1,000 bhp and less than 180 MW.
 - NOx emission limit revised from 75 to 96 ppmv dry NOx @ 15% oxygen for turbines fired on fuel oil.
 - VOC emission limit revised from 2 to 5 ppmv dry VOC (as propane) @ 15% oxygen for turbines fired on natural gas or other noncommercial gaseous fuel.
 - VOC emission limit revised from 2 to 9 ppmv dry VOC (as propane) @ 15% oxygen for turbines fired on fuel oil.
- A simple cycle turbine with a rated output equal to or greater than 6,000 bhp.
 - NOx emission limit revised from 75 to 96 ppmv dry NOx @ 15% oxygen for turbines fired on fuel oil.
- The following presumptive requirements have been added for a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 6,000 bhp.(§129.97(g)(2)(iii))
 - NOx emission limit of 150 ppmv dry NOx @ 15% oxygen for turbines fired on natural gas, other noncommercial gaseous fuel, or fuel oil. (§129.97(g)(2)(iii)(A) and (B))
 - VOC emission limit of 9 ppmv dry VOC (as propane) @ 15% oxygen for turbines fired on natural gas, other noncommercial gaseous fuel, or fuel oil. (§129.97(g)(2)(iii)(C))
- The natural gas-fired lean burn and rich burn engine categories now include “noncommercial gaseous fuels.”(§129.97(g)(3))
- Lean burn engines with a rated output equal to or greater than 500 bhp
 - VOC emission limit revised from 0.4 g/bhp-hr to 1.0 g/bhp-hr, excluding formaldehyde. (§129.97(g)(3)(i)(B))
- The applicable emission limit for a unit firing multiple fuels has been revised so that it is applicable to a unit that fires multiple fuels at any time, not just simultaneously. (§129.97(g)(4))
- System-wide NOx emission averaging has been restricted to sources located within the same ozone nonattainment area in this Commonwealth. (§129.98(a))
- The facility-wide or system-wide NOx emission averaging equation has been revised in § 129.98(e).
 - The 0.9 factor is removed from the equation.
 - The equation now reflects a mass-to-mass comparison between actual and allowable NOx emissions.
 - Aggregated actual emissions from sources included in averaging must be no greater than aggregated allowable emissions on a 30-day rolling basis.
- Section 129.99(a) has been revised to specify that owners or operators of sources subject to presumptive RACT limitations or requirements are no longer required to show that the sources cannot participate in facility-wide or system-wide averaging before electing to apply for case-by-case RACT.
 - The owners or operators now must show that the sources cannot meet the applicable presumptive RACT limitations or requirements.
- Section 129.99(i)(2) now provides that the final compliance date for a proposal involving the installation of an air cleaning device must be no later than 3 years after the approval of the Plan Approval. If the petition pertains to the replacement of an existing source, the final compliance date will be determined on a case-by-case basis.

Compliance demonstrations include:

- Section 129.100(a) has been revised to clarify the compliance demonstration requirements for sources equipped with Continuous Emission Monitoring Systems including Portland cement kilns and municipal waste combustors. Subsection (a) also clarifies how a 30-day rolling average is calculated for a combustion unit.
- Section 129.100(e) requires an owner or operator of a source claiming an exemption to maintain records beginning with the compliance date for the regulation.
- Section 129.100(j) clarifies that all records must be retained for five years and made available to the DEP or an approved local air pollution agency, upon request.

Potential to emit (PTE) maximum annual emission rate will be decreased by a total of 47% for the 810 covered boilers, engines, EGUs with SCR, and turbines. Coal-fired EGUs PTE will decrease 95,279 tons of NO_x and waste coal-fired plants will drop to 10,534 tons. Remaining EGUs were either retired during the revision of the rule, are scheduled to be retired or are switching to natural gas. Actual NO_x emissions from coal-fired EGUs have continually dropped since 1990. The actual NO_x emissions from coal-fired EGU's in 1990 was 428,219 tons/year and in 2013 were down to 92,728 tons/year. The expected NO_x rate of emissions from coal-fired EGUs under the draft final rulemaking and the 2013 production rates is 59,039 tons/year. Under the Cross State Air Pollution Rule (CSAPR), the 2014 annual NO_x budget for PA is 119,194 tons.

