

I. Pending Issues

Water Management

Act 167 Stormwater Management Planning:

Thirty-nine county-wide plus eight watershed stormwater management planning projects are in progress. Almost all of these will be completed and approved before year-end.

NPDES MS4 Permit (PAG-13):

PAG-13 is moving through the final approvals for publication. Work continues on PAG-13's comment/response document, the NPDES MS4 Individual Permit Package, and materials for the municipal workshops.

State Water Plan:

Progress:

Critical Water Planning Designation Process

All regional committees but the Delaware have held February meetings. The Delaware Committee's meeting was rescheduled to March 24th due to winter storm conditions. At these meetings, each committee reviewed the comments and testimony from the November public hearings and recommendations from DEP whether any of the watersheds under Critical Water Planning Area designation consideration no longer meet the designation criteria based on information coming from the hearings.

With the Delaware watersheds yet to be discussed, all but two of the other watersheds in other basins continue to meet the criteria and will be forwarded to the Statewide Committee for consideration. Of the two watersheds not being recommended by the regional committees, one was returned to the nominator (York/Adams Counties) for further work and the second was rejected by the Upper/Middle Susquehanna Committee as not meeting the designation criteria.

A technical subcommittee of the Statewide Committee met on March 26, 2010. An outcome of the meeting was the subcommittee vote to move forward to the Statewide committee 14 watersheds (includes groupings of smaller watersheds) recommended by the Regional Committees for designation as Critical Water Planning Areas (CWPA). Subsequent to this meeting, a steering committee of the Statewide Committee recommended that another meeting of the technical subcommittee be convened for DEP to provide an overview of the technical aspects of each of the watersheds under consideration. That meeting is set for August 6, 2010 at 9:30 am in the DEP Southcentral Regional Office, Harrisburg. More information may be found at www.pawaterplan.dep.state.pa.us

A meeting of the Statewide Committee has not yet been set, but will be scheduled likely later this fall at which recommendations of the technical subcommittee will be revisited and designations considered.

A meeting of the Technical Subcommittee of the Statewide committee met on August 6, 2010. At the meeting the subcommittee received a technical review of the watersheds recommended for designation as critical water planning areas by each of the Regional Committees and then developed recommendations for designation by the overall Statewide Committee at a later date. From the list of 15 watershed groupings, several were recommended for designation, with a number as “maybe” requiring further discussion and several were not recommended.

The meeting notes and recommendations are being drafted and will be reviewed by chairs of the subcommittee prior to distribution to Statewide Committee members.

A Statewide Committee meeting to receive the results of the Tech Subcommittee meeting and make decisions on Critical Water Planning Area designations has tentatively been scheduled for November 11, 2010 with location and times to be determined.

A kick-off meeting of a “pilot” Water Management Plan for the joint Marsh and Rock Creeks watersheds in Adams County was held on September 21st in Gettysburg. The purpose was to i (1) introduce the project to prospective advisory committee members and the general public; (2) identify participants’ concerns on issues facing the watersheds; (3) discuss ways for developing implementable recommendations as an outcome of this project; and (4) nominate project advisory committee members for consideration by the Potomac Regional Committee. The pilot “Water Management Plan” name will change to “Critical Area Resource Plan” or “CARP” if it should be designated as a Critical Water Planning Area (CWPA) by the Statewide Committee in November.

Work continues on an ongoing “pilot” Water Management Plan for the Laurel Hill Creek Watershed in Somerset County. This year, the neighboring Back Creek Watershed (tributary to Indian Creek) in Fayette County will be studied in conjunction with the Laurel Hill Creek. Both watersheds are up for CWPA designation similar to the Marsh/Rock Creek Watersheds with “Water Management Plan” being converted to CARP if designated in November.

Water Resource Technical Assistance Center (WRTAC)

DEP has contracted with the Susquehanna River Basin Commission (SRBC) to establish the Water Resource Technical Assistance Center. The establishment of the Center is a requirement of Act 220. After a request for proposal (RFP) solicitation, SRBC selected the PA Environmental Council to develop a plan to establish the Center. The WRTAC advisory committee to SRBC met this Wednesday to review the work of the contractors selected to develop the WRTAC. The contractors include PA Environmental Council and Eastern Research Group (ERG).

