



# Citizens Advisory Council

to the Department of Environmental Protection

## **Pennsylvania Constitution Article I, Section 27**

*The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.*

# **2012** *Annual Report*

John J. Walliser  
Chair

Manjorie L. Hughes  
Executive Director

# CITIZENS ADVISORY COUNCIL

## GOVERNOR'S APPOINTMENTS

**Jolene E. Chinchilli** – Lancaster Co.; B.S. Biology, Chatham College; M.S.P.H., Environmental Science and Engineering, University of North Carolina; Former Executive Director, Pennsylvania Office of the Chesapeake Bay Foundation; appointed June 27, 1996; current term expires January 2012.

**Gail M. Conner, Esq.** – Delaware Co.; JD, Widener University School of Law; B.S., University of Wisconsin; Founder and President of G&C Environmental; appointed June 17, 2005; current term expires January 2011.

**S. Pat Lupo, O.S.B.** – Erie Co.; B.A. Elementary Education, Mercyhurst College; M. Ed. Science Education, Clarion State University; Director, Lake Erie Allegheny Earth Force; appointed June 29, 1988; current term expires January 2013.

**Richard J. Manfredi** – Bucks Co.; B.S. Public Administration, Shippensburg University; M.S. Public Administration, Marywood College; President & CEO of RJM Public Affairs; appointed June 13, 2002; current term expires January 2011.

**John J. Walliser, Esq.** – Allegheny Co.; B.A. Political Science, University of Pittsburgh; JD, University of Pittsburgh School of Law; Allegheny Valley Conservancy Board of Directors 2004-Present; Allegheny County Bar Association, Environmental Law Section Council, 2006-present; appointed October 2008; current term expires 2013.

## PRESIDENT PRO TEMPORE OF THE SENATE APPOINTMENTS

**Cynthia Carrow** – Allegheny Co.; B.S. University of Pittsburgh; Executive Vice-President of Western Pennsylvania Conservancy; President of the Board of Directors, Conservation Consultants, Inc.; appointed February 1997; current term expires January 2013.

**Walter N. Heine, P.E.** – Cumberland Co.; B.S. Civil Engineering, Drexel University; M.S. Sanitary Engineering, University of Michigan; Chief Executive Officer, Walter N. Heine Associates, Inc. and Township Supervisor; former Director of the Federal Office of Surface Mining, U.S. Department of the Interior; and former Associate Deputy Secretary for Environmental Protection, PA DER; appointed August 11, 1983; current term expires January 2013.

**David E. Hess** – Dauphin County; B.A., Urban Studies from Shippensburg University, M.A. Urban and Regional Planning, University of Illinois. Director of Policy & Communications with Crisci Associates and former Secretary of the Pennsylvania Department of Environmental Protection; appointed July 30, 2012; current term expires January 2014.

**Nancy D. Perkins, Esq.** – Allegheny Co.; B.A. Mount Holyoke College; JD, Nova Southeastern University Shepard Broad Law Center. Associate Dean & Professor of Law, Duquesne University Law School; appointed July 28, 2011; current term expires January 2014.

**Burt A. Waite, P.E.** – Crawford Co.; B.A. Geology, College of William & Mary; M.S. Geology, University of Vermont; Senior Geologist in charge of environmental services for Moody & Associates; appointed November 17, 1998; current term expires January 2015.

## SPEAKER OF THE HOUSE APPOINTMENTS

**James Clauser** – Carbon Co.; Associates Degree, Williamsport Area Community College; Environmental Vegetation Specialist, PPL, September 2010 – present; former District Manager, Carbon County Conservation District; Certified Land Management and Water Control Erosion & Sedimentation Control Specialist; Board Member for PA Western Pocono Trout Unlimited; appointed June 2009; current term expires January 2015.

**Eric R. Conrad** – Cumberland Co.; B.A., Geology, New England College; M.A., Urban and Regional Planning, Penn State University; President, E. R. Conrad and Associates, LLC; appointed November 2009; current term expires January 2014. Resigned from Council December 2012.

**Terry L. Dayton** – Greene Co.; B.S. Environmental Resource Management, Penn State University; Manager of Environmental Affairs, Pennsylvania Land Holding Company; appointed March 2011; current term expires January 2015.

**William C. Fink** – Bedford Co.; B.S. Environmental Pollution Control, California University of PA; State Certifications as Certified Nutrient Management Specialist & Certified Odor Management Specialist, Environmental Management Specialist at Country View Family Farms, appointed July 18, 2012, current term expires January 2013.

**Janet B. Keim** – Lehigh Co; B.S., Elementary Education, Kutztown University. Retired Substitute Teacher; appointed August 22, 2006; current term expires January 2013.

**Thaddeus Stevens** – Tioga Co.; Associate Applied Science, Forestry, Paul Smith's College New York; PA Association of Realtors, Legislative Committee; Delegate to North Central Sewage Agency for Gaines Township, Tioga County; appointed April 9, 1997; current term expires January 2014.

**David Strong** – Jefferson Co.; B.S. Chemistry, Mansfield University; Independent Environmental Scientist; appointed October 31, 1996; current term expires January 2013. Resigned from Council February 2012.

## SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Michael L. Krancer** – Montgomery Co.; 1980 graduate of University of Virginia; 1983 graduate of Washington & Lee University School of Law; 1992-1999 Partner, Litigation Department, Blank Rome Comiskey & McCauley; 1999-2011, Administrative Law Judge, Pennsylvania Environmental Hearing Board; nominated as Acting Secretary of Pennsylvania Department of Environmental Protection, January 18, 2011.