The final rulemaking clarifies that the owners and operators of air contamination sources, except municipal waste combustors, equipped with continuous emission monitoring systems (CEMS) must demonstrate compliance with the RACT emission limitations on a 30-day rolling average basis. The owners of municipal waste combustors, equipped with CEMS, must demonstrate compliance based on Chapter 139 requirements using a daily average. The owners of Portland cement kilns equipped with CEMS must monitor production of clinker production rates in accordance with 40 CFR 63.135(d). EPA's final rule, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," requires sources subject to RACT for the 2008 8-hour ozone standard to implement the requirements by January 1, 2017 (80 FR 12264, March 6, 2015). Therefore, the Board's final-form regulation now requires compliance with the RACT requirements and presumptive emission limitations by January 1, 2017 instead of one year from the effective date of the final rulemaking.

On November 7, 2014, the Air Quality Technical Advisory Committee (AQTAC) approved the draft final-form RACT II regulation by a vote of 11-5-0 (yes; no; abstain) for consideration by the Board. DEP subsequently provided an update to AQTAC on April 16, 2015. On January 28, 2015, the Small Business Compliance Advisory Committee voted 6-2-0 to concur with the DEP recommendation to present the final rulemaking to the EQB for consideration. The Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee considered the draft final RACT regulation on February 20, 2015 and May 12, 2015 and recommended moving the proposal to the full CAC. The CAC tabled discussion of the final rulemaking during its March 17th and May 20 meetings.

CAC members asked why Brunner Island is in a case-by-case basis situation. Mr. Reiley answered because after the program completed the cost effectiveness analysis for RACT, the average cost/ton was \$2,800. The costs to the covered facilities can fluctuate from this number, but the cost to Brunner Island without an SCR is about \$4,500, which is far outside of the range. Other coal-fired EGUs have already made the business decision to incorporate SCRs while Brunner Island has purchased allowances and this creates a large disparity in terms of capital cost. The

program does agree that SCRs are available for the Brunner Island facility, but under RACT it is a two pronged test of what is available and whether or not it is cost affective. Brunner Island is not getting “a pass” on emissions controls because they already have NOx controls on the burners and mandated limits. RACT will also have additional changes with the implementation of the 8-hour ozone standards from the EPA and complete another cost effectiveness analysis which may have an impact on Brunner Island. Brunner Island has also gotten approval to burn natural gas and can switch between coal and natural gas. Mr. Ramamurthy remarked that market forces are driving these changes, including the low price of gas and proximity, not just the emissions regulations.

Mr. Weston asked if the program staff had reviewed the questions from the CAC, which they said they had. Mr. Weston then asked what precedent is being set for reasonably available control technologies based on defining the source by its existence or lack of installed control technologies. He also asked if the department have other examples of this practice. Ms. Epps stated that a precedent is not being set because the regulation is being developed with EPA’s guidance and court decisions. Previous court decisions have maintained an ambiguous definition of what is reasonably available and it is within the EPA’s discretion to determine that standard. Based on those past cases, if the state needs a certain control device to meet the EPA standard, then that control device is considered reasonably available. DEP has not received any guidance for the purposed of RACT that SCR is reasonably available, which causes the cost effectiveness analysis to be different between EGU’s with SCR and those without. If Brunner Island made modifications that constituted it being defined as a “new source,” it would then be subject to much more stringent requirements such as Lowest Achievable Emission Rate which would make SCR a requirement for the facility. RACT is not required to be the most stringent emissions limits, only what is reasonably available to meet the limits.

Mr. Weston posed the question about setting a precedent differently asking if the Department defined the source in a case-by-case basis. Mr. Reiley stated DEP looked at the covered facilities by source categories, not case-by-case. Mr. Weston clarified using the example of judging facilities such as paint operations with VOCs controls including thermal oxidizers and giving “a pass” on adding thermal oxidizer to paint operations without because they did not already install the technology and now the capital cost is too great. The program staff disagreed with the contention that a precedent is being set because the standard for this rule is the technology and the cost effectiveness. If installing a SCR would be less than the average cost, then it would be required. Mr. Ramamurthy stated that the cost effectiveness can change based on fuel source or system capabilities and is not limited to presence of control technologies. The facilities that use a SCR have different limitations than those without, and just because a technology exists does not mean it is the correct control for all types of coal-fired EGUs.

Council members asked additional questions about the cost analysis, specifically why \$4,500/ton was compared to \$2,800/ton because they are capital costs compared to operational costs for the coal-fired EGU’s without SCR compared to with SCR respectively. The program responded because in the case of coal-fired EGUs with SCR, the capital cost is already spent and under RACT, capital and operational costs must be combined for total cost to the facility for compliance. The program noted that this is not specific to Pennsylvania and is based on the pricing by the EPA for all states.

