

DRAFT CAC July 19th Meeting Minutes

I. CALL TO ORDER AND APPROVAL OF THE MINUTES

Chairperson Joyce Hatala called the meeting to order at 11 am in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The following members were in attendance¹:

Joyce Hatala, Chair	Janet Keim
Jim Clauser	Pat Lupo
Gail M. Conner, Esquire	Thaddeus Stevens
Terry Dayton	David Strong
Walter Heine	Burt Waite
	John Walliser

Burt Waite moved approval of the minutes of the June 21, 2011 CAC meeting; Terry Dayton seconded the motion. One correction was noted: under the section of Public Comment, the last paragraph should read the Act 54 amended the 1966 law, not the 1996 law. The minutes were approved with an abstention from John Walliser who was not there for most of the meeting.

II. DEPARTMENT REPORT

Secretary Krancer could not attend the meeting; Dan Lapato presented the Department report in his absence. Congratulations were offered due to Dan's recent promotion to Deputy Director for External Affairs, working for Special Deputy Secretary Alisa Harris.

¹ Richard Manfredi participated by phone for the first half of the meeting.

Senate Bill 263, now Act 60, was signed by Governor Corbett July 7th, 2011. It amends the Regulatory Review Act to allow the Independent Regulatory Review Commission (IRRC) to judge the 'acceptability' of data used to promulgate a regulation. The new law gives IRRC the authority to question the data given to them and use it as a potential reason to deny a regulation. DEP is unique in that it is the only agency with an EQB type forum for external input. DEP also has a network of advisory committees that review and comment on regulations. For other agencies, IRRC provides one of the few opportunities for people to comment on the regulations. DEP will be working with IRRC and General Counsel on how to best implement this law and make sure the process and data used are transparent and available.

Gail Conner asked how IRRC members were selected. Mr. Lapato responded that they were appointed positions through House and Senate majority and minority leaders and the governor's office. It consists of a five person commission, with the House and Senate majority and minority each nominating one member as well as the governor's office nominating a member.

Gayle expressed disappointment in the IRRC selection being politically appointed. She fears it is a setback for environmental regulations and law. Gayle has a fear of the IRRC taking away the ability for non-partisan technical people to analyze and promulgate regulations and to listen to the public.

Sue Wilson inquired what exactly DEP is going to do differently and Mr. Lapato explained that they are waiting to see what IRRC would like them to do and how they want the data. The current regulatory analysis form already asks what scientific data was used so it is not clear what additional information may be required.

Sue Wilson reiterated Council's standing recommendation that DEP prepare decision documents for major regulations and Mr. Lapato will be taking the information back to the Policy office to get an update.

The Bay Executive Council met July 11th in Richmond, Virginia. It was well attended, including Executive Chair Lisa Jackson from EPA, Governor Corbett, and Chesapeake Bay Commission Chair, Senator Michael Brubaker. Their 2011 milestones, short term pollution goals, were discussed. All seven bay jurisdictions are currently on track or

ahead of schedule to meet the goals. Pennsylvania's 2011 milestones to reduce nitrogen and phosphorus are making considerable progress. Their commitment is to reduce nitrogen by 7.3 million pounds; and a 300,000 pounds reduction of phosphorus. They are on a three year reporting period from July 2008 to June 2011 and are ahead of schedule. Implementation for agricultural practice is at 99%, Waste water is 88%, Urban Suburban practices is at 280% of goal.

The Watershed Implementation Plans are in the second phase of drafting and will be due December 1st, 2011.

Pat Lupo asked for examples of the Urban Suburban work being done. Mr. Lapato does not have any examples for the meeting but has requested the Policy office to gather examples for agricultural waste water and urban / suburban work for the next meeting.

In early July, the Chesapeake Bay Foundation and DEP entered into a settlement to resolve the Chesapeake Bay Foundation's lawsuit. The Department agreed to several programmatic changes, including amending the E&S permit to exclude special protection waters, floodplains and contaminated lands from the expedited review process. They will also develop a checklist, and receive guidance from multiple industry and environmental groups. There will be a priority process for pre-construction meetings and they will be developing a policy for PA Bulletin for additional notice.

Sue Wilson inquired about the status of the internal review of DEP's permitting processes. CAC had offered comments and recommendations about the process. Mr. Lapato answered that Michele Tate and Patricia Allen are involved in permitting review, and asked Chris to followup and get back to Council with feedback. He also suggested extending an invitation to Jeff Logan to speak to Council this fall.