Executive Director - Marjorie L. Hughes

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**Mission Statement of the Citizens Advisory Council** Inside Back Cover

## COUNCIL OVERVIEW

Since its creation in 1971<sup>1</sup>, the Citizens Advisory Council (Council, CAC) has been actively involved in environmental issues affecting the Commonwealth. The objective for creating the Council was to establish a non-partisan body to represent citizen viewpoints and provide objective analyses of the Department of Environmental Protection's (DEP) performance and environmental issues in general. This legislation gave the Council three specific charges:

- a) *The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification, and codification thereof.*
- b) *The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents, and records pertaining to or belonging to the Department.*
- c) *The Council shall advise the Department on request, and shall make recommendations upon its initiative, for the improvement of the work of the Department.*

**Council is the only legislatively mandated advisory committee with the comprehensive charge to review all environmental legislation, regulations, and policies affecting the Department of Environmental Protection.**

In addition, the 1992 amendments to Pennsylvania's Air Pollution Control Act require DEP to consult with Council in developing state plans and regulations to implement the federal Clean Air Act. **To carry out these responsibilities, Council by law<sup>2</sup> is granted access to all DEP records. Council reports annually to the Governor, the General Assembly, DEP and the public.**

Council has 19 members: 18 appointed citizen volunteers and the Secretary of the Department of Environmental Protection. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate each appoint six members, with no more than half from the same political party. Council's membership is geographically, politically and professionally diverse. Appointees must be familiar with the work of DEP and members serve staggered 3-year terms.

Council typically meets monthly, and meetings are open to the public and advertised as required by the Sunshine Act.<sup>3</sup> In previous years, Council held a regional meeting in a different part of Pennsylvania to gather input about environmental activities and hear the environmental concerns in that area. In 2012, Council decided to forgo the regional event to focus on completion of Council's 2011 regional report and review of the latest Bituminous Mine Subsidence and Land Conservation Act (Act 54) Five-Year Report.

Annually Council elects five members to serve as the only citizen representatives on the DEP Environmental Quality Board (EQB), a 20-member independent board that adopts all of DEP's regulations.<sup>4</sup> In 2012, the EQB convened five times to consider two petitions, three proposed rulemakings, nine final rulemakings, and one statement of policy. In addition, in early 2012, the Department withdrew a rulemaking following EQB approval. As a result of that unexpected action,

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<sup>1</sup> Act 275 of 1970

<sup>2</sup> Section 1922-A of Act 275 of 1970

<sup>3</sup> Act 84 of 1986

<sup>4</sup> Sections 471 and 1920-A of Act 275 of 1970

CAC EQB members were invited to serve on a working committee to determine if a procedure should be established instructing the Department to return to EQB prior to withdrawing any rulemaking upon which EQB had already taken action. This working committee was not convened as the Department made a commitment to return to EQB prior to any future withdrawal.

Council elects four members to serve on the Mining and Reclamation Advisory Board.<sup>5</sup> Council also holds seats on the Air Quality Technical Advisory Committee, Low-Level Radioactive Waste Advisory Committee, Radiation Protection Advisory Committee, and Solid Waste Advisory Committee. Council is also represented on the Environmental Hearing Board Rules Committee<sup>6</sup> and the Oil and Gas Technical Advisory Board.<sup>7</sup>

Council is granted the independence to hire its own staff by law.<sup>8</sup> In 2012, full-time staff included Marjorie L. Hughes as Executive Director. In addition Susan M. Wilson, previous Executive Director provided specific project support as an annuitant. Ms. Marsha Lohr and Ms. Paula Sviben of the Office of External Affairs provided clerical and administrative support and Thomas Mainzer, PA Management Associate spent portions of September and October with CAC focusing on strategic planning. The Council's offices are located on the 13th floor of the Rachel Carson State Office Building, 400 Market Street in Harrisburg.

For more information, Council can be reached at:

- Website: <http://www.depweb.state.pa.us/cac>
- Write: P.O. Box 8459, Harrisburg, PA 17105-8459
- Telephone: (717) 787-4527
- Email: [mahughes@pa.gov](mailto:mahughes@pa.gov)

## **2012 PRIORITIES**

In 2012, much of Council's attention was focused on issues related to the continuing development of the Commonwealth's oil and gas industry, review of DEP's latest Bituminous Mine Subsidence and Land Conservation Act (Act 54) five-report, sustainable infrastructure and issues from the public. These topics are highlighted in this report covering activities, positions, discussions and recommendations of the Citizens Advisory Council from January 1, 2012 to December 31, 2012.<sup>9</sup>

### **OIL & GAS DEVELOPMENT/MARCELLUS ISSUES**

During the first few meetings in 2012, Council heard from two key players dealing with issues and activities related to the ongoing development of the Marcellus and related shale plays – Mr. Patrick Henderson, PA Energy Executive and Public Utility Commissioner Ms. Pamela Witmer.

Mr. Henderson reviewed the elements of Act 13 of 2012, summarizing its many chapters. He detailed the unconventional gas well fee structure, municipal ordinances and allowable expenditures. Specific

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<sup>5</sup> Section 18 of Act 181 of 1984

<sup>6</sup> Section 5 of Act 94 of 1988

<sup>7</sup> Section 216 of Act 223 of 1984

<sup>8</sup> Section 448 of Act 275 of 1970

<sup>9</sup> Act 275 of 1970 requires the Citizens Advisory Council to report annually to the Governor and to the General Assembly.

questions from Council members touched on a variety of issues including municipal land use control authority, distribution of fees to counties and municipalities, single well and multiple pad development, fee calculations, protection of private property rights of homeowners regarding pipeline placement.

Pamela A. Witmer, Commissioner of the PA Public Utility Commission (PUC), informed Council of PUC's responsibilities in implementing Act 13, specifically fee collection & distribution, as well as local ordinance review. The PUC must also certify the price of natural gas used in the fee calculation. The resolution of the Commonwealth court injunction regarding local land use control will determine how the Commission will address these local ordinances. In response to questions from Council, she explained how the impact fee is calculated; that the PUC has put out a request for proposals to hire a local land use control expert law firm and that they are in the process of hiring two additional attorneys to deal with Municipalities Planning Code issues.

Department implementation of Act 13 has been significant including development of a website, "Frequently Asked Questions (FAQ)" document, production of a four-part WebEx series, review of bonding, erosion and sedimentation controls, and electronic notification of the spud date. Other issues addressed in 2012 were disposal of wastewater and development, with input from the Oil and Gas Technical Advisory Board (TAB), of a spill policy.

#### **BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT (ACT 54 ISSUES)**

Section 18.1 of the Bituminous Mine Subsidence and Land Conservation Act (Act 54) requires DEP to report its findings regarding the effects of underground mining on overlying land, structures, and water resources to the Governor, General Assembly and Citizens Advisory Council at five-year intervals. The latest report, *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining on Surface Structures and Features and on Water Resources, 2003-2008*, prepared by the University of Pittsburgh, addresses underground mining impacts for the period August 2003 to August 2008.