Chairman Fink reminded the Council that under the Pennsylvania CAA, DEP is required to consult with the CAC in consideration SIP regulations needed for the implementation of the CAA. Council asked if this version of RACT will go back before AQTAC before it goes to the EQB to which the

program answered no. Chairman Fink requested a motion to attest that DEP consulted with the CAC during its development of the RACT II regulations and that the CAC concurs that DEP submit the rulemaking to the EQB for action.

Mr. Weston offered a resolution that the CAC continues to work towards the adoption of the proposed RACT II regulations as an appropriate step forward in relation to the control of ozone precursor (NO_x and VOCs) emissions subject to the following concerns and recommendations:

1. The CAC expresses serious reservations regarding precedent being set in the regulations defining sources of RACT analysis based on whether those sources have or have not already installed particular emission technology (e.g. selective catalytic reduction technologies for NO_x control). The CAC believes it would be preferable in instances where it may not be feasible or cost-effective for particular facilities to meet presumptive RACT limits applied to all other sources in the same general category that such facilities be subject to a case-by-case analysis as otherwise provided in the RACT rules, whereby they are subject to public scrutiny and potential review by the EHB.
2. The CAC recommends that the definition of $E_{i\text{allowable}}$ in Section 129.98(e) of the draft final rulemaking is vague and warrants amendment. The term as it is currently defined references that an allowable NO_x mass emissions rate may be computed by using the more stringent allowable emission rate limitation imposed on an air contamination source. However, no specifications are included in the definition to clarify what applicable emission rate limitations can be used in the calculation. In order to define the term with more specificity, the CAC recommends the definition of $E_{i\text{allowable}}$ be modified to clarify that the more stringent numerical emission rate be used in calculating the alternative facility-wide or system-wide NO_x RACT emission limitation shall be based on the emissions limit established in regulation or an existing permit.
3. The CAC recommends that the Department seek further clarification from EPA in order to amend Section 129.98(a) of the rulemaking to permit averaging across non-attainment areas under circumstances where sources within the more serious non-attainment area undertakes over-control (meeting more stringent limitations), to be averaged with sources in less serious non-attainment areas. This would promote NO_x and VOC emission reductions closer to the areas where those reductions would provide the most benefit in terms of ozone reduction. These recommendations are based on the comments received from the members of the Policy and Regulatory Oversight Committee and discussion with Council members.

Mr. Weston made a motion for CAC to adopt the resolution. The motion was seconded by John Walliser and opened for discussion.

Council members asked program staff how these changes will affect Brunner Island, is there really a pollution problem, and is this something that has been or is going to be addressed by DEP. No one was available from the facility to answer direct questions. Council members also asked if the reason for the high cost analysis for the SCR due to the pending conversion to natural gas dual fuel ability. Program staff had not factored in that conversion into the present calculation. Council members stated that the facilities that have already installed SCR's are having their capital costs overlooked in this analysis and it makes the costs for those facilities that have not installed the technology look high in comparison, faulting the coal-fired EGUs with SCR for making capital decisions already. Council does not want to encourage entities to put off making investments in emissions and pollution reductions and then get to claim it is not cost effective when others made

the capital improvement. RACT does have an outlet for a facility by facility analysis, but it is subject very strict scrutiny including EHB hearings.

Council members asked the Department for a reaction to the language of the resolution. Ms. Epps responded that the Department would not agree to placing a restriction in the most stringent emission limitation established in a regulation or permit and would need to add language for a consent decree or Department order. Mr. Weston agreed to this language change to ensure that it is a legal mechanism by which the limits are established. Mr. Reiley agreed that with the language of the resolution as well.

Mr. Weston offered an amendment to section 2. of the resolution that the more stringent numerical emission rate set in a regulation or a previously issued permit, a Department order, a consent decree, or otherwise legally imposed. Mr. Stevens seconded the motion to amend. The CAC unanimously adopted the resolution, as amended.

