



Department of Environmental Protection
Report to the Citizens Advisory Council
April 2011

I. Pending Issues

Water Management

Act 167 Stormwater Management Planning:

Twenty-one county-wide plus two watershed stormwater management planning projects have been approved. In addition, eight more county-wide plans plus approximately a half dozen watershed plans are in progress. Most of the county-wide plans currently in progress will be completed and approved before year-end. There has been no appropriation in the General Fund for payment of reimbursement requests since July 1, 2009.

NPDES MS4 Permit (PAG-13):

PAG-13 will be presented to the WRAC on April 13, 2011. PAG-13 should be finalized, approved by EPA, and published within the next few months. Afterward PAG-13's comment/response document, the NPDES MS4 Individual Permit Package, workshops with DEP's regional offices, finalizing materials for municipal workshops, and holding the municipal workshops will follow. December 9, 2011, is the deadline for permittees to submit NOIs for PAG-13 renewals.

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, 2010, the Department submitted Pennsylvania's Draft Chesapeake Bay Watershed Implementation Plan (WIP) to EPA, which outlined 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 had identified serious deficiencies in the WIPs, indicating that they feel those draft WIPs do not adequately demonstrate reasonable assurance. As a result, EPA published a draft "Back-Stop TMDL". The Department did not agree with the contents of, nor the need for, the Back-Stop TMDL, and worked with EPA, workgroups and Advisory Committees to determine what

was needed to allow EPA to accept the Commonwealth's WIP. Public comments were also part of this process: the Pennsylvania public comment period for the draft WIP ran from September 24th – November 8th. EPA also had a public comment period for the TMDL at the same time.

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/> .

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.

DEP submitted the Final Phase 1 WIP to EPA on November 29, 2010. EPA's evaluation of Pennsylvania's Final Phase 1 WIP determined that it contains significant improvements, including strategies to increase compliance with agricultural regulations. The WIP lacks clear strategies to achieve urban stormwater reductions, however. Pennsylvania meets its nutrient and sediment allocations for each basin in the final TMDL. After adjusting for EPA-approved nitrogen and phosphorus exchanges, Pennsylvania's WIP input deck resulted in statewide loads that are 2% over for nitrogen and phosphorus, and 5% under for sediment allocations. EPA and DEP reached agreement on further nonpoint source reductions in order to achieve allocations both statewide and in each basin, as documented in the final TMDL. The further reductions are supported by contingencies included in the WIP and EPA's commitment to track progress and take any necessary federal actions to ensure these reductions are achieved and maintained. In the Final TMDL, EPA imposed a "backstop" on the urban stormwater sector, transferring 50% of the urban stormwater load that is not currently subject to NPDES permits from the load allocation to the wasteload allocation. EPA is doing this to signal that it is prepared to designate discharges as requiring NPDES permits to ensure nutrient and sediment reductions are achieved and maintained. This does not trigger any immediate changes to the NPDES permitting program. Pennsylvania's final allocations in the Chesapeake Bay TMDL are described in the following table. The Final TMDL calls for 100 percent of the necessary actions to meet Bay water quality standards to be implemented by 2025, with 60 percent to be implemented by 2017.

PA Reduction Targets

Phase 5.3 Watershed Model

Nitrogen (TN), Phosphorus (TP), Suspended Solids (TSS)

Million Pounds/Year

	TN	TP	TSS
1985	135.17	5.08	2,971
2009	106.41	3.96	2,576
Draft TMDL	76.77	2.74	2,013.62
Final TMDL	73.93	2.93	1,983.78
Remaining Reductions By 2025	32.48	1.03	592.22
60% by 2017	19.488	0.618	355.332

Next Steps:

- *Implementation of Phase 1 WIP*
- *Current Schedule for Phase II WIPs*
 - *March 31, 2011: EPA revised Phase 5.3 Watershed Model*
 - *June 1, 2011: Draft Phase II WIPs with local area targets and specific controls to meet 2017 interim target submitted to EPA*
 - *November 1, 2011: Final Phase II WIPs submitted to EPA*
- *Principals Staff Committee (PSC) Meeting on February 17 to discuss adjustment of current schedule to allow more time for public engagement. EPA proposal currently on the table:*
 - *Complete revisions to Phase 5.3 model by late Spring 2011*
 - *Draft Phase 2 WIPs are expected to be submitted to EPA by late Fall 2011*
 - *First post-TMDL 2-year milestones are due January 3, 2012.*
 - *Final Phase 2 WIPs are expected to be completed as early as possible in 2012.*
 - *Any necessary modifications to the Bay TMDL to be completed later in 2012.*

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 and are proposing new permitting fees and a new submerged land license *charges*.

