

MINUTES
CITIZENS ADVISORY COUNCIL MEETING
April 15, 2014

CITIZENS ADVISORY COUNCIL MEMBERS PRESENT:

Terry Dayton (Chairman), Greene County
Cynthia Carrow, Allegheny County
Walter Heine, Cumberland County
David Hess, Dauphin County
Nancy Perkins, Allegheny County
Burt Waite, Crawford County
William Fink, Bedford County
Janet Keim, Lehigh County
Thaddeus Stevens, Tioga County
Pat Lupo, Erie County
Donald Welsh, Chester County
R. Timothy Weston, Cumberland County

CITIZENS ADVISORY COUNCIL STAFF PRESENT:

Michele Tate, Executive Director

CALL TO ORDER:

Chairman Terry Dayton called the meeting to order at 10:04 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

CHAIRMAN DAYTON'S REPORT TO COUNCIL:

Chairman Dayton announced the resignations of Jim Clauser and Nancy Perkins from CAC and recognized each for their significant contributions to Council. Chairman Dayton noted that the appointing authorities of Council would be notified of the vacancies on the CAC and would be encouraged to appoint individuals to those vacancies.

In other business, Chairman Dayton announced that Council would be electing a new Chairperson and Vice-Chairperson in the coming months and asked that a Nominating Committee be convened to assist in the search of council members willing to serve in these positions. Burt Waite and Cynthia Carrow volunteered to serve on the Nominating Committee. A motion to approve Burt Waite and Cynthia Carrow's participation on the Nominating Committee was unanimously passed by Council members.

Due to the departure of Nancy Perkins who served as Council's Chairperson of the Regulatory and Policy Oversight Committee, Chairman Dayton noted that a new chairperson for the committee would need to be selected. In response, Tim Weston agreed to serve as the Chairperson of the committee. A motion to approve Tim Weston as Chairman of Council's Regulatory and Policy Committee was unanimously approved by Council members.

Chairman Dayton asked for the creation of an Ad Hoc Committee to coordinate Council's review of the forthcoming Act 54 Mine Subsidence Report. Chairman Dayton noted that he previously served on the committee that reviewed the prior report, as well as Cynthia Carrow, Burt Waite and John Walliser. He noted that all former members of the committee were interested in serving on the committee again. A motion to approve the formation of an Ad Hoc Committee to review the

draft Act 54 Mine Subsidence Report, comprised of Terry Dayton, Cynthia Carrow, Burt Waite and John Walliser, was unanimously approved by Council members.

A Council vacancy on the Department's Air Quality Technical Advisory Committee (AQTAC) was also noted for CAC action. Michele Tate noted that John Walliser expressed interest in participating on AQTAC but could not commit to attending every meeting. Ms. Tate noted that she could attend those AQTAC meetings that Mr. Walliser could not participate. A motion to approve John Walliser as Council's member to AQTAC was made and was unanimously adopted by Council.

Chairman Dayton asked for a motion to approve the draft March 18, 2014, meeting minutes, as presented to Council.

Thaddeus Stevens motioned to approve the March 18, 2014, meeting minutes as presented to Council. Tim Weston seconded the motion, which was unanimously approved by Council.

MINE SUBSIDENCE: BACKGROUND AND OVERVIEW:

In preparation for Council's upcoming review of the Act 54 Mine Subsidence Report, Joel Koricich, District Mining Manager with the Department of Environmental Protection's California District Mining Office, provided Council with an overview of the Department's responsibilities under Act 54 and how reporting under the Act has evolved since 1994 when the legislation was adopted. Act 54 of 1994 amended the Bituminous Mine Subsidence and Land Conservation Act to, among other things, provide a remedy for the restoration or replacement of water supplies affected by underground mining, as well as a remedy for the restoration, replacement or compensation for surface structures damaged by underground mining. Act 54 requires the Department to compile and analyze data to determine the effects of deep mining on subsidence of surface structures and water supplies and to report its findings in 5-year intervals to the Governor, the General Assembly and the Citizens Advisory Council, commencing in 1993. Mr. Koricich provided an historical perspective of how the report and the Department's mine subsidence program have evolved since 1994, including describing the Department's initial efforts to collect data in order to identify and define the universe of effects to land, structures and water caused by underground mining in Pennsylvania. Mr. Koricich also identified the numerous enhancements made by the Department to develop a more robust mine subsidence program, and the effects these enhancements have made in improving the Department's ability to collect and analyze data.