The report was delivered to the Governor, General Assembly and CAC on December 21, 2010, and released to the public on January 3, 2011. The next report will cover 2008-2013. Council heard from individuals and panels on all aspects of the Act and from all angles as they educated themselves on the issues relating to mining and its impact on surface uses. In October 2011 Council convened its regional meeting and site visits in southwestern Pennsylvania, to focus on Act 54 and to experience and observe some of the impacts and activities related to deep-mining in the region.

For over 18 months, Council heard from DEP, industry, trade groups, individuals, environmentalists, organized individual discussion panels and conducted a regional meeting focused specifically on deep mining in southwestern Pa. In addition, as part of the regional meeting, Council held a public hearing. As a result, all sides of the issues of fairness and balance that Act 54 creates between mineral and surface owners came to light—some participants stating it provides a just balance between competing property rights, and others expressing that it does not adequately protect surface owners and the environment.

A report summarizing what Council heard and saw during that trip was prepared along with comments and recommendations specific to the department's report and Act 54 itself. This CAC report was submitted to DEP and legislators on June 6, 2012 and noted:

- Steady improvement in the quality and quantity of the data collected with each successive report. The latest report continues this positive trend and the department and the authors are to be commended.
- Report emphasizes data gathering rather than data analysis. In order to be in compliance with Section 18.1(b) of Act 54, DEP needs to analyze the data and determine the effects of deep mining on subsidence of surface structures and features, and on water resources including sources of public and private water supplies, as required by law.
- Future reports should go beyond data gathering and provide a review and at least a preliminary analysis of these issues.
- Questions were raised regarding ownership and availability of data used to prepare the current report; unless data is proprietary, data collected under a state contract should be the property of DEP and made publically available.
- Request to confirm that new data such as the data now collected under Technical Guidance Document 563-2000-655, which established protocols for assessing biological health and for determining when a stream was impaired/repared, is being used to update relevant databases.

**Specific areas of concern that should be addressed in the next Act 54 report were identified including the following:**

- Schmid and Co. was commissioned by citizens groups to analyze the latest report. Their analysis (*The Increasing Damage from Underground Coal Mining in Pennsylvania: A Review and Analysis of the PADEP's Third Act 54 Report*) raises numerous concerns about the impacts of deep mining and response times over the reporting period that need to be addressed. For example, their analysis contends that according to the latest 5-year report, less than 10% of the damaged homes and wells actually are being repaired. According to the current report, of 300 damaged structures for which mining was found liable, the resolution whereby the structure was 'repaired' occurred in only 6% of the cases (page V-14). Of 269 damaged water supplies for which a mining company was deemed liable, the resolution 'recovered/repared' accounted for only 9% of the cases (page VI-6).
- Each of the succeeding reports provide 5 year snapshots of data rather than assess cumulative impacts and trends in damage reporting, resolution times, et cetera since reporting started. The cumulative impacts question is critical to assessing the effects of deep mining. What are the cumulative impacts in each category over all four reporting periods? What trends can be discerned in the extent of damage and impacts in each category? What trends can be discerned in resolution times over the whole time period?
- Regarding water, the focus in the reports has been on water supplies and stream segments, rather than an assessment of cumulative hydrological impacts. Do reported claims capture impacts to natural resources (e.g. losing my spring vs. damage to aquifer), duration of impact (temporary vs. long term)
- Are there data gaps? Are we collecting the right data to be able to predict/minimize impacts? Are we using the data to do so?

- After studying the successive reports: Do we now understand the geological and hydrogeological systems well enough to predict impacts and act to prevent/minimize them? Can we document that we are doing a better job at predicting and minimizing impacts, and at resolving those that do occur in a timely fashion? Are there any conclusions we can reach regarding room and pillar vs. full extraction? There are pros and cons to room and pillar extraction vs. full extraction—Act 54 presumes that predictable subsidence and timely damage repair is better than unpredictable and delayed subsidence, even if greater in magnitude. Others argue the reverse and suggest changing how we implement Mine Subsidence Insurance to better address future subsidence from current mining.
- What do we face going forward? Is deep mining moving towards more and more populated and built up areas? If we are moving towards more developed areas, issues will escalate. How does the growing presence of gas drilling in the area affect deep mining?

**Points and concerns regarding program implementation:**

- Regarding program staffing, Council heard both that staffing is sufficient, and that it is grossly inadequate for the workload. If Council received accurate information, there are only three field inspectors covering all the deep mines in 10 counties. Is staffing adequate to the workload?
- Is communication with potentially affected landowners adequate and timely? Council heard claims from impacted surface owners that they had never been contacted by a Surface Subsidence Agent (a.k.a. shadow inspector) however, the program’s records indicated that shadow inspectors did visit the specific properties in question. We also note that the original Environmental Justice Workgroup report included coal communities as defined EJ communities, and all should be receiving the extra outreach and attention provided under EJ policies. Council staff has had some initial discussion with DEP staff on rewriting relevant fact sheets in a more “plain language” style to ensure outreach is clear, consistent and effective.
- While not an obligation or responsibility of the department, there is an obligation under current law to fully disclose the severance of subsurface/mineral rights whenever property is transferred. Based on anecdotal reports, diligence in meeting this obligation can vary and may leave surface owners shortchanged. We recommend that diligence in ensuring adequate disclosure be required and assured in the future. In addition, DEP should bolster relevant fact sheets and outreach materials on this front.
- Damage claims and response times: Some of problems brought to Council’s attention may result from different cultures from company to company, which is outside the purview of DEP regulation. Some of the problems brought to our attention seem to result from the mine operator either not following up on repairs or hiring sub-standard subcontractors to mitigate/repair. One solution might be to require mining operators to hire only bonded and licensed contractors for reparation and restoration activities. Council questions the acceptability of ‘responses’ such as the use of piped-in public water to augment dewatered streams; Council observed one such response at the regional meeting that has reportedly been ‘augmented’ with three public water lines for four years. There may be a need for greater oversight to ensure more timely compliance.
- Pennsylvania has significant archeological sites that are thousands of years old as well as significant historical resources dating from the 1800’s. It is not possible for Native American cultural resources dating back as early as 7000 BC to be truly ‘repaired’ if they are harmed by longwall mining. Damage to prehistoric archaeological sites, or cracks in 18th century windows are irreparable. Those concerned with the protection of cultural and historic resources raise some



very compelling points regarding the special concerns of such resources, and the need for special precautions and perhaps even prohibition of mining under such resources.