The three goals of the project are to establish a leading edge website, develop a comprehensive business plan and legal non profit incorporation including establishment of a board of directors. The website is nearing completion. There was discussion of adding relevant DEP content to the website and how that may work and its value. The advisory group is looking for volunteers to review the website and recommendations on what groups should constitute the board.

The financial numbers of the business plan are beginning to fall in place. PEC is also exploring a variety of fund raising options to implement the business plan, including solicitation of private business, foundations and elected members of the Senate and House for initial support.

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Marcellus O&G Water Management Plan Activities

Water Use Planning staff recently met with representatives of the PA Oil and Gas Producers to discuss the water withdrawal registration and reporting under Act 220 and Chapter 110 regulations. The Division of Water Use Planning has been working internally with Bureau of Information Technology and the Oil and Gas program central and regional offices in developing Marcellus electronic water use reporting and data management systems. As applications are developed to accommodate quarterly reporting of water withdrawals by Marcellus operators, longer term solutions will be developed for overall water management plan data management and sharing of information with River Basin Commissions.

DEP's Water Use Planning (WUP) and the Bureau of Information Technology met with representatives of the Susquehanna River Basin Commission (SRBC) in late 2009 to discuss coordination of data management information and systems, specifically in regards to water use in Marcellus gas operations. It was the consensus of that group to begin defining their respective data needs that will lead to data sharing in the future.

In addition, WUP staff continues to develop and further refine Marcellus electronic water use reporting and data management systems.

Chesapeake Bay Program:

Chesapeake Bay TMDL/WIP: On September 1st, the Department submitted Pennsylvania's Draft Chesapeake Bay Watershed Implementation Plan (WIP) to EPA, which outlines a plan (175 pages and associated tables) to address nutrient and sediment loadings. The PA WIP was drafted with significant input from a variety of groups and venues. As follow-up to a suggestion made at a public meeting in the spring, four workgroups comprised of over 125 volunteers met regularly to provide input. Department staff also received outstanding support from other state agencies, such as DCNR, State Conservation Commission, etc, and agencies such as the Lancaster County Planning Commission.

The WIP is based on a foundation that addresses three core elements: 1) milestone implementation and tracking; 2) supporting the implementation of advanced technologies and nutrient trading; and 3) enhancing common sense compliance efforts.

EPA published a draft TMDL on September 24th. State-drafted WIPs were intended to show "reasonable assurance" for meeting the TMDL objectives. Pennsylvania is one of five states (Virginia, West Virginia, Delaware, Pennsylvania and New York) for which EPA has identified serious deficiencies in the WIPs, indicating that they feel those draft WIPs do not adequately demonstrate reasonable assurance. As a result, EPA has published a draft "Back-Stop TMDL" which is available for public comment. The Department does not agree with the contents of, nor the need for, the Back-Stop TMDL, and is working with EPA, workgroups and Advisory Committees to determine what is needed to allow EPA to accept the Commonwealth's WIP. Public comments will also be part of this process, and details on the public comment period are contained in the next few paragraphs.

The Pennsylvania WIP documents are posted at:

http://www.depweb.state.pa.us/portal/server.pt/community/chesapeake_bay_program/10513 . EPA has established a website specifically for the TMDL, which can be accessed at <http://www.epa.gov/chesapeakebaytmdl/> .

The Pennsylvania public comment period for the draft WIP will run from September 24th – November 8th. EPA will also have a public comment period for the TMDL at the same time. EPA has asked for revised, final WIPs to be submitted on November 29th. EPA will have public meetings on the following dates, and DEP central office staff will be part of the meetings:

- § October 18th - EPA Public Meeting, Best Western Eden Resort 2pm - 4pm 222 Eden Road Lancaster, PA 17601
- § October 19th – EPA Public Meeting, Knights of Columbus 2pm - 4pm 850 Stratford Drive State College, PA 16801-4332
- § October 20th – EPA Public Meeting Lycoming College 2pm - 4pm Wendle Hall 700 College Place Williamsport, PA 17701
- § October 21st – EPA Public Meeting, Bentley’s of Northern Pennsylvania 2pm - 4pm 2300 RT. 309 Ashley, PA 18706

There is a lot of information on planned efforts in the WIP, including these examples: Collecting information on un-reported BMPs; implementing recent regulatory changes to Chapter 102; integrating funds for an annual "Million Pound" project; quantifying legacy sediment impacts; and quantifying reductions associated with air quality programs/regulations. Efforts have been made to include, as much as possible, state-wide programs and changes in the document, which hopefully will help integrate those efforts into the work needed to support the WIP.

