

Citizens Advisory Council

to the Department of Environmental Protection

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April 21, 2009

The Honorable John Hanger
Acting Secretary
Department of Environmental Protection
400 Market Street, RCSOB 16th Floor
Harrisburg, PA 17105

Dear Secretary Hanger:

The Department is fast-tracking its proposed permit-by-rule (Chapter 102), which purports to address delays to the regulated community as well as to better protect the environment. It has held private meetings with individual interests over the last several months rather than work publicly with a multi-interest group. Until very recently, requests for information were refused as the proposal was under frequent revision. This behind the scenes, moving target approach has forced interested parties to rely on reports and press articles to try to track the Department's intent and progress, leading to confusion and distrust.

Council has long encouraged the Department to develop its initiatives in a more transparent manner with earlier consultation of advisory committees, including the Council. A transparent, inclusive process builds understanding among diverse interests, builds trust between DEP and its publics, and ultimately improves decisions by accessing broader input, expertise and perspectives. However, instead of living up to its commitment to work collaboratively with its advisory committees; DEP did not seek to discuss the proposed permit by rule with its committees until very late in the process. DEP now expects the committees to take formal action without adequate time to consider the many issues and concerns being raised.

Based on our preliminary discussions, Council wishes to make the following points:

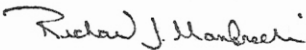
- Delegating responsibility to the private sector for self-enforcement would be a major change to how DEP conducts business. Even though this particular application is quite limited, it would set a major precedent that should not be taken lightly. There are significant legal, procedural, and effectiveness questions that need to be publicly vetted before deciding whether or not this is appropriate.
- If streamlining is needed, then it should be focused on those areas that pose real barriers with no resulting environmental benefit. The proposal in its current form will neither address the stated problem, nor achieve the projected benefit:
 - The proposal has limited applicability for developers and will provide little relief in that arena.



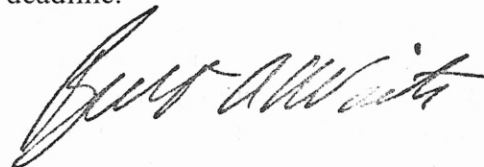
- At the March 17 meeting, Council was told that the proposal has no applicability for Marcellus Shale-related activities. However, in an April 6 news article in the Williamsport SunGazette, DEP's press secretary is attributed with saying that the department's goal was to offer gas drillers different methods to acquire E&S and stormwater control permits, and that in fact, most drilling sites would qualify for the permit-by-rule. Conflicting statements by DEP personnel about the proposal's applicability to gas drilling contribute to confusion and frustration and make it difficult to evaluate the real impact of the proposal.
- Processing individual permits will still strain staff resources so the PBR will not have a significant impact in freeing up field staff.
- This proposal clearly needs to be more fully and publicly vetted, through a broad based group of interests. There are significant unresolved legal, procedural, and environmental issues associated with the proposal, issues which deserve careful deliberation, not rushed comments.

Council recommends creation of, and offers to participate in, a balanced, formative group to deliberate a protective yet more applicable solution, even though this will require that DEP step back from its plans to proceed to EQB with this proposal in June. If DEP remains committed to proceeding in an expedited manner, Council will on its own undertake a careful, informed review and prepare formal public comment rather than rush to meet DEP's artificial deadline.

Sincerely,



Richard J. Manfredi
CAC Chair



Burt Waite
Water Committee Chair

cc: Water Resources Advisory Committee