- Since the passage of Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels causing greater areas of subsidence. For example, the width of panels has become so wide that we now have a category of “supercritical” where the ration of the panel width to the depth of overburden is great enough that it causes maximum impacts. If narrower panels produce subcritical subsidence characteristics, then consideration should be given to the merits of regulating panel width as a means of controlling surface damage. Narrower panels probably leave more coal unrecovered, but it would be useful to know how the value of the coal left compares to the cost of the damages caused.

#### **Legislative concerns:**

- As we approach the 20th anniversary of Act 54, we concur that it is time to assess the oft-requested need for reform. Pennsylvania needs to objectively examine the benefits of the law as well as threats to the health, welfare and safety of the citizens of the Commonwealth and its environmental resources. We recognize that balancing the benefits and threats to public health and the environment is a politically, ethically, and morally challenging undertaking, and that the property rights of both mineral and surface owners must be upheld.

#### **Specific areas of focus include the following:**

- The original 1966 BMSLCA prohibited bituminous coal from being mined in a manner that would cause subsidence damage to certain protected structures; there was no provision addressing affected water supplies. It was amended in 1980 and again by Act 54 in 1994 to provide a restoration or replacement remedy for damage caused by subsidence. This was intended to provide balance between the disparate rights of the landowner and coal operator by providing a replacement or restoration remedy for damage caused by subsidence. Do the tradeoffs implemented nearly 20 years ago by Act 54 still provide the intended balance?
- Since the passage of Act 54, the technology and efficiency of longwall mining has continuously been improved to extract more coal from ever wider and longer panels causing greater areas of subsidence; has Act 54 and its regulations kept up with technology or are changes needed to restore better balance? Similarly, has Act 54 and its regulations kept pace with development of restoration techniques?
- Should historic properties be given special consideration and/or protection given the difficulty in mitigation/repair without loss of historic value? The Constitution requires that we protect natural, scenic, historic and aesthetic values of the environment. Should the goal for historic properties be protection or reparation?

At its September meeting Council heard from Professor Benjamin M. Stout III of Wheeling Jesuit University. Dr. Stout testified before CAC at the Southwest Regional meeting in October 2011. He was invited back to present the preliminary results of his study on coal region headwaters and the impacts from long wall mining. Dr. Stout reviewed the preliminary data in detail including site selection and testing protocols. He noted the changes observed in the biological and hydrological elements. He complimented the Department on its method to assess streams which relies on the May Fly count, and offered that for small headwater streams, using the Stone Fly may be a better indicator of stream health. Dr. Stout explained that their 12 years of data seems to show that long wall mining headwater streams do not recover or stay the same after mining. He reminded Council that the data was still being reviewed

and anticipated the analysis would be ready for peer review prior to publication in approximately 6 months.

In September Council also heard a presentation from the Department on the status of the 4th Act 54 Report Contract, and DEP's response to CAC comments on the 3rd Act 54 Report. Mr. Thomas Callaghan, Director, Bureau of Mining Programs, Office of Mineral Resources Management reported that the contract for the 4<sup>th</sup> Report (covering August 2008 - August 2013) had been signed with the University of Pittsburgh with a draft report expected in April 2014. He reported that all data would be provided to the Department and none would be considered proprietary or held back by the contractor as in previous years. He also reported that there would be more data analysis in addition to data collection and reporting and that hydrology and long term impacts will be considered.

Mr. Callaghan indicated that all data will be considered if comparisons are appropriate, and the review will consider data as far back as possible, however the Department may not have appropriate baseline data prior to 2007. Council members asked if an annual report rather than a five year report could be produced. Mr. Callaghan responded that the Act requires a five year report. Council members strongly encouraged the Mining Program to consider preparation of a supplemental cumulative impact review of structures and the environment. They observed that data gathering without analysis was not valuable. Mr. Callaghan reminded Council of Secretary Krancer's August 20<sup>th</sup> response to CAC's Act 54 review and offered to provide program experts and information if questions remain. He also offered to consider Dr. Stout's report when it is available if it strengthens the Department's protocol.

In November Council heard from Mr. Steve Kunz, Senior Ecologist, Schmid & Company, Inc. of Media, PA, who presented on behalf of the Citizens Coal Council (CCC). The CCC believes that the Act 54 report should analyze information from permit application files, monitoring reports, enforcement files, and any other appropriate source. He detailed CCC's numerous concerns with the three previous Act 54 reports such as: quality and statistical validity of the data; inability of the data to support some of the report's conclusions; lack of a comprehensive evaluation of deep mining's impact upon water resources and their associated social costs; need for solid baseline studies during pre-mining surveys to ensure the protection of water supplies in areas slated for mining; lack of evaluation of how much water loss occurred, either through reduction in quantity or quality; lack of evaluation of the economic or environmental impacts of the reported flow diminution, ponding and diversion; property damage prevention efforts and costs to make repairs and replace water supplies; questions whether Act 54 properly balances surface owner rights against mineral rights; lack of adequate baseline information which prevents any meaningful analysis of impacts; insufficient comparison and analysis of longwall vs. room-and-pillar; the pace of the resolution process; suggestion that DEP conduct the study contemporaneously with the study period in order to provide a clear, real-time picture of the situation; data collection to be able to predict/minimize impacts is missing. He noted that each of the reports provide a 5-year snapshot of data rather than assess cumulative impacts and trends, and that the cumulative impacts question is critical to assessing the effects of deep mining. He noted that the focus in the reports has been on water supplies and stream segments, rather than an assessment of cumulative hydrological impacts.

