

**Department of Environmental Protection
Report to the Citizens Advisory Council
February 2013**

I. Pending Issues

Water Management

Water Quality Standards Triennial Review

Once every three years, the Department is required by the Federal Clean Water Act to review and amend, as necessary, its water quality standards. This process is known as the Triennial Review. The Department has conducted the review and identified needed additions, corrections, and updates to the water quality regulations. A number of new chemical parameter limits are proposed. The current Triennial Review is due as final to EPA by May 15, 2013. At the regularly scheduled WRAC meeting in January 2012, they voted to accept the Triennial as presented. The EQB approved the triennial review proposed rulemaking at the April 2012 meeting. The triennial review proposed rulemaking will now be published in the Pennsylvania Bulletin with provisions for a 45-day public comment period, and to hold a public hearing on the proposal. Concurrently, the Department will propose revisions to Chapter 16 Water Quality Toxics Management Strategy – Statement of Policy that are consistent with, and accommodate the proposed revisions to the water quality standards regulations. *The Department's Water Resources Advisory Committee (WRAC) held two Adhoc workgroup sessions in August 2012 to discuss Molybdenum and Sulfates. The Department presented the final rulemaking to WRAC in November 2012. WRAC endorsed taking the final rulemaking to EQB. The Department will present the final rulemaking to EQB this spring.*

2012 Integrated Report

The Integrated Report includes both a narrative description of the Commonwealth's water quality management programs (formerly the 305(b) Report) and various lists depicting the status of Commonwealth surface waters as required by section 303(d) of the Federal Clean Water Act. The report is comprised of four parts and also includes a five-part list that collectively summarizes the designated use attainment status of Commonwealth surface waters.

Section 303(d) of the Federal Clean Water Act and 40 CFR Part 130 require states to identify waters which would still be impaired, even after the appropriate technology has been applied to point sources and requires best management practices are in place for nonpoint sources. Waterbodies that do not meet water quality standards after this evaluation are placed on Category 5 of the Integrated Waterbody List.

The 2012 Integrated Report was submitted to EPA Region 3 for approval of Category 5 on January 29, 2013. EPA has 30-days to act on the list.

NPDES MS4 Permit (PAG-13)

PAG-13 was issued final on September 17, 2011. DEP is continuing its discussions with EPA Region III regarding provisions in PAG-13 particularly in regards to implementation of TMDLs and the implementation of the Chesapeake Bay TMDL. Fifteen work sessions reviewing the permitting requirements of federal MS4

program and the PAG-13 and individual permit applications were held in various locations of the Commonwealth from January 2012 through April 2012. Permit renewal applications or Notice of Intent (NOI) are required to be filed by September 14, 2012. The DEP Bureau of Point and Non-point Source Management continues to assist municipalities and the re-organized DEP regional offices in handling the renewal applications.

The majority of the renewal MS 4 permit applications were received and they are being processed by the regional office Clean Water program permitting staff. Those entities who did not submit applications were sent reminder notices and we do expect to step up compliance action as necessary. The Department does not expect to notify any new municipalities 'assigned urbanized areas by EPA because of the 2010 census until the renewal permits are close to being through the re-issuance process. The expected time frame of notification to new MS4 entities is sometime late 2013.

NPDES Large and Small Vessel General Permits (vGPs)

In 2007 and 2008 EPA was required, by a court order, to issue a general permit (GP) to address invasive species present in the discharge of vessels ballast water for all vessels traversing waters of the United States. They initially addressed the large vessels (>79 feet) and issued this GP in December 2008. This GP was for 5 years and is up for renewal in December 2013. Pursuant to the federal Clean Water Act, Section 401, the states are required to review these general permits for consistency with their state laws, rules and regulations. DEP reviewed the initial GP and issued a 401 certification in December 2008, which was further modified in 2010. EPA as required is preparing for the 2013 renewal of the large vessel GP and in addition has developed a new GP to address small vessels (<79 feet). The EPA, for the renewal, has added some modifications to the large vessel GP conditions, most significantly numeric standards for the ballast water to be discharged. DEP is expected to issue a 401 certification by June 30, 2012 for the vGPS. *DEP issued the certification of EPA's vessel general permits and it was advertised in the June 30, 2012 Pa Bulletin. The EPA recently announced that it plans to issue the final General Permit in March 2013.*

Standard Operating Procedures (SOPs)

Nearly 30 SOPs for permitting activities were developed by the Bureau of Point and Non-Point Source Management (BNPNSM) in November 2012 to ensure consistency in the implementation of DEP's "Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee." The SOPs cover review procedures for essentially all of the permits issued by the DEP regional Clean Water Program, and are available online at the following link:

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21215/SOPs/1294992

BNPNSM is working on SOPs for the review and Sewage Planning applications and Biosolids Permit applications and will be posting SOPs to the website in the near future. In addition, BNPNSM is also working on SOPs for conducting inspections at permitted facilities.

Chesapeake Bay TMDL/WIP

EPA published a Total Maximum Daily Load (TMDL) for the Chesapeake Bay on December 29, 2010, which establishes a 'budget' for nitrogen, phosphorous and sediment loadings. As part of the process, EPA directed states to submit phased Watershed Implementation Plans (WIPs) intended to demonstrate "Reasonable Assurance" that TMDL objectives would be met. EPA requested Phase I WIPs in 2010; Phase 2 WIPs in 2012; and expects Phase 3 WIPs to be delivered in 2018. Over 125 individuals representing a broad range of organizations and interest volunteered to participate on a Management Team and workgroups that provided input throughout the development of the first two Pennsylvania WIPs.

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/>

According to EPA's 2011 watershed model progress run, when compared to 1985, Pennsylvania has achieved 26% of the nitrogen reductions, 32% of the phosphorous reductions, and 46% of the sediment reductions needed to reach the 2025 restoration targets. This is real progress but more needs to be done. When compared to current 2011 progress reported by the watershed model, Pennsylvania needs to achieve an additional 33.64 million pound reduction in nitrogen, 1.2 million pound reduction in phosphorous, and 567.8 million pound reduction in sediment by 2025. This is real progress. Current progress and goals are identified in the below table.

Phase 5.3.2 Watershed Model			
Nitrogen, Phosphorus and Sediment Delivered Loads			
(Millions of Pounds)			
	Nitrogen	Phosphorus	Total Suspended Sediment
2011 Progress	112.47	4.8	2513
August 1, 2011 Phase 2 WIP Planning Targets	78.83	3.60	1,945
Remaining Reductions	33.64	1.2	568

It should be noted that EPA's watershed model can be a useful tool to help guide management actions and project their results. It is not, however, sufficiently precise to measure actual progress or lack thereof. It should not be used in a regulatory context to determine whether an enforcement action or other penalty is appropriate.

Pennsylvania WIPs

Phase 2 was addressed in a process similar to Phase 1. DEP staff re-convened the Management Team and held eight county workshops from October through early November to solicit input on the Phase 2 draft. DEP then held a 45 day public comment period on the Draft Phase 2 WIP. Many of the public comments received supported the issuance of local area targets to help inform county and municipal governments of the approximate level of effort necessary to reach Pennsylvania's TMDL allocations. EPA also called for local area targets. In response to these comments, DEP has posted on its website revised Draft County Planning Targets. These targets are for planning purposes only.

EPA provided their evaluation of the final Phase 2 WIP on May 30, 2012. The evaluation included the following:

- EPA appreciated the steps that Pennsylvania is taking to continue working with local partners, including providing draft county planning targets.
- EPA upgraded the wastewater sector from "enhanced" to "ongoing" oversight based on additional information in the final Phase 2 WIP and milestones.