Chapter 105 Regulation Revisions: The Division of Waterways, Wetlands, and Stormwater Management is currently working to revise the Chapter 105 Dam Safety and Waterway Management regulations. The Chapter 105 Wetland program is a very strong program and one of the leading wetland programs in the Mid-Atlantic States. The program is considering regulation revisions that would further strengthen the program in two (2) general areas: 1) the wetland classification system, and 2) the wetland and waterway compensation program. The proposed wetland classification system would include an assessment of natural wetland condition allowing for the classification of high value resources. The proposed waterway compensation program would require applicants to offset waterway and floodway impacts authorized by Chapter 105 authorizations similarly to the way wetland impacts are offset.

The Division is getting input on the revisions from Regional Office staff through meetings and resource agencies and the regulated community through the WRAC Chapter 105 Adhoc Workgroup, which met several times between January 9, 2008 and January 23, 2009. The workgroup reviewed conceptual changes for wetland classification and wetland compensation. Many comments on each topic were shared and discussed. Comments and recommendations from the workgroup on these topics were presented to WRAC at their July 2009 meeting.

WRAC recommended program staff continue moving forward with the regulation revision.

While the Chapter 105 Program staff are continuing work on the regulation revision, they have been placed on hold and are currently focused on proposing new permitting fees and a new submerged land license fee. The proposed fees were shared with WRAC at the May 11, 2010 meeting and the July 14, 2010 meeting for comment. After a few questions, WRAC motioned for the draft regulations be forwarded to the EQB.

Chapter 102 Regulation: The regulations will take effect on November 19 2010. *Staff conducted six training sessions for Department and conservation district staff starting on September 14 through October 5. Additional training sessions with the regulated community have been scheduled for November. They are as follows:*

November 2, King of Prussia

November 3, Wilkes-Barre

November 9, Meadville

November 10, Greensburg

More information will be posted concerning these trainings on the stormwater management website at http://www.portal.state.pa.us/portal/server.pt/community/stormwater_management/10628 as soon as it is available.

Revisions to the Delegation Agreements: DEP staff has been working with the 102 Advisory Workgroup regarding changes to the delegation agreements and required output measures (ROMs) for the NPDES Construction Stormwater Program. The group is taking a triage approach to revising the two portions of the agreements. Language related to fees and deposits into Clean Water Fund accounts by Conservation Districts are the first item to be revised. The revision is necessary to allow the funds from the NPDES Construction Program and E&S Program to be split between both the Conservation District and the Department. The workgroup agreed that the base fee would be retained by the Conservation District while the per-acre fee would be forwarded to the Department. *This issue was brought before the State Conservation Commission (SCC) at their September 15 meeting for information purposes and will be acted upon at the October conference call of the SCC. The second item to be revised will be the additional facets of the delegation agreement and the ROMs to address changes in the delegation caused by the new Chapter 102 regulations and other programmatic changes. The 102 advisory workgroup has begun the process of looking at the further changes necessary to the delegation agreement.*

Proposed Permit for Oil and Gas Activities: In response to the United States Environmental Protection Agency's (EPA's) rulemaking and the effect of the federal Energy Policy Act of 2005, DEP issued an "Erosion and Sediment Control General Permit -1 (ESCGP-1) for oil and gas activities that disturb five acres or greater at one time over the life of the project. This permit *applies* to earth disturbance activities for oil and gas exploration, production, processing, treatment operations or transmission facilities (oil and gas industry). The added protection gained through this permit will ensure that proper best management practices (BMPs) will be planned, implemented and maintained for erosion and sediment control and post construction stormwater runoff from these activities. In addition, this approach is an incentive for the operator to minimize the disturbed area and restore the area promptly after completion of the well or installation of the pipeline. Copies of the permit, permit application, and instructions have been sent to the DEP regional offices and county conservation districts statewide. The Division of Waterways, Wetlands, and Stormwater Management conducted a number of training sessions for varied audiences throughout the state through early spring 2009. A few of the conservation districts in the southwest and northeast regions have reported some improvement in the quality of erosion and sediment control plan submittals from some of the consultants who attended the training. DEP staff provided this training on the following agenda items: erosion and sediment control overview of new permitting options, wastewater, water management plan to include water withdrawal and module overview and impoundments.