## **WATER AND WASTEWATER SUSTAINABLE INFRASTRUCTURE**

In February Council discussed Water and Wastewater Sustainable Infrastructure, a priority approved by CAC at the November 2011 meeting. The Governor's Sustainable Infrastructure Task Force Report *Creating a Sustainable Solution for Pennsylvania* identified an estimated \$36.5 billion shortfall in funding for water/wastewater infrastructures. Eric Ross, the chair of the Task Force regulatory and

legislative workgroup, spoke to the Council and provided additional context and history. He noted that legislation was drafted that addressed budgeting, asset management, technical assistance and promoted full cost user fees. Mr. Ross provided a summary of the bill and noted while it had been previously introduced, it was not acted upon during that session. Mr. Ross responded to questions from Council regarding current infrastructure funding options and asked Council to champion this legislation. Council members suggested that appropriate asset management should be a condition for receiving infrastructure grants and a draft CAC plan of action was to be developed.

Veronica Kasi, DEP Program Manager, Bureau of Point & NonPoint Source Management presented information on the draft Water and Waste Water Infrastructure legislation and provided details on the DEP program design. She gave an overview and discussed implementation of asset management.

A draft CAC position paper was prepared based on prior positions and generally supports the concept of sustainable infrastructure. Council members discussed how to be open to considering all Commonwealth assets, not to rely on rate payers alone, and focus on how this draft legislation can be crafted to truly provide sustainable infrastructure.

### **CONCERNS/COMMENTS FROM THE PUBLIC**

**During every Council public meeting, a portion of the time is set aside specifically to invite any member of the public in attendance to offer testimony or raise concerns or issues with Council. During 2012, several members of the public spoke.**

**February** - Jeff Schmidt with Sierra Club congratulated the Council on getting Governor's Office support for filling the CAC Executive Director position. He noted that DCNR was not able to retain their Advisory Council position. Mr. Schmidt informed Council of an article by Don Hopey concerning DEP Southwest regional office attorneys/legal staff. According to the article, the regional counsel was forced to resign and the replacement's connection to Consol violated federal rules, forcing that person to also resign. Jeff would also like to have Act 54 recommendations addressed by the Council. He would like the Council to look into the decision making process used by the DEP concerning issuing permits.

**March** - Stephen Kunz, Senior Ecologist with Schmid & Company, noted Council's plan to complete its comments on the latest Act 54 Review Report next month, and indicated that the Citizens Coal Council is eagerly looking forward to those comments. He offered comments on Act 54, including the failure to balance the goals of those who drafted and those who adopted Act 54. He noted that this latest Act 54 Report indicates that mine-related impacts to structures, water supplies, and other surface and near - surface features are increasing, that actual repair or restoration of those impacts is rarely done, and that resolution of impacts - when there is some resolution - takes a very long time, sometimes many years. Mr. Kunz indicated that he was speaking on behalf of those in the coalfields who are growing ever more frustrated with the lack of action and lack of attention to these problems.

**April** - Michael Jacoby spoke to the Council about site location inaccuracies in the EPA FSR locational information database that he believes can be traced back to DEP eFacts as the data source. He indicated that he has sent a letter to EPA, Secretary Krancer, and Governor Corbett with his concerns specifically related to emergency response use of this inaccurate locational data. He stated the records / reports he reviewed have only a 10% accuracy rate. Mr. Jacoby subsequently meet with DEP Information Technology staff to discuss his concerns and it was determined to be a county level issue. He indicated he would work with counties to resolve.

**May** - Roberta Winters, Vice President for Issues and Action of the League of Women Voters of Pennsylvania, addressed the council in regards to the League's recommendation to enforce existing regulations, pause permitting of new long wall coal mining operations and reform Act 54.

**May** - By letter, John Dawes, Executive Director of the Foundation for Pennsylvania Watersheds, requested that CAC look into water quality issues in the Susquehanna River. As a result, Jeff Smith from the Pennsylvania Fish and Boat Commission (F&BC) was invited to present background information to Council. Mr. Smith provided details on blotchy bass syndrome as well as the decline in the small mouth bass population. Council members raised questions regarding tissue sampling, parameters reviewed, the ramifications of placing the river on the 303d impaired waterways list, and similar actions in other states. DEP Water Management staff clarified when a TMDL (Total Maximum Daily Load) can be assigned to a river and explained that TMDLs can only be done once the stressor is identified. Council members noted that TMDL may not be effective when there are multiple causes of impairment and a nontraditional approach may be needed. Deputy Secretary Kelly Heffner reported that the Department is working with a variety of agencies. Mr. Smith offered to share F&BC's study design and indicated that they are looking for data collection funding and expertise from various partners. Based on the meeting discussion, Council agreed that additional scientific investigative work is necessary to identify the cause of the water quality problems in the Susquehanna and offered support to the F&BC's effort to collect and analyze pertinent scientific data. Council also noted support for DEP's efforts and encouraged the Department to continue to share its expertise with the Fish and Boat Commission.

As a follow-up, at the September CAC meeting, Rob Kime, Environmental Program Manager in the Water Quality Standards Division provided Council with an update on the Department's actions regarding designating the Susquehanna as an impaired waterway. He reported on area testing conducted from Sunbury to Harrisburg, the sampling analysis, coordination with the Fish and Boat Commission and the comprehensive sampling by the Susquehanna River Basin Commission. As a result of this effort, he expects that USGS will probably move a few of their sampling toward the middle of the river channel. In addition, it will take several months to review all the data. He explained that once the analysis was complete, the Department would make a determination regarding designation. He added that a comment/response document was under development and when complete and sent to EPA, it will be posted on the DEP website.

**September** - Susan Leinberger representing the League of Women Voters of Pennsylvania read a statement applauding the Department's efforts to offer public hearings on various permits. She expressed concerns regarding an August 14<sup>th</sup> hearing at West Chester University regarding a Transco pipeline expansion. Specific concerns raised included the format of the open house conducted immediately prior to the public hearing, as well as the significance of information presented with no opportunity for review by the public.

**November** - Bonita Hoke, Executive Director of the League of Women Voters of Pennsylvania, gave testimony related to several concerns with DEP's water well testing protocol and disclosure notices and the reversal of a permit decision for a pipeline crossing. She noted that the League would like the Council to request measures be put in place to insulate regulatory agencies from political influences and other considerations provided by natural gas companies. She explained that this action would prevent the growing appearance of a conflict of interest and potential ethical concerns.