- EPA stated that the proposed resolution in support of the Model Agriculture Compliance Policy from PACD and Pennsylvania's work with USDA NRCS on advanced manure technologies both show promise that the Commonwealth's agricultural strategies will be successful. However, EPA will maintain enhanced oversight for the agriculture sector until Pennsylvania more fully addresses issues identified in the evaluation. These include compliance, tracking and verifying unreported BMPs, and quantifying the reductions associated with manure technology.
- EPA will now conduct enhanced oversight for Pennsylvania's trading program until recommendations from the recent offset and trading program assessment are addressed, including EPA concerns with the baseline for credit generation.
- EPA is maintaining backstop actions for the urban stormwater sector as they do not feel that the final Phase 2 WIP and milestones provide clear strategies for how to achieve reductions in nutrient and sediment loads from existing urban lands.

Additional Wastewater Details

Following issuance of the Final Phase 2 WIP, on April 2, 2012 the Bureau of Point and Non-Point Source Management (BPNPSM) issued a point source supplement to the Final Phase 2 WIP to EPA. This supplementary document described the status of TMDL implementation for point sources through the establishment of TN and TP annual load limits in NPDES permits, and set forth an updated permitting strategy. Specifically, the document addressed the following:

- It determined that the issuance of permits to significant sewage dischargers is nearly complete, and that upon completion total cap loads in permits will exceed the wasteload allocations (WLAs) in the TMDL. However, the exceedance is due to the connection of retired on-lot sewage systems, and so DEP will need to shift some load from the non-point source septic load allocation (LA) to the point source WLAs.
- It estimated reserves for significant industrial waste dischargers following the initial round of permitting, and a strategy for managing these reserves.
- It modified the list of significant sewage and industrial waste dischargers based on updated information.
- It provided updated direction on permitting non-significant discharges, approving offsets, and certifying or verifying credits.

BPNPSM intends for the document to be dynamic, with frequent updates based on the collection of additional data and modifications due to new or changing circumstances that are encountered.

Milestones

EPA will be using two-year milestones to track Pennsylvania's progress toward the Year 2025 Chesapeake Bay goals. Pennsylvania's Final 2012 – 2013 Programmatic Milestones were submitted to EPA on March 30, 2012 and are posted to DEP's Chesapeake Bay Program website. BMP progress for Years 2009 through 2011 was announced at the Chesapeake Executive Council on July 9th, and posted to the DEP website.

Chesapeake Bay TMDL Midpoint Assessment

The Chesapeake Bay Program's Principals Staff Committee adopted the below Guiding Principles for the Chesapeake Bay TMDL Midpoint Assessment at their December 5, 2012 meeting.

Guiding Principles

1. *Continue implementation, tracking progress and reporting results, with stable tools through at least 2017*
2. *Enhance decision support and assessment tools to enable successful engagement of local partners*
3. *Incorporate new or refined BMPs and verification of practices into existing accountability tools and reporting protocols*
4. *Address emerging issues that may impact current strategies and future plans*
5. *Prioritize midpoint assessment actions and use adaptive management to ensure water quality goals are met*

What is the Midpoint Assessment?

- *Review and incorporation of the latest science, data, tools, BMPs and lessons-learned to determine whether Partnership's strategies will result in all practices in place by 2025 necessary to attain water quality standards in the Bay*
- *Midpoint assessment includes:*
 - *Changes to modeling decision support tools*
 - *Integrated assessment of progress, including watershed monitoring and assessment of water quality standards attainment*
 - *Expectations and schedule for Phase III WIP development*
- *Why is a midpoint assessment necessary?*
 - *Partnership needs to be able to engage local partners in order to get practices on the ground*
 - *Current suite of modeling tools is pushing partners away*
 - *Changes to modeling inputs and assumptions will allow us to work with key partners*
- *TMDL allocations will remain in place through at least 2017*
- *Future changes to targets and allocations are a decision point, not a presumption. After the midpoint assessment is complete, including but not limited to any changes to decision support tools:*
 - *EPA will work with Partnership to set Phase III WIP planning targets. Note level of effort could change.*
 - *Based on midpoint assessment and Phase III WIPs, EPA will determine whether to modify Bay TMDL*

Nutrient Trading

DEP continues to implement the Nutrient Trading Program as designed in the regulations, 25 Pa. Code, Chapter 96, "Water Quality Standards Implementation." The Nutrient Trading Program regulations, Section 96.8, "Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed" were published in the Pennsylvania Bulletin and became effective on October 9, 2010. (Reference, 40 Pa. B. 5790.) The program has become very successful in providing a cost-effective means for facilities subject to limits for nitrogen, phosphorus and sediment to meet those limits by working with other facilities or with nonpoint sources, or both. It has become an integral part of Pennsylvania's Chesapeake Bay Program strategy to advance the restoration and protection of this very valuable water resource. However, DEP has recognized that there are a few program components that could be enhanced. As a result, Deputy Secretary for Water Management Kelly Heffner and Paul Marchetti, Executive Director for Pennvest sent notices to potential members of a stakeholder group comprised of buyers, sellers, governmental agencies, environmental groups and other interested parties asking them if they would be interested in participating in a series of meetings to further evaluate the need for revisions in the policies, guidance and regulations governing the Nutrient Trading

Program. These meetings are now finished. Recommendations were provided relative to three major topic categories as follows:

1. Streamlining processes for certification, verification and registration of credits – including the creation of an Independent Review Team, the extension of the “true-up period”, the role of the aggregator and 3rd party verification.
2. Nutrient Credit Clearinghouse – including interbasin and interstate trading, the PENNVEST Auction process, the credit reserve and the use of public funds for the generation of credits
3. Calculation of Credits and Practice Efficiencies – including the definition of baseline and threshold, the eligibility of practices for credit generation and the life of a credit

The Department met again with this group on November 15, 2012. An overview of the proposed enhancements to the program was provided. These enhancements were developed with the following goals in mind:

1. *Maximize the use of existing technical and financial resources of the Department and the participants in the NTP.*
2. *Enhance program transparency and public involvement where appropriate.*
3. *Meet EPA expectations regarding program elements.*
4. *Minimize the perception of risk in the credit trading market and enhance certainty.*

The key points from the presentation provided to the stakeholder group are:

- *There are no proposed revisions to the credit certifications, verifications or credit registrations currently in place. However, all certifications currently in place would expire September 30, 2015. It is unclear at this point if those certifications with approval dates after this date would have to submit a complete new application for certification.*
- *Moving forward, the proposed adjustments for threshold would be applied to all credits generated after October 1, 2015. If a credit generator wants approval for credit generation after this date; the draft adjustments in place at the time of application would be applied to the DEP approval of the credit certification application.*
- *The adjustments to threshold would be phased in, starting in October 2014 for point sources and October 2015 for nonpoint sources.*
- *To trade, a credit generator must first demonstrate achievement of the threshold. This threshold is being adjusted in order to address EPA concerns.*
- *Adjustments to the threshold for nonpoint sources include:*
 - a. *Application of a trading ratio based on EPA technical memorandum. This ratio will be in addition to the credit reserve and edge of stream/delivery ratios.*
 - b. *This ratio will not be applied to technologies where actual quantification of reductions can be quantified through sampling.*
 - c. *Phase-in of a performance-based approach pending availability of a tool to simulate actual farm practices. Further analysis is needed to determine whether one allocation for each sector within the Pennsylvania portion of the Chesapeake Bay basin or allocations for each sector within smaller watersheds is more equitable.*
- *Adjustments to the threshold for point sources include:*
 - a. *Elimination of the ability to generate credits solely on the fact that the wastewater treatment facility discharged less wastewater than their permit allows starting October 1, 2013.*
 - b. *Credits would be calculated based on a threshold of effluent concentration of 8 mg/L total nitrogen and 1 mg/L total phosphorus. This threshold would be reduced to 6 mg/L total nitrogen and 0.8 mg/L total phosphorus starting October 1, 2014.*
- *There are a couple proposed options for changes to the business processes including:*
 - a. *Locational – Certification applications for credit generation would be submitted for each site where the pollutant reduction activity would be installed. This is the current process.*