Burt Waite asked for an update on disposal of Marcellus wastewater. Mr. Lapato confirms there was great success with the May 18th call to voluntarily stop sending Marcellus wastewater to POTWs. They want to encourage recycling of wastewater from both conventional and nonconventional wells.

John Walliser asked about EPA's involvement and request for information from operators. Mr. Lapato explained that they are working with the operators about storage of water options. But he is not sure about EPA's actions.

David Strong inquired about Marcellus Shale fracking fluid. Mr. Lapato explained the best option is recycling and re-use. There will always be a need for some kind of treatment and they need them to meet the discharge limits out there.

Gail Conner stated that the biggest problem is that well water users worry about cross-contamination, and that laboratories are not accredited to analyze fracking constituents, if they even know what they are. There is a need to protect citizen health and the environment from immediate and future liabilities. There is insufficient data to make sure that we won't have contamination. We need to deal with the environmental long term system, she does not believe there is adequate protection provided.

Mr. Lapato stated that Pennsylvania has a robust and rigorous lab accreditation program that other states copy or defer to (i.e., if you can get accredited by a PA system then you can be accredited in our state.)

Gayle feels that we need consistent protocols for testing; for the Marcellus Shale matter, there are no established protocols for all these particular bacteria and pollutants. She commented that the laboratories are concerned about their liability. We need a system in place for the laboratories to analyze all the constituents that aren't always being disclosed.

Pat stated that the Erie wastewater treatment system refuses to take frack water. She also reminded Council that we have a similar problem with pharmaceuticals in wastewater. Mr. Lapato suggested bringing someone in from the lab accreditation program to talk about this subject.

David Strong asked about using AMD water for fracking, and stated that there is a disconnect. Mr. Lapato explained that the storage of acid mine drainage and its use for fracking is a pressing concern that DEP is working on. The Secretary has asked John Hines, the Executive Deputy Secretary for Programs, to form a group on that. They are making the decision as quickly as possible to make a sound, scientific judgment.

Gail recommended that the Secretary create a non-political committee to deal with laboratory and analytical issues. She is concerned when the laboratories are faced with one lawsuit, the whole industry will crumble. There was a major laboratory in PA that brought up this very issue but they are too afraid to speak up because they don't want

to lose business. She puts forth a request to solve this problem to its maximum extent. Mr. Lapato is taking that recommendation back to the office.

Joyce questions about Recycling grants. Municipalities and counties are really looking for them. Mr. Lapato said he would talk to Larry Holly and RFAC to see where they are with it.

David asked Mr. Lapato about possible changes to the waste regulations, as discussed with the Solid Waste Advisory Committee. Mr. Lapato responded that the massive package previously being discussed by SWAC will not be presented in whole, but that sub-packages will be advanced. For example, revision of medical waste regulations will be coming soon.

Richard asked about Warrington Township, Bucks County. They passed a resolution requesting that DEP restore the Act 167 exemption for small projects (in this case, Neshaminy Creek) He asked Mr. Lapato to check that it was received and is at least under consideration for a project exception. It pertains to the Required Model Storm Water Ordinance, requiring less than 1,000 square foot. Mr. Lapato stated he will track it down.

Mr. Lapato thanked the committee for having him to the meeting.

III. CHAIR'S REPORT

Joyce reported that the Marcellus Commission had its final meeting and the recommendations and the final report will be released and made publicly available after the report has been provided to the Governor. Sue will send links to members.

The new administrative support for CAC, Marsha Lohr, was welcomed and introduced to the board members. Council thanked Toni Muhammad for her help.

Joyce reminded Council that Curtis Kratz had resigned, leaving an opening on the MRAB. Terry cannot do position on Mining & Reclamation Advisory Board because he will be on EQB. CAC is still in need of someone on MRAB. John is interested in MRAB, but would be looking to give up the Chair of the Air committee and his position on AQTAC.

The committee is still waiting to hear about the two reappointments from Governor and three from the Senate.

Public attendance was Lisa Kasianowitz from Communications, their new Information Specialist. Lisa graduated from Penn State University last year and has legislative experience due to interning with State Representative Jerry Stern in his Hollidaysburg District Office. She likes working with constituents because it has given her more of an exposure on the environmental issues that are facing Pennsylvania. Brigid Landy is an intern at DEP and law student at Temple. She is trying to observe lots of different meetings while here. Sara Mullen is a legal intern with a background working in an environmental testing lab. Jess Gass from PCA, Mike Lovegreen and Brent Legroff. No one had any public comment on the agenda items.