## DEPARTMENT/COUNCIL OPERATIONS

- Budget - Beginning in the next budget cycle, DEP has made a commitment that the CAC and its Executive Director will be actively involved in the CAC budget development and submission. Previously the CAC budget was prepared by DEP with no CAC involvement.
- Permit Review Guidance - In September, Alisa Harris, Special Deputy for External Affairs provided CAC with a briefing on the Governor's Permit Decision Guarantee Program Executive Order and discussed the two draft policies currently out for public comment. She thanked Council for their February 2011 white paper *Transforming DEP's Permitting Processes* and indicated that it had been helpful in developing the draft policies.
- Public Participation Guidance - In November, Deputy Director Lapato introduced Holly Cairns, newly named DEP Environmental Justice Advocate. She will be the contact for proposed revisions to the public participation guidance. Council members asked if the CAC would be able to provide input to the revisions before it is published for public comment. Mr. Lopato responded that he would get back to Council regarding that request. As a result of this request Council has been invited to review several Department public participation guidance and are expected to conduct that review in early 2013.
- Council Mission, Powers and Duties Review - A general review of the CAC, its mission, powers and duties was conducted in November. Council members discussed the importance of CAC strengthening its effectiveness and monitoring DEP activities. Ideas regarding increased communication with the Legislature and the department were mentioned along with where CAC should focus given reduced resources. Act 13 implementation, budget, issues CAC brings to the table, DEP transparency, and use of legal interns and committee structure were among the items mentioned. No specific conclusions were reached, however a draft work plan was to be considered at the January 2013 meeting.

## COMMITTEE ACTIVITIES

### AIR COMMITTEE

Council thanks the Bureau of Air Quality for providing regular updates on air issues, policies and regulations.

Council was given additional responsibility with the 1992 amendments to Act 95, Pennsylvania's Air Pollution Control Act (APCA), which directs DEP to consult with Council when considering state plans and regulations to implement the federal Clean Air Act (CAA). As a result, Council formed a standing Air Committee<sup>10</sup> to address air issues and policies.

During 2012 the CAC the Air committee held three conference calls (1/31/2012, 2/22/2012, 8/29/2012) to consider rulemaking packages being developed by the Bureau of Air Quality. On the committee's recommendation, Council approved the following rulemakings.

- ✓ **Proposed Chapter 121 and Chapter 139** – clarifying sampling and testing methods related to condensable particulate matter and filterable particulate matter.

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<sup>10</sup> **Air Committee members during 2007-2012 reporting period:** DeEtta Antoun (2007); Gail M. Conner, Esq. (2007-present); Walter Heine, P.E. (2007-present); Brian Hill (2007); Lack Lebeau, MD (2007); Nancy Perkins, Esq. (2011-present); David Strong (2010); Bruce Tetkoskie (2007-2008); Margaret Urban (2007); John Walliser, Esq. (2009-present; current chair).

- ✓ **Commercial Fuel Oil Sulfur Limits for Combustion Units Final Rule** – would lower the allowable sulfur content limits of commercial fuel oils used in oil-burning combustion units and replace the existing geographic area-specific sulfur content limits for commercial fuel oils with statewide sulfur limit.
- ✓ **Proposed Title V Fee Amendment** – to amend the base Title V annual emission fee codified in § 127.705 (relating to emission fees) of Chapter 127, Subchapter I (relating to plan approval and operating permit fees).

*June 2007 to June 2012 Air Five-Year Report – CAC Activities Report* – Act 95 also requires DEP to conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the federal CAA. This evaluation was to begin five years after the effective date of July 9, 1992, and continue every five years thereafter, and include a summary of the activities undertaken by the Citizens Advisory Council. In November Council met its obligation under the Air Pollution Control Act, and on the recommendation of the Air Committee, approved the *June 2007 to June 2012 Air Five-Year Report – CAC Activities Report*. The Report was then submitted to the Bureau of Air Quality as required.

## **PUBLIC PARTICIPATION & OUTREACH COMMITTEE**

The Public Participation & Outreach Committee reviewed the Department of Education’s Environmental Literacy Plan. No comments were submitted.

## **WATER COMMITTEE**

The Water Committee held a conference call (1/31/12) and meet following the 2/21/12 and 4/17/12 CAC meetings to listen to reports on changes to Chapter 93 (Water Quality Standards) and the proposed ESCGP-2 for oil and gas activities, as well as a presentation on 2012 Draft Integrated Water Quality Monitoring and Assessment Report. The Committee decided that there was adequate oversight and expertise already applied to its review and no comments were submitted.

## **PROGRAM/REGULATORY REVIEWS**

**Great Lakes** – Council member Pat Lupo announced the approval of the Great Lakes Wind Collaborative MOU signed by the heads of 10 federal agencies and the governors of Illinois, Michigan, Minnesota, New York and Pennsylvania for coordination of off shore wind development in the Great Lakes. She distributed a press release and reported on the signing of the Great Lakes Water Quality Protocol signed on September 13, 2012. This Protocol covers a variety of issues including cleanup, restoration, water quality, habitat destruction and harmful substances. She reviewed the Great Lakes areas of concern, which included Asian carp and encouraged Council members to review the report *The Carbon Footprint of Water* found at <http://www.rivernetwork.org>.

She also reported that the memorandum of understanding between DEP and the Department of Education had been signed and that a replacement to fill Department of Education’s Environmental Educator position had been posted.

**Infectious and Chemotherapeutic Waste Proposed Revisions within the Municipal and Residual Waste Regulations** – In July, Ali Tarquino Morris, DEP Environmental Group Manager (Bureau of Waste Management) reviewed revisions previously discussed with the Solid Waste Advisory Committee and currently in the review approval process to go to EQB. She explained two major changes proposed -

a global change of the term “Infectious” Waste to “Regulated Medical” Waste to better describe this type of waste and to reflect the term used in federal regulations. The second proposed revision would allow for the use of standard business forms/practices to track the waste, including databases, and company forms rather than the current requirement for paper manifests that must be handwritten or typed. In response to a question from Council, she noted that the proposed regulations would impact only currently regulated entities and that the DEP regional program staff have seen the proposed revisions and will receive training once it is final.