- b. *Pollutant Reduction Activity – Certification applications for credit generation would be submitted for each pollutant reduction activity. Once approved, any credit generator could install the practice on a site without further application. Submittal of locational information would be done at verification.*
- c. *Generator Approval Program – Any entity could apply to be a credit generator, describing the types of pollutant reduction activities they plan to utilize and the general area they plan to work. Details on actual pollutant reduction activities installed and location would be submitted at verification.*
- d. *Tailored – Approval for credit generation would be based on whether or not the seller wants to sell the credits during the current year, or in future years. Applications for credit generation for future years would need to supply additional locational information and would be subject to more detailed review. In essence, this is a combination of options a and b above.*
- *Before adjustments can be made to the existing business processes, questions to still be answered include:*
 - a. *Which option is the best option; or is a combination of options a more appropriate approach?*
 - b. *When should DEP approval of a credit certification application (regardless of option taken) expire, or should it expire at all?*
- *Other proposed enhancements:*
 - a. *Extension of the “true-up” period to 90 days*
 - b. *Add an additional 5% reserve to credits generated through inter-basin trading where the location of the credit generator is not in the same basin as the entity buying the credits*
 - c. *Creation of a Compliance Monitoring & Inspection Audit Program*
- *Other input received that resulted in no changes to the program*
 - a. *An Independent Review Team will not be created*
 - b. *Existing policies on the use of public funds for the creation of credits will not change*
 - c. *For the purpose of determining compliance, credits cannot be averaged over a 3 year period*
 - d. *The department is continuing to evaluate edge of stream and delivery ratio factors. However, for now, the edge of stream and delivery ratios from Version 4 of the Chesapeake Bay Watershed Model will continue to be the ones used in the credit calculation methodologies.*

While most of these proposed enhancements can be done through guidelines DEP is planning to propose comprehensive revisions to the existing regulations to implement these enhancements in order to provide sufficient opportunity for outreach and training to ensure the final program enhancements will meet the goals of the program. In addition, to minimize confusion with other proposed revisions to Chapter 96, the existing regulations will be rescinded and replaced with a new, separate Chapter 98. It is estimated that these regulations can be in place by May, 2015.

Before draft regulations are developed DEP intends to implement a comprehensive outreach strategy to ensure the proposed enhancements are comprehensive and will achieve the intended outcomes. This strategy is now under development.

Another important component to facilitate the nutrient trading market involves Pennvest. Pennvest has been serving as the Nutrient Credit Clearinghouse for nutrient credit trading transactions. In this context, credit buyers and sellers contract with Pennvest rather than directly with each other. These transactions occur through periodic credit auctions. The next Pennvest auction will take place on *March 20, 2013*. Additional information can be found at: http://www.pennvest.state.pa.us/portal/server.pt/community/pennvest_internet/9242 .

The nutrient trading regulations provide for three distinct activities regarding the generation of credits: certification, verification and registration. Certification is written approval by DEP that a proposed nutrient reduction activity will generate credits. Verification is the process of confirming that the certified activity took place. Registration is the accounting mechanism used by DEP to track and associate the use of credits for permit compliance. *Detailed information on this process and specific projects can be found on the DEP website at www.depweb@pa.state.pa.us. (Keyword: Nutrient Trading) The true-up period for 2012 Water Compliance*

Year was completed. Table 1 is summary of the number of credits certified, verified and registered for this water year.

Table 1. Summary of Credit Transactions for 2012

Activity	Certified		Verified		Registered as Sold	
	TN	TP	TN	TP	TN	TP
WWTFs with New Concentration Criteria	300,229	28,391	298,345	28,068	212,518	10,041
WWTF Under Cap Load	873,913	75,313	811,584	47,448	222,787	16,520
Nonpoint Source Ag BMP	68,743	221	22,494	433	26,472	0
Nonpoint Source Manure	1,357,580	167,370	176,845	21,138	161,804	6,510
NPS Treatment w/Permit	1,720,454	54,315	0	0	0	0
TOTALS	4,338,919	327,810	1,309,268	97,087	623,703	33,203
TOTAL TRADES					50	

DEP is in the process of updating the individual spreadsheets posted on the website to describe each project involved in the three process steps that participated in the program in 2012.

Based on data made known to DEP, the price of nitrogen has been in the range of \$2.50 to \$15 per pound. The price of phosphorous has ranged from \$1.50 to \$10 per pound.

Agriculture Updates

Related to the efforts to implement the Phase 1 Chesapeake bay WIP, there have been several significant activities to enhance compliance with PA’s environmental regulations that address agriculture (Ag).

Extensive education and outreach activities have been undertaken to ensure farm operators are aware of their regulatory requirements under Pennsylvania’s Erosion Control regulations and the Manure Management Manual. Beginning in July 2011, County Conservation Districts in the Chesapeake Bay watershed have engaged in over 5,700 site visits. *DEP exceeded the 4,000 site visits target established for the fiscal year ending June 2012.* With the completion of the “Manure Management Manual,” DEP organized regional trainings on the DEP Manure Management Manual. Dr. Doug Beegle and Jerry Martin from Penn State Extension prepared “train-the-trainer” format presentations that allowed participants to both learn the manual and prepare to deliver this information to farm operators and others in their local jurisdictions. Using federal Chesapeake Bay funds and PA Clean Water Funds, DEP supported mini-grants for conservation districts to conduct local training/workshops for farmers, consultants, and others to improve awareness of the revised Manure Management Manual and to assist farmers in completing manure management plans. Forty Seven conservation districts held 152 manure management manual training programs. *This training included 2,966 farmers, 30 consultants and 246 “others” and followed the format developed by Penn State. Through this effort, 717 plans were completed at these training sessions. Additional sessions are expected in FY 2013-14.*

To support Pennsylvania's expanded outreach to the Ag community to increase compliance with Chapter 102 and manure management requirements, DEP worked with the Lancaster County Conservation District and the Ag Ombudsman program to develop and produce outreach materials. Pennsylvania has prepared several easy to read materials on Pennsylvania's existing regulatory programs. This series of information includes the "Am I in Compliance" brochure which has a distribution of ~20,000 copies since January 2011; the "Ag E&S Barn sheet" which was prepared in July 2011; and the "Manure Barn Sheet" which was prepared in November 2011. At least 8,000 of each barn sheet have been distributed. These materials were prepared for general distribution and for use in conservation district site visits. The fourth item in this series was completed and mailed by the USDA-NASS to over 80,000 farm operators and related businesses.

As part of Pennsylvania Ag compliance efforts, DEP evaluated and modified several regulatory tools that aide in implementation of the existing Manure Management and Ag E&S requirements.

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.