Walter Heine asked for a correction of the spelling of his name in the June 21st meeting. It should read "Heine", not "Heinz".

IV. COMMITTEE REPORTS (part 1)

Environmental Standards Committee (Dave Strong, Chair). Dave reported that Steve Socash had confirmed that pieces of the proposed rewrite of the Solid Waste Regulations will be moving forward but we are not sure as to which pieces will move first. The MRAB had a successful field meeting at the Elk Viewing Center; it was interactive and educational. He resigned as chair with of the MRAB Reclamation Committee, and is considering resigning from MRAB, but will stay until replaced and is still seeking a solution for funding of waste water in AMD.

Sue added that CAC is planning to hold the regional business meeting and field trip October 3 to 5 in Southwestern PA. The plan is to start the evening of Monday, the 3rd, with an overview of Act 54. There would be a Surface Impacts Tour on Tuesday, then a Mine tour on Wednesday. We will be sending a questionnaire to solicit interest and availability so please hold these dates open.

V. CNRAC REPORT

Kurt Leitholf reported that DCNR's budget had been cut about 20% of the general fund allocation, but is able to pay for its operations through the Oil and Gas Fund and leasing and royalty revenues from the Marcellus Shale gas being extracted from state forest lands. The final budget cut an additional \$3 million from DCNR, which was made up by further cuts to seasonal wage employees.

They are waiting on the recommendations of the Marcellus Shale commission to see what kind of impacts that may have on ongoing drilling of Marcellus Shale on state forest and state parks.

CNRAC recently finalized its annual report. In addition, they hope to do another joint advisory council business trip in the Southwestern part of the state this year.

He reported that Secretary Allen has been a regular attendee at their Council meetings. They are awaiting the new direction of agency, and will realign themselves as needed to work with the new secretary.

Walter asked if there had been any change in the policy to eliminate lifeguards at state parks. Kurt explained that nothing is going to change with that. State Parks have made a decision within the last couple of years that they are no longer providing lifeguards at state park lake facilities. Park rangers will have the responsibility of checking in on the lakes. There will be lifeguards at swimming pool facilities. Presque Isle and Pine Grove Furnace State Parks are the only exceptions, and have lifeguards at their lake swimming facilities.

VI. CONSERVATION DISTRICT ROLE IN MARCELLUS OVERSIGHT

Joyce introduced Mike Lovegreen, district manager of the Bradford County Conservation District. Bradford County is the second largest county in the state with 720,000 acres. 50% forest, 45% agriculture, and 5% other. Mr. Lovegreen wanted to talk about the good things that are happening with Bradford County pertaining to Marcellus Shale. He wanted to show the big impact that Marcellus Shale has had. When people think of Marcellus Shale, they think of a hole in the ground and not the other landscape items that they are seeing in Bradford County such as water storage footprints, well site footprints, E&S, access roads, seismic testing, pipelines/ROW, aggregate quarried, pipe/supply yards, water intakes, truck traffic/road impacts, housing, etc.

It was pointed out that in Bradford County, Wyalusing, Troy, Sayer Athens and Towanda are the more 'urban' areas; they are population centers, at least for that county, with about 10,000 people each. There are about 62,000 people total in the county. There are 29,000 housing units and about 20,000 of these are on septic and private wells.

Mr. Lovegreen reviewed some of the landscape effects of gas development in Bradford County, including well sites, water sites, access sites, storage areas, and pipelines (there are 450 miles of gas lines installed to date in the last two to three years).

- He noted that the County doesn't see ponds any longer on many of the well sites; the companies recycle their water on site and run surface lines to their well sites during the fracking process.
- Bradford County unfortunately is not doing a good job in floodplain regulation.
- They have seen an increase of quarries in the area/countryside. Talking with quarry workers, they are producing aggregate for the municipalities since they are not as fussy as the industry and PennDOT.
- Pipe yards and supply yards are popping up all over county without much regulation. They are seeing a whole lot of back yard supply yards. It can be in a farmer's field or a residential property.
- There are 24 different water intakes. Most of them are situated along the Susquehanna River. Susquehanna River Basin Commission opened an office in Bradford County consisting of five people to inspect things.
- Track traffic has increased, and since Bradford County has the most dirt and gravel roads in the state, road impacts due to heavy traffic are significant. When state roads and state highways break up due to traffic, they break up pretty seriously. The Conservation District works with the municipalities as close as they can to help get the roads repaired. With Marcellus Shale companies now working with them, the roads are being improved and are being rebuilt to a higher standard than the local municipalities ever would.