CONSERVATION AND NATURAL RESOURCES ADVISORY COUNCIL (CNRAC) UPDATE:

Gretchen Leslie, DCNR's Senior Advisor to the Secretary, provided the Council with an update on DEP's sister advisory council – the Conservation and Natural Resources Advisory Council. She mentioned the council is focusing on various priority areas of work to move the agency forward. The priority areas are outdoor recreation, conservation and jobs, green infrastructure and sustainability, youth engagement and jobs, water and climate change. Ms. Leslie mentioned DCNR's Outdoor Recreation Plan has been finalized and DEP will be assisting with the action items to implement the Plan. She mentioned that DEP will assist in restoring and repurposing brownfields, abandoned mine lands, and other damaged lands for recreation and conservation purposes. Another item will be developing partnerships with agencies and volunteer water organizations to update and implement 25 river conservation plans with the focus being on restoring rivers for outdoor recreation. Ms. Leslie mentioned an additional action item will be to mitigate the impacts of gas development to recreation and consider possibilities to develop new recreation opportunities. Another item will be to review the best practices of shale gas management and determine the future of outdoor recreation.

Ms. Leslie discussed the draft State Forest Resource Management Plan which is the bible for managing the 2.2 million acres of state forest land. The Forest Management Plan is updated every five years, but it has been seven years since the last plan was issued. The public comment period will open within the next two weeks with 14 public meetings across the state to take comments. The draft plan will be finalized after all comments have been incorporated. She mentioned that information on climate change, landscape management units, communication vehicles, river islands and lakes, shale gas development, wildlife fires and cultural and historic resources will be added to the new plan.

Ms. Leslie mentioned that members of CNRAC are involved in both the Outdoor Recreation Plan and the update of the State Forest Resource Management Plan. Council members are concerned about DCNR's oil and gas lease fund and Loyalsock State Forest.

At the conclusion of Ms. Leslie's presentation, an inquiry was made as to the yearly intake in the oil and gas lease fund. Ms. Leslie stated that last year's intake was approximately \$135 million, but it has been reduced dramatically this year. Another inquiry was made of how the absence of an

Executive Director has affected the Council. Ms. Leslie stated that the Council would like to have an Executive Director back in the position to handle the administrative work and prepare reports. The administrative work is currently being handled by the Council members. An additional inquiry was made on the ash borer difficulty across the state. Ms. Leslie mentioned that DCNR's Forest Pest Management Section is currently working on a pest management plan for this issue.

An individual from Washington County made an inquiry on the closing of Duke Lake at Ryerson Station State Park. Ms. Leslie explained the history that led to the closing of the lake and expressed DCNR's disappointment that the lake cannot be rebuilt. A settlement of \$25 million or more paid by Consol Energy will be put back into the park. There will be a public meeting to take comments from the community on the possible future of the park.

CAC COMMITTEE REPORTS:

Administration Oversight and Management Committee

Ms. Sproggins reported that the committee had its first meeting on September 14, 2015 and discussed the report given by Jason Swarthout, DEP and DCNR Human Resources (HR) director during the July 21, 2015 CAC meeting. The committee had a follow up meeting with Mr. Swarthout to understand HR's priorities and gain greater understanding of the job creation and workforce planning processes. The committee agreed to review the information and report at a future meeting.

DEP Advisory Committee Reports:

Oil and Gas Technical Advisory Board

No Report

Conventional Oil and Gas Advisory Committee (COGAC) Report

Mr. Waite, CAC representative to the COGAC, reported the committee met for the second time on August 27, 2015, approved bi-laws, and elected David Ochs Chairman, but did not approve the minutes. COGAC felt the minutes did not accurately reflect the direction concerning the committee's adherence to the Sunshine Act. COGAC asserted that during the March meeting, DEP informed the COGAC that they could meet at any time and for any reason they chose at their leisure. Secretary Quigley then stated in a webinar concerning the Chapter 78 & 78(a) Subchapter C regulation development that the letter composed by the COGAC members rejecting the promulgation of these regulations for the conventional industry was in violation of the Sunshine laws. At this time, the committee has many concerns about the regulatory package and if it goes to the EQB in its current form, it is unlikely to receive COGAC's recommendation to proceed. The committee hopes the October 29, 2015 meeting results in additional negotiations and gets closer to a better position.

Mr. Waite was asked what are the biggest concerns with the regulation for the COGAC to which he responded one of the more contentious points is the water supply replacement requirement. The current version of the regulations requires operators to replace affected water supplies to a level that is either at or better than the safe drinking water standard depending upon pre-drill samples, regardless if the water did not meet the standard prior to drilling. This can be very cost prohibitive. The public resource agency definition has also been expanded past the PA Game Commission and DCNR state parks and forests to now include schools, playgrounds, and thousands of additional public resources that can comment on plans and creates an element of unknown.