As a result of the Department's reorganization effort, the newly formed Bureau of Waterways Engineering and Wetlands, Division of Wetlands, Encroachments and Training and Division of Dam Safety published the Chapter 105 Dam Safety and Waterway Management fee revision package on January 28, 2012 in the Pennsylvania Bulletin for a 30-day public comment period. As a result, the Department received a number of public comments regarding the proposed fees from 29 commentators. Bureau staff is currently reviewing comments on the proposed new permitting fees and a new submerged land license charges for development of a final rulemaking which should be presented to EQB soon. The comment/response document has been completed and staff will discuss with CAC at a later date.

The EQB adopted the final-form rulemaking, which updates the existing fees and includes additional fees for activities performed by the Department at its meeting of October 16, 2012 meeting. In addition, the final-form regulations were deemed approved by the House and Senate Committees on November 30, 2012, and IRRC on December 13, 2012. The final regulations are expected to be published in the Pennsylvania Bulletin on February, 16, 2013.

Revisions to the Construction Stormwater General Permit PAG-02

The Department will be releasing the draft construction stormwater general permit (PAG-02) for public comment in August. The draft PAG-02 incorporates requirements from the updated Chapter 102 regulation revision, but will not include numeric effluent limitations for turbidity which were proposed and then stayed by EPA. It is anticipated that the final permit will be submitted to EPA for review in late summer to early fall and published as final in December 1, 2012.

Stormwater Offsetting Workgroup

The Department has organized a workgroup to address issues related to offsetting stormwater through permits at an offsite location. The group will be working through the winter and spring to provide structure to the Department in developing a stormwater offsetting policy. It is anticipated that a draft policy will be available for public comment in *summer of 2013*.

Publication of the Erosion and Sediment Control Pollution Manual

The final Erosion and Sediment Control Pollution Manual was announced as final in the Pennsylvania Bulletin on March 31. Three trainings have been held for county conservation district and Department staff in multiple programs. Additional trainings will be held throughout the summer and fall for the regulated community. These trainings are as follows:

August 20-21: Best Western Plus Lehigh Valley Hotel & Conference Center, Bethlehem

August 30-31: Holiday Inn Hotel, New Cumberland

September 24-25: Pittsburgh Marriot North, Cranberry Township

Additional training sessions are tentatively scheduled for:

March 19 and 20; Holiday Inn, Williamsport

May 29 and 30; Villanova University, Villanova

Safe Drinking Water

From July to December 2012, the Safe Drinking Water Program accomplished the following:

- *Administered the Drinking Water Program and protected public health at nearly 9,200 public water systems serving 10.7 M people (86% of population). With nearly 9,200 PWSs, PA is ranked 4th in the Nation.*
- *Maintained the surveillance program:*
 - *Total # sanitary surveys conducted = 1,232*
 - *Total # other inspections conducted = 1,322*
- *Maintained the enforcement program:*
 - *Total # enforcement actions taken = 84*
 - *Total fines/penalties assessed = \$71,235*
 - *Total fines/penalties collected = \$149,625*
- *Continued work to implement and ensure compliance with recently enacted rules, including:*
 - *Stage 2 Disinfectants/Disinfection By-products Rule*
 - *Revisions to the Lead and Copper Rule*
 - *Long-term 2 Enhanced Surface Water Treatment Rule*
 - *Ground Water Rule*
 - *General Update to Chapter 109*
- *Managed the Source Water Assessment and Protection Program, including oversight of various grants/contracts (SWPTAP, WREN, PRWA and WMON), and support for the development of local source water protection programs.*
- *Provided Capability Enhancement/Technical Assistance:*
 - *Provided on-site assistance to 41 water system owners, administrators and operators.*
 - *Conducted 37 filter plant performance evaluations.*
- *Administered the Operator Training and Certification Program:*

- *Approved 8 new training providers and 94 training events. Currently, there are 232 approved training providers and 2,562 approved training courses.*
- *Administered examinations to 1,119 individuals, and processed 2,567 applications for new/upgraded/renewed certifications.*
- *Developed and/or delivered several regulatory-based training courses, including Public Notification and Stage 2 Disinfectants/Disinfection By-products Rule.*
- *Managed the inventory and compliance/enforcement records for all 9,200 public water systems, processed approximately 600,000 sample records, and updated automated compliance programs, as needed. As of September of 2012, all laboratories and public water systems are required to comply with mandatory electronic reporting requirements for the reporting of sample results.*
- *Administered the permitting program:*
 - *Total # construction permits issued = 246*
 - *Total # operation permits issued = 420*

II. Pending Issues

Waste Management

Recycling Fund and Solid Waste Advisory Committees

The February 7, 2013 meeting of the Solid Waste Advisory Committee (SWAC) was cancelled due to lack of agenda items. The next meeting is scheduled for Thursday, May 16, 2013, at 10:00 am in room 105 of the Rachel Carson State Office Building.

Mushroom Manual

The Manual on Best Practices for Environmental Protection in the Mushroom Farm Community was issued as final on November 3, 2012.

Municipal and Residual Waste Regulation Revisions

The Bureau of Waste Management (*BWM*) is currently revising the Municipal and Residual Waste Regulations to update the Chapters relating to Infectious and Chemotherapeutic Waste. While most of the revisions are being made to Chapter 284, other affected chapters that contain references to infectious and chemotherapeutic waste include Chapters 271, 272, 273, 285, 287, 288, and 299. The revisions largely aim to replace all references to “infectious waste” with “regulated medical waste.” The global change in terminology will allow Pennsylvania’s requirements for the management of infectious and chemotherapeutic waste to be consistent with federal requirements and the requirements of other states. In addition, the revisions allow persons who generate, transport, process, or dispose of infectious waste to use standard business documentation, including electronic tracking systems in lieu of the currently mandated paper manifest system to track waste through the shipping process to disposal. *Recent revisions to the Regulatory Review Act pertaining to small businesses required extensive analysis and outreach, thus requiring additional time to develop the Regulatory Analysis Form (RAF). The RAF has been completed and the draft regulations are expected to be brought before the Environmental Quality Board at its April 2013 meeting.*

Identification, Assessment and Disposal of TENORM Waste at Landfills

TENORM is a material in which radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. The many sources of TENORM include residual wastes from industrial and resource extraction activities, demolition wastes, and wastes resulting from municipal and industrial wastewater treatment.

During the past year as part of its routine tracking procedures, BWM noticed an increase in the amount of TENORM waste going to landfills. After further investigation, it was determined that this increase was largely due to the development of the Marcellus Shale in Pennsylvania and the resulting wastes containing TENORM—specifically, the sludges resulting from the treatment of wastewaters associated with drilling activities. In addition, while monitoring Marcellus waste disposed in landfills, BWM has learned that these particular waste streams, in regards to TENORM, are not consistent over time or on any production or geographic basis.

BWM, in conjunction with the Bureau of Radiation Protection (BRP), is developing a strategy for further evaluation and management of these TENORM-containing wastes. Led by BRP, the Department ultimately will be conducting a comprehensive study of the radioactive materials (TENORM) generated during the development of oil and gas resources. The study would last 12 to 14 months after the date of implementation and should provide the Department with the information necessary to continue to effectively manage these materials and ensure that public health and the environment continue to be protected. In the short term, the Department is reviewing its existing management approach regarding the disposal of TENORM waste, with the objective of developing additional tools for testing, tracking and monitoring.

Permit Decision Guarantee

BWM continues to work to “eliminate the queue” of permit applications received prior to the implementation of Permit Decision Guarantee (PDG). Regional Office staff provides updates on their respective projects to Central Office on a regular basis.

In the coming months, BWM will begin to develop SOPs and permitting checklists for those permits not included in PDG, as well as review and modify, as necessary, the associated applications for these permits.