Even though the conservation districts were removed from the regulatory process, there are a lot of activities that the Conservation District is involved with. Mike has served on the county advisory board and that's a reflection of a lot of different interests in the county. The Conservation District also serves on the regional planning commission as well. Chesapeake has a Citizens Advisory panel that Mike serves on.

Lumber mills in the area are not getting enough supply to continue working. This is because the values of logs are reduced because logs aren't sorted and wells don't need them.

Gas companies are reaching out and helping landowners interpret the results of water testing. Gas companies have also offered to assist with environmental programs in the area and the district has taken advantage of that. One company asked what watershed projects they have going on in the county and then provided \$3,000 to put up as match dollars for projects going on.

Drill cuttings are going to solid waste landfills and they have seen a vast increase of their tipping fees coming in. County set up environment fund so that they are utilizing the dollars to fund educational projects. Jim Clauser thanked Mike for coming in and asked if the districts have sufficient resources to handle E&S and all of this other work? Mike responded that 1400 permits come in and they know they have to do a review of the plan, site visits to see if the plan matches the site, and to view the construction of the pad at least a couple times during the construction. From there they can do the math to figure out if they will need more people to do as required. The industry has been hiring district staff that has the experience and now the Conservation District has to start over with new staff.

They have to look at cooperative efforts right now and think outside of the box for a bit. Gas companies have come to them about the wetlands issue because it is one right now that they are struggling with.

Joyce reported that she submitted a personal comment to the Marcellus Commission. She states that people really have a distrust of the gas industry and that they really need an independent third party involved, a liaison between DEP and the gas industry. People do trust the conservation districts. The people need local eyes and ears. The Conservation District is viewed as unbiased, scientific, their friend, and that could do a lot towards making the situation better.

Mike is in agreement. One of the things they are doing is training their watershed groups to do water monitoring in their streams. The Conservation Districts have been a third party between gas companies and those affected. 54% to 60% increase in tourism for Bradford County in just the last quarter.

Janet asked if there are plans to increase permit fees to cover the permit and onsite reviews. Was this a recommendation of the Marcellus Commission?

Scott Perry explains that Chapter 102 was revised to provide for the \$500 general permit fee and \$1500 provisional permit fee and has provisions that allow the conservation districts to charge an additional fee. It's already in place in the regulations so far that in addition to the \$500 general fee they can establish their own fee schedule.

Mike defends that by saying adjusting fees for one industry will have an impact on the other reviews that they do. Their conservation district did not feel comfortable doing that. Their view in Bradford County is that a program should pay for itself.

Terry states he believes the Conservation Districts can still play a pivotal role in looking after their respective counties. They don't necessarily have to have control over the permitting process but they can still play a pivotal role with it. With Conservation District managers, citizens sometimes feel more comfortable going to the managers than they do going to DEP.

Thad Stevens explains that the fees they have that pertain to the well permit are not the same fees he was talking about in the 102 permit. With the Chapter 102 it has to be a reasonable fee and it should cover the cost of enforcement. There has to be a balance and there has to be efficiency in that process, and if that requires a higher fee that would be preferable to an extra six months.

Joyce and Sue thank Mike for the talk. Scott Perry adds that he wants to work with the districts and have the department and the districts work together. Scott would love for Mike to act as a liaison between his district and the department.

Mike admits that there is a tremendous cry for the county and the district to be liaisons with the DEP.

VII. COMMITTEE REPORTS (part 2)

Executive Committee (Joyce Hatala)--Joyce reported that John Hines was unable to join the Executive Committee, but that the committee had a shorter meeting to discuss their plans for the regional meeting.

Prospective and Strategic Projects (Jolene Chinchilli)—Sue asked Council members to take a look at the draft work plan discussed last month and let her know if there are particular items that should be listed for committees.

VIII. UPCOMING MEETINGS

For the September meeting, Burt has helped set up a presentation on mineral vs. surface property rights.

October is the regional meeting.

There is an interest to get Jeff Logan to come in and speak at a future meeting about the permitting review. Other pending items include getting updates to 537 and Watershed Implementation Plans.

Burt and Terry move to adjourn at 2 pm.

Notice of the July meeting was published in a newspaper of general circulation in Dauphin County and mailed to individuals and offices in compliance with the Sunshine Act (1986-84). These minutes constitute the official record of the Citizens Advisory Council meeting; no official transcript is prepared.