**Pennsylvania’s Watershed Implementation Plan (WIP)** – Andy Zemba, Director of DEP Interstate Waters Offices, provided history and an overview of the WIP along with EPA’s review. Council asked about the WIPs for the other Bay states & Andy offered that they were all keeping pace with PA, but New York is not as active. Council members expressed concern that some small municipalities may need to upgrade their systems unnecessarily and asked if there was national oversight of the Bay program. Pat Buckley, Interstate Waters Office, explained the reviews done by the Scientific Review Committee model evaluation, the National Academy of Sciences, Government Accounting Office analysis and the Chesapeake Bay Foundation. In response to a question, Mr. Zemba noted that there has been some improvement in the Bay “dead zones”. Lee Ann Murray, Chesapeake Bay Foundation (CBF) Attorney, explained the structure and programs of the Foundation including their work with local partners and the Foundation’s involvement with the WIP. She noted that it was helpful that DEP developed county target numbers. Ms. Murray discussed the letter CBF wrote to EPA to have the Susquehanna listed as impaired. She emphasized it is important to have the river listed for access to increased funding.

In September Kelly Heffner, Deputy Secretary for Water Management, gave a detailed presentation on the **Dam Safety and Waterways Management (Chapter 105) Fees Regulatory Package** regarding dam safety and water management regulations reviewing the various annual and application fees and the justification for the proposed fee amounts. In response to questions from Council members, she clarified that municipalities and state government do not pay these fees, and that total expected revenue is approximately \$1.5 million with the dam safety program being close to full cost recovery.

Also in September – Mark Brown and Eric Ross provided a history and overview of the **HB 1855 – Proposed Water Well Constructions and Standards Act** development. They noted that 40% of private water wells fail Safe Drinking Water standards. Based on numerous meetings with the Department and others, they anticipate support from the county health departments, state agencies and the Governor’s Office when this bill is reintroduced in the next legislative session. They explained that the bill was designed to establish a simple process where a licensed water well driller would follow specified standards and provide a report to the homeowner. Also, enforcement would be against the driller, not the homeowner. The bill is designed to allow the Environmental Quality Board (EQB) to fill in the technical requirements with regulations.

Tim Schaeffer of the PA Fish and Boat Commission provided information on the severity of the **Asian Carp Threat to the Ohio Basin** Mr. Shaffer reviewed the movement of the Asian carp up the Mississippi River. He reported that in the Illinois River it has been determined that Asian carp have consumed 80% of the biomass in those areas. He indicated that the US Fish and Wildlife have prepared an Asian Carp Control Plan and that the Mellon Foundation recently approved funding for an Ohio River Asian Carp Action Plan that is expected to consider how the river locks and dams, as well as how the commercial fishing industry can assist. Pat Lupu noted that at the recent Great Lakes meeting, it was reported that Asian carp eDNA had been found in Lake Erie. Council members expressed concern for

the significant environmental and economic impact that may result in PA as this invasive species moves into the watershed and potentially into the Great Lakes.

In November Glenn Rider, Director Bureau of Conservation & Restoration provided an overview of the new Bureau's responsibilities - short and long term goals. He explained that the **newly formed Bureau of Conservation and Restoration** (BCR), within the Water Deputate is a hybrid of the former Bureau of Watershed Management (BWM) and the former Bureau of Abandoned Mine Reclamation (BAMR). The Acid Mine Drainage (AMD) Treatment Program from BAMR has been transferred to BCR. BCR is funded by both state & federal sources and has a \$25 million spending plan for the upcoming fiscal year. The goal of BCR's is to restore watersheds currently on the impaired list.

## COUNCIL NEWS/UPDATES

*Membership* - David Strong resigned in February and Eric Conrad resigned in December. New appointees in 2012 were William Fink (House) and David Hess (Senate). Fortunately, Council members are authorized to serve beyond their 3-year term and until a replacement is named. Council notes that in January 2013 the terms for all of the six CAC members appointed by the Governor's office will have expired.

*Election* - Terry Dayton was elected to serve a two-year term on the Mining and Reclamation Advisory Board (MRAB).

Council leadership and Environmental Quality Board (EQB) elections were held at the September 18<sup>th</sup> meeting. The results of the leadership elections were: John Walliser, chair, and Burt Waite, vice chair. The following individuals were elected to represent Council on the EQB: Walter Heine, Gail Conner, Burt Waite, Cynthia Carrow and Terry Dayton. Council's EQB alternates are Pat Lupo, and John Walliser.

*Staff* - Sue Wilson, former CAC Executive Director served as an annuitant to Council preparing key documents such as the 2011 CAC Annual Report as well as the CAC's review of Act 54 Five-Year Report and CAC's Report on 2011 Regional Meeting & Field Trip. Tom Mainzer, PA Management Associate spent a rotation with Council in October & November and assisted in interviewing Council members and developing documents to assist in preparing a CAC Strategic Plan. Ms. Marsha Lohr and Ms. Paula Sviben of the Office of External Affairs provided clerical and administrative support.



**COMMITTEES AND BOARDS**  
(as of December 2012)

Chair: John J. Walliser

Vice Chair: Burt A. Waite

**CAC STANDING COMMITTEES**

**Administrative Oversight**

Eric R. Conrad, Chair  
Cynthia Carrow  
Jolene Chinchilli  
Richard Manfredi  
Janet Keim  
Thad Stevens

**Air**

John Walliser, Chair  
Gail M. Conner  
Walter Heine, P.E.  
Nancy Perkins

**Environmental Standards**

David Strong, Chair  
Terry Dayton  
Nancy Perkins  
Thad Stevens  
John Walliser

**Prospective and Strategic Projects**

Jolene Chinchilli, Chair  
Cynthia Carrow  
Janet Keim  
Pat Lupo, O.S.B.  
Richard Manfredi  
Thad Stevens  
Burt Waite  
John Walliser

**Public Participation and Outreach**

Cynthia Carrow, Chair  
Jim Clauser  
Gail M. Conner  
Pat Lupo, O.S.B.  
Nancy Perkins

**Water**

Thad Stevens, Chair  
Cynthia Carrow  
Jolene Chinchilli  
Jim Clauser  
Gail M. Conner  
Terry Dayton  
Walter Heine, P.E.  
Janet Keim  
Pat Lupo, O.S.B.  
Richard Manfredi  
Burt Waite