Radiation Protection

Comprehensive Oil and Gas Development Radiation Study

Generation of technologically enhanced naturally occurring radioactive material (TENORM) has increased significantly. This is mainly due to the recent expansion in natural gas exploration and production in Pennsylvania. There are many issues with TENORM that must be managed effectively. These issues include potential worker radiation exposure, public radiation exposure, environmental (water, etc.) contamination, and waste disposal. On January 24, 2013, DEP announced it will undertake a study to assess naturally occurring levels of radioactivity in by-products associated with oil and natural gas development.

The purpose of the study is to gather data necessary to ensure the existing protocols and management approaches continue to be effective, and to determine if any modifications are necessary. Using standard scientific protocols, DEP’s contractor, Perma-Fix Environmental Services, Inc., will collect samples of flowback water, rock cuttings, treatment solids and sediments at well pads and wastewater treatment and waste disposal facilities. The study will also analyze the radioactivity levels in pipes and well casings, storage tanks, treatment systems and trucks. Perma-Fix, of Pittsburgh, has worked with the agency as a consultant on health physics and radiological issues for more than a decade.

The agency will consult with independent members of academia to peer review the project’s detailed study plan. [After the peer review is complete, DEP will publish the study plan on its website, where the agency’s proposal for the study is currently viewable.](#)

It is noteworthy that Pennsylvania is the only state that routinely requires landfills to monitor radiation levels in incoming wastes to ensure public health and the environment are protected. Should waste trigger a radiation

monitor, the landfill must use a conservative and highly protective protocol that DEP developed to determine if the amount and concentration of the radioactive material can be accepted. This protocol ensures that TENORM does not pose a risk to public health from disposal at an approved site.

DEP will manage and fund the study, which is expected to take 12 to 14 months, and it will be a transparent process. The study proposal and summary are posted at www.dep.state.pa.us at the "Oil and Gas Development Radiation Study" button on the front page.

Environmental Cleanup and Brownfields:

Land Recycling Program Technical Guidance Manual

The Cleanup Standards Scientific Advisory Board has established a new Process Workgroup to review the Land Recycling Program Technical Guidance Manual and provide recommendations for pending revision. The existing Vapor Intrusion Workgroup is reviewing the existing vapor intrusion guidance and will provide recommendations on development of a revised vapor intrusion section to the Land Recycling Program Technical Guidance Manual. *These workgroup recommendations will be made to the full Cleanup Standards Scientific Advisory Board in April 2013 and final recommendations of the Board will be forwarded to the Department. The Department is planning to have a final draft document available for public comment by December 2013.*

Air Quality

Revision to the General Plan Approval and/or General Operating Permit (GP-5) for Natural Gas Compression and/or Processing Facilities: *On February 1, 2013, the Department finalized the revision to the General Plan Approval and/or General Operating Permit (GP-5) for Natural Gas Compression and/or Processing Facilities. The notice of availability of the final GP-5 along with related documents, including the instructions, application form, fact sheet, comment/response document, and technical support document were published in the Pennsylvania Bulletin on Saturday, February 2, 2013. The final GP-5 represents a significant work effort by the staff and will result in lower emissions at well sites and more efficient compressor stations, resulting in cleaner air as development, production and transmission take place.*

Proposed Exemption Criteria for Compressed Natural Gas Fueling, and Oil and Gas Exploration, Development, Production Facilities and Associated Equipment: *The Department has published a notice in the Pennsylvania Bulletin proposing revisions to the technical guidance document, which lists sources or classes of sources that may be exempt from the plan approval and permitting requirements of 25 Pa. Code Chapter 127. This includes Category No. 33, pertaining to compressed natural gas fueling, and Category No. 38, pertaining to oil and gas exploration, development, production facilities and associated equipment. Written comments on the proposed revisions to Categories 33 and 38 will be accepted until March 19, 2013.*

Proposed Revision to Title V Emission Fee: *On February 2, 2013, the Environmental Quality Board published for public comment the proposed revision to the Title V emission fee. The proposed rulemaking would amend §127.705 (relating to emission fees) to establish a base Title V annual emission fee of \$85 per ton for up to 4,000 tons of regulated pollutant, beginning with the fees due by September 1, 2014, for emissions from Title V facilities in the 2013 calendar year. The initial base Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the base Title V annual emission fee has not been revised since 1994. The Title*

V annual emission fee due September 1, 2012, for emissions occurring in calendar year 2011 was \$56 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant.

Minor clarifying amendments are proposed for § 127.701 (relating to general provisions). The proposed rulemaking would revise § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The proposal would also make additional editorial changes to this section.

Three public hearings are scheduled in March. The public comment period closes on April 8, 2013.

Long-Term Marcellus Shale Monitoring: *In July 2012, the DEP launched a one-year ambient air monitoring project with an emphasis on characterizing near-source concentrations of criteria and hazardous air pollutants from permanent facilities related to the Marcellus Shale gas industry (compressor stations, gas processing). Based on the results of the three DEP short-term studies undertaken in 2010, this long-term study is focused on permanent gas facilities located in Washington County.*

The study consists of four monitoring sites including a primary site and three satellite sites as well as a background site. During the long-term study, DEP will collect samples of the following to assess potential emissions: VOC's, NOx, particulate matter, carbon monoxide and hydrogen sulfide. The Department is also collecting meteorological data at each site. The long-term study is expected to end in July/August 2013; a final report will be prepared in fall 2013.

The Department is installing a monitoring site in Bradford County to measure ambient concentrations of ozone and nitrogen oxides. The site is located in the Towanda area and has been chosen because of the local topography (ridge and valley) and the numerous wells and compressor stations to the west. This site is specifically located to determine if Pennsylvania is experiencing similar winter-time ozone issues to those being seen in states like Wyoming and Colorado. Site operations will be performed by the Pennsylvania State University (PSU). The DEP/PSU collaboration ozone site near Gleason (Tioga County) has been upgraded with a nitrogen oxide monitor. With the installation of the Bradford County monitor, PA DEP will have air monitors in 18 of the 37 counties included in the Marcellus Shale region.

SO2 NAAQS: *EPA adopted a revised 1-hour SO2 National Ambient Air Quality Standard (NAAQS) in June 2010. EPA set the standard at 75 parts per billion (ppb). In June 2011, PA submitted recommendations to EPA for area designations, recommending four counties be designated as nonattainment (Allegheny, Beaver, Indiana, and Warren) based on ambient air quality data. On February 7, 2013, EPA notified the states of EPA's response to the recommendations. States have 120 days to review EPA's response and provide any additional data. EPA plans on making the final designations this spring. The nonattainment areas would be required to achieve attainment within 5 years of the designation.*

Climate Change: *The Department is required under Act 70 of 2008 to prepare a climate impacts assessment and action plan and update those reports every three years. The impacts assessment report has been prepared by researchers at the Pennsylvania State University. The report is undergoing review by the Department. The Climate Change Advisory Committee is reviewing draft action plans that will be included in the Department's report to the legislature.*

Energy Initiatives

Natural Gas Vehicles

The Department of Environmental Protection accepted applications from Dec. 1 2012 until Feb 1st 2013 for its Natural Gas Vehicle Grant program. This program will provide up to \$20 million over three years to help pay for the incremental purchase and conversion costs of heavy-duty natural gas fleet vehicles. In this first year, \$10 million in grants are available, \$5 million of which is slated for local transportation organizations,

including non-profit agencies providing public transportation services and public transportation, port and redevelopment authorities. An additional \$7.5 million will be available the second year, with \$2.5 million the third year. Entities eligible to apply include; non-profit organizations, for-profit companies, local transportation organizations, state owned or state related universities, Commonwealth or municipal authorities, and the Pennsylvania Turnpike Commission. Eligible vehicles include those fueled with compressed natural gas (CNG), liquefied natural gas (LNG) or bi-fuel vehicles weighing 14,000 pounds or more. Grant awards are capped at 50 percent of the incremental purchase or retrofit cost per vehicle, with a maximum total of \$25,000 per vehicle. Forty-nine applications were received and grants are expected to be awarded late March 2013.