Waste Management

American Recovery and Reinvestment Act (ARRA).

Leaking Underground Storage Tank ARRA: Under the ARRA, \$200 million is provided for Leaking Underground Storage Tank (LUST) cleanups, nationwide. EPA has awarded a grant for \$6,163,000.00 to Pennsylvania to conduct cleanups at LUST sites where a private party is unable to perform the work or has abandoned the site. *DEP is performing corrective action work under the Storage Tank laws and regulations at 70 eligible sites where properties owners have voluntarily agreed to provide DEP access. As of September 30, 2010, DEP contractors have completed approximately \$4.3 million worth of work and DEP expended approximately \$3.4 million.* The grant term expires on September 30, 2011.

Superfund ARRA: Under the ARRA, \$600 million is provided to EPA for federal superfund projects. EPA has chosen to use ARRA funds at two Pennsylvania sites, the Havertown Pentachlorophenol (PCP) Site, located in Haverford Township, Delaware County and the Crossley Farms Site, located in Hereford Township, Berks County. EPA is using ARRA funds in the amount of \$4.2 million at the Havertown PCP site and \$6.478 million at the Crossley Farms site. *EPA initiated action at the Havertown PCP site in November 2009 and is completing construction this fall. EPA initiated construction at the Crossley Farms site in June 2010 and continues to install the groundwater remediation system.* Pennsylvania is obligated to pay 10% of the cleanup costs at these sites according to the superfund statute and regulations (there is no exemption from this requirement under ARRA). The Commonwealth's share will come from the Hazardous Sites Cleanup Fund.

Recycling Fund Advisory Committee: At the September 10th Recycling Fund Advisory Committee meeting, the Committee approved the Department's proposed grant formula change that reduces the Act 101 Section 904 Recycling Performance Grant Rewards by 40%. This action helps bring Recycling Fund expenditures in line with revenues. The Committee also initiated and approved a motion to consider a reduction in the Commercial Bonus in the Recycling Performance Grant formula for 2011. The Committee approved the 2011-2012 Recycling Fund Spending Plan as presented by the Department with the stipulation that the next Department of Education MOU include measurable performance requirements.

Solid Waste Advisory Committee: The Department presented the draft final rulemaking on the Beneficial Use of Coal Ash at the May 27, 2010 SWAC meeting. The Solid Waste Advisory Committee unanimously approved the request to submit the draft final regulation, Chapter 290 - Beneficial Use of Coal Ash to the Environmental Quality Board as a final rulemaking, requesting that consideration of comments provided during the meeting be addressed. The Department presented the draft final rulemaking on the Beneficial Use of Coal Ash at the August 30, 2010 EQB meeting. The EQB approved the rulemaking.

Land Recycling Program

The Uniform Environmental Covenants Act (UECA) regulations were approved by the EQB on December 15th 2009. The EQB also approved the proposed revisions to Chapter 250 on December 15th 2009. Both packages will be open for a 30 day comment beginning March 6th.

Energy Initiatives

PA Energy Development Authority: *The Pa. Energy Development Authority (PEDA) Board of Directors approved on Friday, Aug. 27 \$20.5 million in grants to 40 green energy projects as part of the 2010 PEDA solicitation. The projects are expected to leverage more than \$211 million in private funds, create 1,400 jobs, and reduce carbon emissions by almost 9 million tons--the environmental equivalent of removing 1.5 million*

passenger cars from our roads. They are also expected to generate or save more than 10,000 GWh's of electricity over their lifetimes. Twenty-four projects are to be funded with \$13 million from Growing Greener II, eight projects are to receive \$5 million in federal funds through ARRA, and eight projects in the Duquesne Light Co. and adjacent service areas are to receive \$2.5 million made available through a settlement of a ratepayer case between the company and the public Utility Commission.