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 *Environmental Quality Board (EQB)*.

Program staff presented the draft rulemaking to EQB on December 21, 2010. After some discussion, John Arway, Executive Director, PA Fish and Boat Commission, moved to adopt the proposed rulemaking, with a 30-day public comment period. Walter Heine, Citizens Advisory Council, seconded the motion, which was approved by a majority of the Board members. Joe Deklinski, on behalf of Rep. Scott Hutchinson, voted in opposition to the motion.

Chapter 102 Regulation: *Additional training sessions with the regulated community have been scheduled for December and February. They are as follows:*

*December 14, Williamsport
February 8, Harrisburg
February 10, Allentown
February 24, Cranberry Township*

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.

Staff issued a Frequent Asked Questions (FAQ) document to all conservation districts and regional offices with many questions and answers related to the implementation of the new Chapter 102 regulations. Staff are also working on updating and creating new forms and guidance, including riparian buffer waiver guidance, to aide in implementing the new regulations.

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 *was approved* 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. A meeting will be held in State College on February 17 to discuss changes to the delegation agreement.*

Revisions to the construction stormwater general permit PAG-02: *The Department began discussions with the Environmental Protection Agency on the revisions to the construction stormwater general permit (PAG-02). The Department has incorporated requirements from the new regulations into the PAG-02, as well as incorporating the federal numeric effluent limitation guidelines for turbidity into the permit. The Department will be sharing the draft permit with the conservation districts and regional offices during February and will be delivering the draft permit to EPA for comments in late February. The Department anticipates putting the permit out for public comment in late May or early June, with an effective date of the permit of December 8, 2011.*

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 January 31, 2010, DEP contractors have completed approximately \$5.1 million worth of work and DEP expended approximately \$4.5 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 \$3.2 million at the Havertown PCP site and \$6.478 million at the Crossley Farms site. EPA has completed the use of ARRA funds for remedial actions at the Havertown PCP site and is continuing to operate the groundwater treatment plant using Superfund monies. EPA initiated construction at the Crossley Farms site in June 2010 and continues to install the groundwater remediation system partially using ARRA funds. 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.

Solid Waste Advisory Committee: At the January 13th Solid Waste Advisory Committee meeting, the Committee discussed mandatory trash collection, recycling collection and open burning. A

subcommittee was organized on illegal dumping, mandatory trash collection and open burning. Other agenda items included an overview of the Covered Device Recycling Act and the Draft Hazardous Waste Facilities Plan.

Land Recycling Program

ARRA Keystone HELP/Geothermal Loan Program: The Residential Geothermal Loan Program opened Oct. 22 and is accepting applications through Keystone HELP: www.keystonehelp.com. The program is funded with \$5 million from the American Recovery and Reinvestment Act (ARRA). The program, to be administered by AFC First Financial, consists of three loan products: a 4.99% fixed rate, unsecured 10-year loan for the purchase and installation of a geothermal heat pump system; a lower rate (based on market conditions) secured 20-year loan for the purchase and installation of a geothermal heat pump system in conjunction with a whole-house energy efficiency project; and a market-rate, short-term Tax Credit Anticipation Loan to further assist homeowners with the capitalization of an investment of this size with minimal cash outlay.

As part of the ARRA Residential Geothermal Loan Program, DEP has set aside a training budget for Keystone HELP contractors to get certified to International Ground Source Heat Pump Association standards. Some of the training programs will be held in the DEP regional offices throughout the state. The primary training opportunities include courses for drillers (geothermal loop installers) and installers (HVAC contractors). The intent of the trainings is to increase industry best practices pertaining to borehole installations and quality installations of geothermal HVAC systems.

Energy Initiatives

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The Residential Energy Efficiency Keystone HELP loan program provides low-interest financing options to assist homeowners seeking to install energy efficiency equipment and whole-house improvement, such as air sealing and insulation measures. Effective December 20, 2010, new Keystone HELP guidelines went into effect. Highlights include loans for energy improvements with air sealing performed by a BPI certified contractor at 2.99%. Funding also continues for loans for single measure ENERGY STAR rated improvements, plus larger secured loans up to \$35,000.