Alternative Fuel Vehicles

Approximately \$10 million in grants will be made available in April 2013 through the Alternative Fuels Incentive Grant Program. Eligible entities include; non-profit agencies, for profit companies, commonwealth or municipal authorities and local transportation organizations. The grant funds available will include an opportunity to propose projects which will convert or purchase natural gas vehicles weighing less than 14,000 pounds as well as convert or purchase electric, propane, or other alternative fuel vehicles of any size. As done with the Natural Gas Vehicle Program, applicants interested in purchasing or converting one or two alternative fuel vehicles will be encouraged to join forces and aggregate into a single application to satisfy the five vehicle minimum required for application. Applications will also be accepted for innovation in alternative fuel transportation.

Vehicle Rebates

The Alternative Fuel Vehicle (AFV) Rebate program will be extended once it reaches its milestone of awarding 500 rebates at \$3,500 for large-battery system plug-in hybrid electric vehicles and battery-electric vehicles. The AFV program has committed to offer \$3,000 for the next 500 large battery system vehicles. With this commitment, the total investment in alternative fuel vehicles for residents will total over \$3.35 million. The Department of Environmental Protection also offers rebates of \$1,000 for battery-electric vehicles with battery system capacity less than 10 kWh, as well as, for natural gas, propane, hydrogen or fuel-cell vehicles. A recent accounting of vehicles provided a rebate shows that 593 vehicles have been provided to residents in 52 Counties since 2011. There are only 41 rebates remaining at \$3,500.

PA Sunshine Program

In January, The PA Sunshine Program moved out of the waiting list phase and back in an active rebate mode, thanks to the allocation of \$7.25 million in final Act 1 of 2008 funding from the Commonwealth Financing Authority. The PA Sunshine Program staff along with Grant Center staff has begun the processing of rebates for all completed projects which have been awaiting payment. There are over 500 projects totaling over \$3 million in payments to be processed. The Sunshine program also announced amended PA Sunshine Program guidelines in order to stream-line the rebate application process, keep the program moving along smoothly and provide more certainty in the program as the final \$7.25 million in funding is paid out. The Sunshine Program will now be a first-come, first-served rebate process. All existing applications in the system that were reserved/approved for construction by the PA Sunshine Program will have to be completed by June 1, 2013, in order to insure payment. Anyone who had a reservation or a reservation request in the system prior to Jan 26, 2013, is eligible for the rebate as long as the reservation is approved. Anyone who submits for a rebate for a system that was built after Jan 26, 2013, with or without an approved reservation is eligible for a rebate. The PA Sunshine Program will close, upon the exhaustion of the final \$7.25 million in funds before or by December 31, 2013, whichever occurs first. Lastly, remaining rebate funds will be updated, approximately weekly, on the PA Sunshine Website at www.dep.state.pa.us , keyword: PA Sunshine.

Draft Proposed Rulemaking – Chapter 78, Subchapter C (relating to environmental protection performance standards)

The Department has developed a proposed rulemaking concept paper outlining potential changes to the Oil and Gas regulations in Chapter 78, Subchapter C. The environmental protection performance standards in Subchapter C primarily address surface activities related to oil and gas exploration and production. These topics include protection of water supplies, erosion and sediment control, waste management, pits and tanks for temporary containment of drill cuttings and production fluids, containment of polluttional substances (such as hazardous substances stored on a well site), site restoration and spill reporting and remediation.

The concept paper was presented to the Oil and Gas Technical Advisory Board in February 2012 but has been significantly updated to address both changes to the regulations that are necessary as the result of enactment of Act 13 as well as implementation issues identified by the Department since that meeting. The Department presented a revised concept paper for discussion at the August 15, 2012 Oil and Gas Technical Advisory Board meeting; however, the TAB members were not prepared to discussed the document.

A special meeting was held with TAB on October 15, 2012 to discuss the draft proposed rulemaking. The next TAB meeting is scheduled to be held in the Rachel Carson State Office Building (Room 105) on Wednesday, February 20, 2013 and will begin at 10:00 AM. This meeting will include a discussion of the actual draft proposed Chapter 78, Subchapter C rulemaking language and adjustments that were incorporated since the last TAB meeting. The Department will also accept public comment on this draft proposed rulemaking during the meeting.

Erosion and Sediment Control General Permit (ESCGP-2)

On January 21, 2012, the Department published a draft Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities (ESCGP-2) with a 60-day public comment period. This General Permit is intended to provide coverage under the Clean Streams Law to operators who conduct earth disturbance associated with oil and gas exploration, production, processing or treatment operations or transmission facilities where the total disturbance of the project is 5 acres or greater.

On February 16, 2012 the Department met with stakeholders to allow individuals an opportunity to clarify and provide additional input on any comments that were submitted to the Department for consideration during the comment period.

The public comment period closed on March 21, 2012. The Department received and reviewed a total of approximately 450 comments from the public and prepared a Comment Response Document.

A special meeting of the Oil & Gas Technical Advisory Board (TAB) meeting was held on September 17, 2012 to discuss the Erosion and Sediment Control General Permit (ESCGP-2) and related documents.

The ESCGP-2 was published in the Pennsylvania Bulletin as final on December 29, 2012 (42 Pa.B 7863). The final date that the ESCGP-1 permit was accepted by the Department was January 28, 2013 since the permit expires on April 12, 2013. Given that expiration date, January 28 was the latest the Department could accept ESCGP-1 applications and still meet the timelines established by the Department's Permit Decision Guarantee Policy and the regulations in Chapter 102. The Department has developed a transition plan to facilitate a smooth transition from the use of the ESCGP-1 to the ESCGP-2 permit. The Department is planning to provide

training to the regulated community regarding the features and use of the ESCGP-2 permit in the second quarter of 2013.

Draft Final Guidance – Addressing Spills and Releases at Oil and Gas Well Sites

The Department developed a draft technical guidance document titled “Addressing Spills and Releases from Oil & Gas Wells and Related Operations”. This policy was developed to facilitate a consistent and uniform general response by those working in and for the oil and gas industry to respond to spills and releases related to oil and gas well operations. The policy addresses expectations for 1) spill prevention and response planning, 2) notification to the Department in the event of a spill or release, 3) remediation of the spill or release to meet a standard established by the Land Recycling and Environmental remediation Standards Act and the required administrative process or alternate process, and 4) restoration and revegetation of areas impacted by spills or releases (particularly chlorides). The Department discussed the draft guidance with the Oil & Gas Technical Advisory Board in October 2011 and February 2012.