COGAC is concerned that there are at least a dozen forms that are referenced in the regulation that

have yet to be made public or at least shared with the committee. Mr. Waite referenced the Mechanical Integrity Assessment form, stating that the language in the form created regulations and has remained a point of contention for the last three years. Operators, both conventional and unconventional, are also concerned about the increased number of advanced notifications to the department and failure to do so could result in a violation.

COGAC is concerned that many elements of the regulations are still to be defined in technical guidance documents, such as the spill policy, which has the potential to force operators into operating under the Act 2 program for cleanup. The Act 2 program began in 1995 as a voluntary program and was extremely successful in cleaning up brownfields and areas for redevelopment, but the to-be-determined spill policy could force that level of compliance upon operators in the case of a spill.

Mining Aggregate Advisory Board (MAAB) Meeting

Mr. Dayton reported that at the day before the last meeting the MAAB had a field trip to the Lamar Quarry. The operators explained the history of the limestone quarry, dating back to the 1880's. The quarry is a combination of an open pit with surface mining methods and two sloped tunnels for underground mining. The quarry produces two types of limestone: a dark limestone for asphalt production or concrete industry and a higher calcium product used in steel making or animal feed supplements. The tour also included viewing the reclamation projects surrounding the mine. The big issue before the board is permitting and meeting the timelines of the Permit Decision Guarantee. Ms. Tate commented that another issue on the horizon of this board is the non-coal mining fees.

Mining Reclamation Advisory Board (MRAB) Meeting

Ms. Tate reported that MRAB is also in the process of reviewing the permit fees that increased three years ago and will be looking at another increase because current permit revenue is insufficient to cover program costs. MRAB, along with MAAB, are working with DEP and the EPA to try to streamline the National Pollution Discharge Elimination System (NPDES) permitting reviews, including a possible checklist to assist with review.

Water Resources Advisory Committee (WRAC)

Ms. Tate reported that the WRAC is looking at several updated technical guidance documents in the August meeting, but spent considerable time reviewing the implementation of Act 162 of 2014 related to riparian buffers. The triennial review just passed the EQB, but with promulgation of that regulation, there was a requirement for further study related to the effects of sulfates and chloride standards. This study will have an effect on the next triennial review.

Air Quality Technical Advisory Committee (AQTAC)

Ms. Tate reported that AQTAC met on August 6, 2015 and they are also looking at fees. The Title V fees were passed three years ago and are under review by the program. Nick Lazor gave a presentation on NAAQS ambient air monitoring network plan. Ms. Tate could reach out to Mr. Lazor to give his presentation to the CAC if they would like.

NEW/UNFINISHED BUSINESS:

Chairman Fink and Ms. Tate discussed including regional reports and offering support on regional project, like ALCOSAN in Allegheny County, which should be brought before the CAC to increase awareness. Chairman Fink suggested that if members see something interesting at a regional level, the members should share the information with the CAC to promote public

awareness. Mr. Waite asked how many regional round tables are still active. Ms. Tate stated that they are still active, but it is inconsistent between regions. Ms. Tate hopes to attend the regional round tables in the future and get a better assessment of how these are operating.

Mr. Walliser asked that the CAC be updated on DEP's involvement in the Great Lakes Compact and the implantation plans, considering there have been large scale water withdrawal applications in the Great Lakes.

Office of Surface Mining held hearings in southwestern PA on the stream protection rule. DEP and AAMO asked for a 120 day extension to the comment period, but OSM only granted at 30 day extension. DEP has a number of concerns with the draft rule. Ms. Tate will try to find testimony or comments submitted by DEP on this rule for the CAC members. Mr. Weston would like to add this topic to a future meeting, especially concerning the prevalence of streams in PA and how the rule redefines the terms streams.

For the October meeting: EPA Region III presentation on their impending New Source Performance Standards Rulemaking for Methane and VOCs and a presentation by Dr. Jim Shortle, Penn State University, on the PA Climate Impacts Assessment Update.

For the November meeting: A presentation from Mike Gordon, EPA Region III on the EPA's Clean Power Plan.

ADJOURN:

With no further business, Chairman Fink requested a motion for Council to adjourn the meeting. Tim Weston moved to adjourn the meeting, which was seconded by John Walliser. The September 15, 2015, meeting of the CAC was adjourned at 1:32 p.m.