Trainings are available for the residential energy efficiency contractors to become trained in Home Performance 101, RESNET and BPI. RESNET and BPI are specialized training and certification programs for contractors who work in the home auditing, air sealing, insulation and HVAC equipment installation industry.

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). 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. All funds are currently committed in reservations or the waitlist. The program is no longer accepting customers to the waitlist. Rebates are still being paid to all qualifying customers with a reservation. If a reservation customer decides they do not want a rebate, their reservation is given to the next person on the waitlist. The PA Home Heating Equipment Rebate program is unique from most of the other state rebate programs because it creates contractor jobs. Other state rebate programs provided rebates for white goods such as refrigerators and clothes washers that did not need to be installed by a professional contractor. Additionally, the home heating equipment is manufactured in the United States and some components are made in Pennsylvania while the majority of the white goods are manufactured overseas.

Mining/Reclamation/AMD Issues

ABS BF Discharge Treatment: *Progress is being made in systematically approaching the problem, with designs underway for many of the treatment facilities. Initial work has begun in order to prepare a draft NPDES permit for these sites. Water Quality Based Effluent Limit Calculations have been started.*

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 was approved at the October EQB meeting.

Noncoal Program Fees: preliminary work has commenced for fees to support the 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. IRRC also provided comments. The Department is working on the comment and response and determining the revisions necessary to the proposed regulation. The final-form rulemaking is expected to be presented to the EQB at a meeting this spring.

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 conducted a permit quality review for NPDES permits for mine sites. BMR is working on implementation guidance. The Department has engaged EPA in discussions intended to improve NPDES permitting for mining permits. New issues continue to be raised by EPA. The Department has focused its attention on the regulatory requirements. Some of EPA's objections seem to go beyond the regulations. *Comments have been received on about 15 of the 50 permits sent to EPA as of February 2011. Work continues to improve documentation.*

Office of Homeland Security

Since the Office of Homeland Security's contract to receive intelligence from a Philadelphia Firm was cancelled, in 2010, the office has undergone some restructuring. The OHS is now supervised by the Deputy Director of Operations at PEMA and the intelligence gathering for homeland security has been turned over to the Pa. State Police through PACIC.

The CI/KR Steering Committee has met infrequently since the change and the work of identifying Level 3 CI/KR has slowed due to a lack of direction from OHS. The federal DHS has accepted some portion of Pa.'s 2010 submission of Level 3 CI/KR but the Chairman of the Energy & Environmental Working Group at DEP has not yet received the list of facilities and resources accepted.

Environmental Education

Environmental Education Grants Program (EEGP)

Rater reviews of the applications have been completed. The applications have been listed by score, high to low. When the EEGP staff receives an estimated award amount, a recommendation list will be compiled.

Outreach: Environmental Education outreach activities include the following:

None

Workshops Conferences and Board Meetings:

*February 22 & 23 Advisory Council on Environmental Education meeting
New Cumberland*

Upcoming Outreach Events:

*March 3 & 4 EPA Region 3 Chesapeake Bay Education Roundtable
Rocky Gap Conference Center*

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 has been fully executed.*
- *The EE Director is working with the Susquehanna River School/Pride of the Susquehanna Riverboat to explore partnering opportunities in delivering watershed education programming to students and educators.*

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. The October 5th Greening of PA Workshop was part of this initiative.

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:

- *Live stream video web hosting began February 14th. The peregrines are renewing their pair bond before a worldwide web viewing audience.*
- *EE staff will seek sponsorship for A/V upgrades and web streaming improvements at the conclusion of the 2011 nesting season.*

IV-DEP Regulations and Policies: Proposals Open for Comment

PA Bulletin Publication Date	Proposal or Regulation	Comment Deadline
1/22/2011	<i>Draft Technical Guidance 385-2100-002: Policy and Procedure for NPDES Permitting of Discharges of Total Dissolved Solids (TDS)</i>	2/22/2011

DEP Regulations and Proposals Recently Finalized

PA Bulletin Publication Date	Proposals or Regulations
	<i>December 11, 2010 Beneficial Use of Coal Ash (25 Pa Code, Chs. 287, 290 and 299)</i>
<i>January 8, 2011</i>	<i>The Uniform Environmental Covenants Act regulations (25 Pa Code, Chapter 253)</i>
<i>January 8, 2011</i>	<i>Land Recycling Program regulations (25 Pa Code, Chapter 250)</i>