Notice of the draft technical guidance was published in the Pennsylvania Bulletin on April 14, 2012, with a 30-day public comment period. The Department received approximately 67 discrete comments from 12 individuals, companies, organizations and associations. *The Department reviewed these comments, prepared a Comment and Response Document and made several changes to the Policy in light of those comments. In addition, the draft final policy parallels section 78.66 of the draft proposed Subchapter C rulemaking. The draft final guidance will be discussed at the February 20, 2013 Oil and Gas Technical Advisory Board meeting, with the expectation that the final policy will be published in the Pennsylvania Bulletin following that meeting.*

Workload Report

The following is the Oil and Gas Workload Report for the week ending *February 1, 2013*:

OFFICE OF OIL AND GAS MANAGEMENT							
WEEKLY WORKLOAD REPORT – WEEK of 01/28/2013 to 02/01/2013							
WELL PERMIT APPLICATIONS¹							
Year to Date	Received	Issued	Other ⁴				
Conventional	140	113	4				
Unconventional	209	270	11				
Total YTD	349	383	15				
For Week 01/28 to 02/01	Received	Issued	Other ⁴				
Conventional	12	30	0				
Unconventional	13	66	0				
Total for Week	25	96	0				
Unconventional Shale Permit Applications – 2005 to Present							
	Received	In Process	Issued	Denied	Withdrawn	Returned	Entered in Error
2005 – Present	13,232	259	12,685	51	165	13	59
WELL PERMIT APPLICATIONS IN PROCESS							
	Total In Process		< 45 Days	45 to 180 Days		> 180 Days	
Conventional	202		150	22		30	
Unconventional	259		217	24		18	
Total	461		367	46		48	

Note: There are 48 Applications (NWRO-17/SWRO-31) that were received at the Regional Offices that have not been accepted for review and are not included in the weekly statistics.

INSPECTIONS²				
Year to Date	Inspections	Wells Inspected	Violations	Enforcements
Conventional	1,117	789	101	35
Unconventional	991	841	46	23
Total YTD	2,108	1,630	147	58
For Week 01/28 to 02/01				
Conventional	194	156	30	5
Unconventional	76	75	2	4
Total for Week	270	231	32	9
WELLS DRILLED³				
	2013 Year to Date	Week 01/28 to 02/01	2005 – Present⁵	
Conventional	69	21	24,264	
Unconventional	133	23	6,380	
Total	202	44	30,644	

¹Source: eFacts; permit may have been applied for during prior year and issued in current reporting period.

²Inspections count each individual inspection. Inspected wells count how many individual wells were inspected. Some wells may be inspected more than once during the time period.

³Source: Spud Data Report

http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas_reports/20297#InteractiveReports

⁴Other: Applications withdrawn, denied, returned, or entered in error.

Note: The Unconventional Shale numbers may fluctuate as we continue to refine the Unconventional Shale Wells data in the eFacts Database.

⁵ Figures have been adjusted to reflect data cleanup.

Spud Well Report Submitted to Public Utility Commission (PUC)

Pursuant to Act 13, DEP was required to provide to the PUC within 14 days of the effective date of the Act a list of all spudded unconventional gas wells that received a drilling permit. The Department considers the spud date of a well (i.e., the date that drilling commences) to be the date that setting of conductor pipe commences, regardless of the method used to set the conductor. If an operator does not use conductor pipe for a well, the spud date is the date that setting of the initial casing string commences.

The Department met this legislative mandate by providing to PUC this information. Specifically, DEP developed an electronic report for all spud well for which permits were issued through December 31, 2011 *and continues to update the spud well report each month*. Each of these reports is available to the public on DEP’s Act 13 website. The PUC uses these reports to determine what impact fees to assess.

DEP developed a new interactive spud report that allows the public to run customized reports that identifies many different views of the spud data. The data can be sorted by: county, operator, municipality, well status, spud start date, and spud end date. This report is available on DEP’s website (select Act 13 tab at bottom of webpage).

Since the initial report was prepared, DEP has been providing monthly updates to the PUC as new wells are spudded. During the month of August, the Department has provided supplemental information to the PUC at

their request to assist the PUC in determining the appropriate fee amounts that operators will be obligated to remit as of September 1, 2012.

The initial impact fee for wells spudded prior to December 31, 2011 was due to the PUC on September 1, 2012. In part as a result of the Department's efforts, the PUC collected \$204,210,000 from operators of 4,333 unconventional wells spudded prior to December 31, 2011. The Department's spud well list also included several hundred (mostly vertical) unconventional wells spudded prior to December 31, 2011 that were exempt from paying the impact fee due to lack of production over 90 thousand cubic feet of natural gas per day.

The PUC distributed this impact fee money in late 2012 in accordance with the terms of Act 13. Primarily, this money was distributed to the counties, municipalities where these unconventional wells are located and all municipalities in counties where wells are located (\$38.2 million and \$28.3 million and \$28.6 million respectively). The balance of the impact fee money was distributed to a number of different agencies and funds, including the State Conservation Commission, the PUC, the Department, County Conservation Districts, the Fish and Boat Commission, PEMA, PaDOT, the State Fire Commissioner, the Housing Affordability and Rehabilitation Enhancement Fund and the Marcellus Legacy Fund.

The second round of impact fees, including all wells spud prior to December 31, 2012, is due to the PUC by April 1, 2013 (the impact fee is due April 1 in each succeeding year). The Department is working closely with the PUC and unconventional well operators to make sure that our spud well report is as accurate as possible to support collection of the impact fee. The second round of disbursements by the PUC is scheduled for July 1, 2013.

Act 9 of 2012

The Department worked with PEMA on the development of draft regulatory language to implement Act 9 (formerly SB995) that requires operators of each permitted unconventional well in Pennsylvania to post certain 911 response information at the entrance to each unconventional well site. The three main provisions of Act 9 include:

Registration: A drilling operator must register the address of the well pad location with the DEP, PEMA and county emergency response organization in which the drill site is located.

Signage – A reflective sign must be posted at the entrance of a well site that identifies a variety of information including the operator name, site name, street address of well site entrance, and GPS coordinates for each well located on the well site.

Emergency Response Planning – The operator must develop an emergency response plan that provides for equipment, procedures, training and documentation to properly respond to emergencies that threaten human health and safety for each well site or planned well site.

A presentation of Act 9 was provided to the members the oil and gas Technical Advisory Board on August 15, 2012 and the Department requested the TAB to provide formal comments to the Department by the end of August. *The final-omitted emergency rulemaking was presented to TAB on September 17, 2012.*

The Environmental Quality Board approved the emergency regulations at the Board's November 20, 2012 meeting. The final regulations were published in the Pennsylvania Bulletin on January 26, 2013 (43 Pa.B 526). Operators of new well sites will be required to comply with the regulations after January 26, while operators of existing well sites will have phased-in compliance dates of February 26 (addresses), April 26 (emergency response plans) and July 26 (signs). The Department is working with PEMA, industry stakeholders and county

emergency management agencies to develop a Frequently Asked Questions document which should be available on the Department's Oil and Gas website in early February.

Oil & Gas Technical Advisory Board Meeting, Dauphin County

A special meeting of the Oil & Gas Technical Advisory Board (TAB) meeting was held on September 17, 2012 to discuss the Erosion and Sediment Control General Permit (ESCGP-1) and related documents, the draft technical guidance document titled "Addressing Spills and Releases from Oil & Gas Wells and Related Operations" and other time sensitive policy matters.

An additional special meeting of TAB was held on October 15, 2012 to review and discuss of the draft proposed Chapter 78, Subchapter C rulemaking.

The next TAB meeting is scheduled to be held in the Rachel Carson State Office Building (Room 105) on Wednesday, February 20, 2013 and will begin at 10:00 AM. The purpose will be the review and discussion of the draft proposed Chapter 78, Subchapter C rulemaking and adjustments that were incorporated since the last TAB meeting. The Department will also accept public comment on this draft proposed rulemaking. Also included on the agenda is a discussion of the draft final policy titled "Addressing Spills and Releases at Oil and Gas Well Sites". After this TAB meeting, the proposed Chapter 78, Subchapter C rulemaking will be presented to the Environmental Quality Board (EQB).