**OTHER BOARDS & COMMITTEES**  
(as of December 2012)

**Environmental Quality Board**

**Members:**

Cynthia Carrow  
Gail M. Conner  
Terry Dayton  
Walter Heine  
Burt A. Waite

**Alternates:**

Pat Lupo, O.S.B.  
John J. Walliser

**Mining and Reclamation Advisory Board**

**Members:**

Cynthia Carrow  
Eric R. Conrad  
Terry Dayton  
Burt A. Waite

**Alternates:**

Marjorie Hughes  
Mark Killar, Western Pa. Conservancy

**Air Quality Technical Advisory Committee (AQTAC)**

**Appointee:** vacant

**Alternate:** Marjorie Hughes

**Environmental Hearing Board Rules Committee (EHB)**

**Appointee:** Thomas Scott, Esq.

**Low-Level Radioactive Waste Advisory Committee (LLWAC)**

**Member:** Marjorie Hughes

**Oil and Gas Technical Advisory Board (TAB)**

**Appointee:** Burt Waite

**Radiation Protection Advisory Committee (RPAC)**

**Appointee:** Marjorie Hughes

**Solid Waste Advisory Committee (SWAC)**

**Member:** Eric R. Conrad

**Alternate:** Marjorie Hughes

**Council Staff**

**Executive Director** – Marjorie Hughes

**REPORTS, STATEMENTS, AND RESOLUTIONS**  
(January – December 2012)

<b>Mining Issues</b>	
CAC's review of Act 54 Five-Year Report	Adopted 5/15/2012
CAC's Report on 2011 Regional Meeting & Field Trip	Adopted 5/15/2012
<b>Air Issues</b>	
Concurrence letter re: Chapters 121 & 139 Sampling and Testing Methods Relating to Particulate Matter Proposed Rulemaking	Approved 2/21/2012
Concurrence letter re: Commercial Fuel Oil Sulfur Limits for Combustion Units Final Rulemaking	Approved 9/18/12
Concurrence letter re: Title V Fee Amendment Proposed Rulemaking	Approved 11/20/12
Five Year Report: Summary of CAC's Air Activities July 2007- June 2012	Adopted 11/20/12
<b>Miscellaneous</b>	
2011 Annual Report	Adopted 5/15/2012
Comments on the Permit Coordination Policy and Draft Permit Review Process & Permit Decision Guarantee Policies	Submitted 9/28/2012

## LEGISLATIVE MANDATE

### ACT 275 OF 1970

#### **Section 448. Advisory Boards and Commissions**

- (p) The Citizens Advisory Council shall consist of the Secretary of Environmental Protection, six members who shall be appointed by the Governor, no more than three of whom shall be of the same political party, and six members who shall be appointed by the President Pro Tempore of the Senate, no more than three of whom shall be of the same political party, and six members who shall be appointed by the Speaker of the House of Representatives, no more than three of whom shall be of the same political party. The appointed members of the Council shall be citizens of the State who, during their respective terms, shall hold no other state office to which any salary is attached except that of membership of the Environmental Quality Board.

The term of office of each appointed member shall be three years, measured from the third Tuesday of January of the year in which he takes office or until his successor has been appointed.

The Citizens Advisory Council shall include persons knowledgeable in fields related to the work of the Department of Environmental Protection such as, but not limited to, ecology, limnology, toxicology, pharmacology, organiculture, and industrial technology.

The Council shall annually elect one of its appointed members as Chairman and shall elect a Secretary who need not be a member of the Council. Meetings of the Council shall be held at least quarterly or at the call of the Chairman.

The Council shall have the power to employ and fix the compensation of such experts, stenographers, and assistants as may be deemed necessary to carry out the work of the Council, but due diligence shall be exercised by the Council to enlist such voluntary assistance as may be available from citizens, research organizations, and other agencies in Pennsylvania or elsewhere, generally recognized as qualified to aid the Council.

#### **Section 1922-A. Citizens Advisory Council**

- (a) The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification and codification thereof.
- (b) The Council shall consider, study, and review the work of the Department of Environmental Protection and for this purpose, the Council shall have access to all books, papers, documents and records pertaining or belonging to the department.
- (c) The Council shall advise the department on request, and shall make recommendations upon its initiative, for the improvement of the work of the department.
- (d) The Council shall report annually to the Governor and to the General Assembly and may make such interim reports as are deemed advisable.

## **ACT 95 OF 1992, THE AIR POLLUTION CONTROL ACT**

### **Section 7.6. Advice to Department**

- (a) The department shall consult with the Citizens Advisory Council established under Section 448 of the Act of April 9, 1929 (P.L. 177, No. 175), known as “The Administrative Code of 1929,” as appropriate, in the consideration of State implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. Nothing in this section shall limit the Council’s ability to consider, study and review department policies and other activities related to the Clean Air Act implementation as provided under Section 1922-A of “The Administrative Code of 1929.” This section shall not apply to state implementation plans or portions thereof comprised of permit emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations. The requirements of this section shall not apply to State implementation plans submitted by a local air pollution control agency.

### **Section 4.3. Evaluation**

Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the Clean Air Act. The evaluation shall include:

- (6) A summary of the activities undertaken by the Citizens Advisory Council and the air technical advisory committee under Section 7.6.



**MISSION STATEMENT OF THE  
CITIZENS ADVISORY COUNCIL**

It is the mission of the Citizens Advisory Council to strive to ensure that all people of the commonwealth enjoy the benefits included in Article I, Section 27 of the Pennsylvania Constitution.

This mission specifically states that the Council is to carry out the mandates of Act 275 of 1971 and Act 95 of 1992, by:

- *Performing non-partisan, independent oversight of the operations, management and policy of the Department of Environmental Protection;*
- *Evaluating environmental issues and laws;*
- *Participating in the development of environmental regulations; and*
- *Providing advice concerning environmental matters to the department, the Governor, the General Assembly, and the Commonwealth's federal representatives.*

The council strives to represent all people of the Commonwealth and endeavors to bring a collective view of the public interest in environmental protection and natural resources, forged from the Council's own diversity of personal experiences and perspectives.

(Unanimously Adopted: November 20, 1989; Amended: November 12, 1996; Reaffirmed: March 15, 2005; Amended: April 17, 2007.

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