Alternative Fuels Incentive Grant (AFIG) Program: *The Alternative Fuels Incentive Grant (AFIG) Program closed its solicitation period for applications for the most recent round on August 27. A total of 50 applications were submitted requesting in excess of \$19 million, approximately \$11 million more than is available for funding. DEP hopes to announce winners in October. The AFIG program was established in 1992 under Act 166. Act 178 was passed in 2004, resulting in two new programs designed to stimulate the production and use of biodiesel and ethanol in the commonwealth. The Alternative Fuels Incentive Fund receives about \$5 to \$6 million annually from the General Fund. The amount received is equal to 0.25 mills of the utilities gross receipts tax collected during each fiscal year. AFIG was established to promote the production and use of alternative fuels, alternative fuel vehicles, and related transportation technologies to reduce air emissions, utilize indigenous fuels, and create economic development.*

Electric Vehicle Infrastructure Grant Program: *OETD opened a special round of AFIG exclusively for Electric Vehicle (EV) charging infrastructure deployment. The Alternative Fuels Incentive Grant Program EV Infrastructure Solicitation funding opportunity opened Sept. 13 and will remain open until close of business Nov. 12, 2010. During the current fiscal year, approximately \$470,000 will be made available to fund these grants to provide incentive to organizations to install charging equipment for plug-in hybrids and other electric vehicles.*

Home Heating Rebate Program: *The Pa. Home Heating Rebate program, funded by the American Recovery and Reinvestment Act (ARRA), is now taking customers on a waitlist basis as all available funding has been allocated through reservations with the program. As projects who have received a "reservation" drop out, that money will then be redirected to individuals on the wait list. The program is using ARRA funding to provide rebates to Pa. residents for the professional installation of ENERGY STAR rated HVAC equipment and water heaters. The program has awarded a total of 23,675 reservations as of September 9, worth a total of \$14,824,400 in rebate money. The program has paid 6,413 rebates for a total of \$2,457,950.*

Mining/Reclamation/AMD Issues

Reclamation Fee: The final rulemaking was published in the Pennsylvania Bulletin on August 30, 2008. . <http://www.pabulletin.com/secure/data/vol38/38-35/1585.html> The regulation established an adjustable reclamation fee to provide for the on-going Operation and Maintenance (O & M) Costs for the (now defunct) Alternate Bonding System bond forfeiture discharge sites. The fee calculated for 2010 is \$0. This is based primarily on the fact that the fund has about \$4 M and the regulations require a minimum of \$3 M. A second factor is that all of the required treatment systems have not yet been constructed. It is anticipated that the fee will be increased substantially in the future as more facilities come on line. Preliminary analysis suggests that the fee for 2011 may remain at \$0. This is primarily the result of the fact that there has been more revenue than anticipated, from the reclamation fee while it was in effect in 2009 and civil penalties. Also, expenses have been lower than anticipated. Good progress is being made in systematically approaching the problem, with designs underway for many of the treatment facilities. The Department will present the draft reclamation fee report to the MRAB at the October 28 meeting.

Third 5 Year Report: The University of Pittsburgh commenced work on report preparation in February 2009. University researchers have compiled most of the information needed for impact assessment from Department files and databases. Researchers have created a geographic information system (GIS) that is used in establishing relationships between study period mining and overlying properties, structures, streams, water

supplies and other surface features. In addition to the Department's data, researchers have reviewed reports prepared by the Center for Public Integrity as a means of gathering additional information on mining-related impacts and landowners' views regarding those impacts. The researchers are currently engaged in evaluating the data that has been gathered. University biologists have visited stream sites where mining related impacts were reported and performed independent biological assessments of many of the sites. In November, DEP directed researchers to perform biological assessments of several additional streams, which the researchers were unable to sample between the award of the contract and the end of May. (Under the applicable scoring protocol, macroinvertebrate sampling must be performed between October and May) Researchers experienced several unanticipated set backs in correlating information from various sources and, as a result, are running behind schedule. Based on revised projections, the delivery date for the final report has been pushed from May to July 2010. *Comment have been provided to the University of Pittsburgh. The contract allows a 45-day period for them to revise the report in response to comments.*

Proposed Rulemaking-Coal Permit Fees: DEP presented a proposed rulemaking package to the MRAB at the October meeting. This package included fees for coal mining permit applications. The MRAB objected to the fee amounts and recommended that the rulemaking proceed with out the fee revisions. In the meantime, BMR is working with the MRAB's Regulation, Legislative and Technical Committee (RLT) to establish a fee approach that is in line with recommendations the MRAB made at the January meeting.