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. Operation and maintenance continues for the facilities that are in place. *Progress reports are being provided to the Office of Surface Mining to assist them in their oversight of the project. Act 157 of 2012 provides for additional funding sources to pay for the required operation and maintenance of the treatment facilities.*

Final Rulemaking-Coal Permit Fees

DEP presented a proposed rulemaking package to the MRAB at the October 2009 meeting. This package included fees for coal mining permit applications. The MRAB objected to the fee amounts and recommended that the rulemaking proceed without 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 2010 meeting.

On April 22, 2010, 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 2010 EQB meeting. The regulation was published for comment in December 2010. No comments were received. Based on processing delays, republication is necessary. The proposed rulemaking was republished for comments on March 10, 2012. No comments were received during the public comment period. A special meeting of the MRAB was held May 15, 2012 to review the final coal fee regulation. The final coal fee regulation was approved by the EQB at the July meeting. *The rulemaking was effective upon publication in the Pennsylvania Bulletin on November 10, 2012.*

Noncoal Program Fees

Noncoal fees have been calculated to support the program costs (about \$3M). Outreach meetings were held to explain the reason for the fees and how the amounts were calculated. The final-form fee regulations were approved at the April EQB meeting. The regulation was disapproved by IRRC on June 21. It was reconsidered without revision by the EQB at the July meeting. On August 16, IRRC approved the resubmitted regulation. *The final rulemaking was published in the Pennsylvania Bulletin on October 13, 2012. Permit application fees were effective upon publication and the annual administration fees were effective January 1, 2013.*

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. 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 *167 of the 276* permits sent to EPA as of *January 2013*. A new NPDES application form for mining activities has been developed and implemented. *The draft guidance was published for comment in November 2012. Comments were received from 3 commentators. Work is progressing on responding to the comments and finalizing the guidance.*

Act 54 Report

The Department has executed the documents with the contractor (University of Pittsburgh) to begin data collection in September 2012 for the 2008-2013 reporting period. The contract period is two years. *Data collection and evaluation is underway.*

Pending Guidance Documents

The Bureau of Mining Programs is in the preliminary stages of developing guidance documents relating to the use of reclamation fill for active noncoal surface mines, government financed reclamation contracts, coal ash and the use of waste materials regulated under general permits. Work is also underway to update the Conventional Bonding guidance to eliminate the requirement for annual bond reviews. A proposed TGD for NPDES permitting for mining sites has been *published for comment*.

Permit Decision Guarantee

The mining program has developed and posted standard operating procedures for permit application review in order to implement the permit decision guarantee (PDG). The Bureau of Mining Program is systematically reviewing existing guidance documents to identify revision required to reflect the elimination of the money-back guarantee and the implementation of the PDG. There are about a dozen guidance documents in need of revision, most of which have not been updated since the mid 1990's. In addition, the Large Noncoal Permitting process was evaluated for efficiency using the LEAN process. This process identified improvements that could be made, some of which can be done immediately, while others require continuous effort. The improvement of the Large Noncoal Application form is the current focus of attention. While the LEAN process was initiated independently from the PDG, it is clear that the result of LEAN process will be applicable to implementing the PDG.

Office of Homeland Security

The Pennsylvania Office of Homeland Security requested a list of private business / trade associations with which the Department of Environmental Protection has contact for a new outreach program to private businesses. The outreach is intended to generate interest among private businesses for "Risk and Vulnerability Assessments" to be conducted by the Pa. State Police and the federal Department of Homeland Security's Protective Security Advisors. The list was compiled and delivered to Homeland Security.

The PA Criminal Intelligence Center (PaCIC) has requested a subject matter expert from DEP to assist in the analysis of intelligence received for the purpose of addressing all hazards. The DEP representative was required to receive a federal "Secret Clearance" from the Department of Homeland Security prior to beginning work at the center and has received that clearance. The DEP SME will meet with the PaCIC management next week to begin the orientation process and information analysis.

Environmental Education

Environmental Education Grants Program (EEGP)

Environmental Education Grants Program: *For the 2013 grant round, 168 applications were submitted to the program, requesting over \$1 million. The grant review scoring sheets are due on Friday, February 15, 2013. EE staff are reviewing all of the applications requesting \$3,000 or less, and four of those requesting more. The raters each get an average of four applications to review.*

Outreach

Energy Education Exhibit: *The next event for the exhibit is the Pittsburgh Home and Garden Show, March 1 - 10. The exhibit will also be set-up and staffed at the Erie Home and Garden Show, March 14-16*

Energy Education IFB: *As part of the Department's SEP, a contractor will be selected through the IFB process to do professional development, statewide, in K-12 schools on energy education with a curriculum integration component. Energy Star Benchmarking will be another key component of this program. The Energy Education IFB has been reissued with a bid ending date of February 15th.*

Workshops Conferences and Board Meetings

Chesapeake Bay Education Workgroup: *the director met with Bay Fund and NOAA staff and some education workgroup staff to clarify some self-assessment for k-12 schools and reporting requirements associated with tracking metrics in watershed education within the Bay and Environmental Literacy throughout the Mid-Atlantic Region. Outcomes were positive and the Annapolis group was appreciative of our direct involvement.*

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 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.

Green Schools

Jack Farster is working with PDE and other agencies on the green schools initiatives. The federal Green Ribbon Schools Program is the focal point of this initiative. Schools applying for Green Ribbon status will be recognized nationally. Last year, four schools from PA were nominated and accepted to the national recognition program.

Falcon Outreach/Education

CMS has coordinated the installation of four new HD cameras, and the associated software that allows for PC operation of pan, tilt, and color/light balance. The live stream hosting is scheduled to go live on Valentine's Day, February 14th.

The adult pair continues to exhibit behavior consistent with a bonded breeding pair. Again this year, the resident male is being challenged by a ranging male seeking out his own nesting territory. To date, the resident male, W/V has defended his nest.

Small Business Ombudsman

The Small Business Advantage Grant Program, which is currently in its ninth round, provides Pennsylvania small businesses with 50 percent matching reimbursement grants of up to \$9500 to implement pollution prevention or energy efficiency projects and assists various business sectors to transition into competitive markets.

The small business community is critical to Pennsylvania's economic health and vitality. Well-designed pollution prevention and energy efficiency projects can help small businesses operate more efficiently and save money while simultaneously improving Pennsylvania's environment. Examples of eligible projects include HVAC and boiler upgrades, high-efficiency lighting, solvent recovery systems, waste recycling systems, and auxiliary power units deployed as anti-idling technology for trucks.

The Advantage Grant Program, along with the Pollution Prevention Assistance Account (PPAA) Loan Program, and the Commonwealth Financing Authority Loan Program (CFA), is administered by the Small Business Ombudsman's Office, and typically is launched on or about July 25, and will accept applications up to around September 26, or until the funds are exhausted, whichever comes first.

Since the Program's inception in 2004, the Department has awarded more than 1632 grants to small businesses throughout the State, amounting to more than \$6,598,283. The current Round has in excess of 186 applications making the program fully subscribed for 2012-13.

Office of Program Integration

Permit Review Process/ Permit Decision Guarantee

Implementation of the "Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee" began in November 2012. The effectiveness of the new process and guarantee will be evaluated on at least a quarterly basis during the first year. The first evaluation will be completed February 15, 2013. Information pertaining to the Department's Permit Review Process and Permit Decision Guarantee can be found on the Department's web site at www.depweb.state.pa.us (DEP Search/Keyword: Permit Decision Guarantee).