On April 22, the MRAB made a recommendation that the Department prepare a rulemaking package that includes permit fees that would generate about \$400,000 per year. This rulemaking package is being assembled. *It is scheduled for action at the October EQB meeting.*

Noncoal Program Fees-preliminary work has commenced for fees to support he noncoal mining program. The fees have been calculated to support the program costs (about \$3M). Outreach meetings have been held to explain the reason for the fees and how the amounts were calculated. The proposed fees were approved at the June EQB meeting. The proposed regulations were published in the August 28 PA Bulletin, with a 30-day comment period. *Comments were received from about 20 commentors.*

NPDES Permitting for mine sites-The mining program has focused its attention on improving the documentation for NPDES permit reviews. This is necessary due to recent initiatives by EPA and OSM. Efforts will focus on dealing with the conductivity/TDS requirements and reasonable assurance of meeting the state water quality standards. EPA has to conducted a permit quality review for NPDES permits for mine sites. *BMR is working on implementation guidance.*

Office of Homeland Security

The Protection Steering Committee met on May 6, 2010 and the Energy and Environment Working Group Chair briefed the members of the steering Committee on the Level 3 criteria for Critical Infrastructure/Key Resources. The Energy and Environment Working Group focuses on Energy, Dams, Water and Wastewater Treatment and Nuclear Power Plants. In addition, the DEP Energy Office is collaborating with the PUC and PEMA under a Department of Energy Grant to develop an Energy Emergency Plan and an Energy Assurance Plan for the Commonwealth.

The Director of the Bureau of Energy Innovation and Technology Deployment will be briefing the Governor's Preparedness Interagency Emergency Management Committee this month at PEMA

Environmental Education

Environmental Education Grants Program (EEGP)

The 2011 grant round opened on October 1st. Some applicants are submitting email summary proposals for review and comment by EEGP staff. The full applications are due to the program by December 17th 2010.

Outreach: Environmental Education outreach activities include the following:

- *September 15 Ohio River Watershed Celebration
Kempton*
- *September 17 Renewable Energy Festival
Pittsburgh*

Workshops Conferences and Board Meetings:

- *September 1 Climate Adaptation Workshop
TREC, Erie*

Upcoming Outreach Events:

None

Other EE Initiatives:

The EE Director is working with the Pa Department of Education (PDE) to continue a 25 year partnership through an MOU designed to integrate DEP initiatives into K-12 education. The MOU is in the signatory process.

The Director is working with other agencies and organizations to enhance career opportunities through the Governor's Science, Technology, Engineering and Math (STEM) initiative. The STEM initiative meshes well with DEP's alternative energy technologies related programs. *This initiative has been augmented by the new Greening of Pennsylvania's Labor Market initiative with ARRA funding through L&I.*

DEP's Director of EE is involved regularly with the Pennsylvania Center for Environmental Education (PCEE) as Board Chair. PCEE is located in Slippery Rock, PA and is funded and administered by the State System of Higher Education. The center serves as a clearing house and resource tool for formal and non-formal educators throughout the state.

Falcon Outreach/Education:

- *Occasional Falcon Wire postings, tweets and email exchanges.*
- *EE staff will continue to seek sponsorship for A/V upgrades and web streaming improvements in partnership with CMS.*

EP Draft Technical Guidance Documents

Draft Date	Document Title	Comment Deadline
8/14/2010	<i>Manure Management Manual - Land Application of Manure</i>	11/12/2010

i. **DEP Regulations and Policies: Proposals Open for Comment**

PA Bulletin Publication Date	Proposal or Regulation	Comment Deadline
<i>10/23/2010</i>	<i>General Permit for Short-Term Construction Projects; BMR-GP-103 Modification</i>	<i>11/15/2010</i>
<i>10/2/2010</i>	<i>Guidance for Filter Plant Performance Evaluations</i>	<i>11/1/2010</i>

DEP Regulations and Proposals Recently Finalized

PA Bulletin Publication Date	Proposals or Regulations
<i>10/2/2010</i>	<i>Outdoor Wood-Fired Boilers (25 Pa Code Chs. 121 and 123)</i>