In response to Mr. Koricich's presentation, Council asked a number of questions relating to the program and its anticipated review of the latest Act 54 Mine Subsidence Report, which will cover the years of 2009-2013. Mr. Koricich noted that the latest report will include more detailed analysis and assessment of data collected on structural damage and water supply issues, including measures to mitigate impacts, instead of just the presentation of data and facts on mine subsidence damage. He noted that the draft report should be available in May and that the University of Pittsburgh is the contractor that is developing the report for the Department. Council inquired whether settlements made through private and confidential agreements will be included or reflected in the report, if GIS technology is utilized by the Department to analyze and track underground mining-related impacts, and how or if the Department establishes the "baseline" for which reclamation efforts must adhere. In closing, Council also noted its concern with the basic premise of Act 54 which allows underground mining to impact the land and water without any emphasis toward the prevention of environmental degradation and how this premise is contrary to

the Department's constitutional obligation to protect the environment.

DRAFT DEP ACT 54 BROCHURE:

Holly Cairns, Director of DEP's Office of Environmental Advocate, presented Council with a draft copy of a brochure or public information document that Council previously commented on concerning water supply replacement and subsidence damage repair and the rights and responsibilities of underground coal mine operators, DEP and the public. Ms. Cairns noted to Council that DEP appreciated its earlier comments on the brochure and had incorporated its suggestions into the latest version of the document for additional input and review by Council. Ms. Cairns noted that it is DEP's intent, once Council has reviewed the document, to share it with other stakeholders for input. In addition to the brochure, Ms. Cairns noted that she would share a Fact Sheet with Council for its review and input. Ms. Cairns noted that the finalization and public dissemination of the brochure and updated Fact Sheet are particularly timely given the forthcoming release of the Act 54 Mine Subsidence Report.

DEP ONLOT SEWAGE DISPOSAL SYSTEM PLANNING:

Lee McDonnell, Director of DEP's Bureau of Point and Nonpoint Source Management, presented information to address recent Council inquiries about DEP's sewage planning process requirements and the use of alternate technologies for new land development planning proposals. Council, in cooperation with the Department's Sewage Advisory Committee, identified impediments which prevent the Department's consideration of onlot alternative technologies in the municipal Act 537 Sewage Facilities Act planning process. Mr. McDonnell updated Council on the Department's efforts to reconcile sewage planning and alternative systems requirements in order to facilitate the consideration of alternative technologies in onlot sewage planning and noted that it has been the Department's longstanding intention to update its regulations to, among other things, classify new technologies as conventional when they are proven to perform adequately and reliably. He noted, however, that despite work by the Department and the Sewage Advisory Committee on a regulatory proposal, the program's regulations have not been updated in over 17 years. While some have suggested that surgical changes could be made to the regulations to solve the impediments identified by Council and the Sewage Advisory Committee, Mr. McDonnell emphasized that any changes to the regulations would need to be comprehensive in nature to adequately resolve the issues at hand. He stressed that the Department is examining solutions to rectify the immediate concerns expressed by Council and the Sewage Advisory Committee and was hopeful an expeditious resolution could be developed, short of a regulatory change. In response, Council questioned if it could play a role in helping to facilitate a resolution to the impediments identified in the current regulations, including, among other things, helping to define the criteria that would determine when an alternate system has met acceptability as a conventional technology. Other members on Council posed more broad questions including the adequacy of Act 537 to meet the current challenges of sewage planning. At the request of Chairman Dayton, Duane Mowery, Chairman of the Sewage Advisory Committee, also participated in the conversation and reiterated the concerns expressed by Council with respect to the current regulatory impediments that prevent alternate technology from being considered in the onlot sewage planning phase.

At the conclusion of their conversation, Council emphasized the need of the Department to prioritize the Act 537 program for review and enhancement. Council suggested that Secretary Abruzzo update the Department's progress in examining the program at each monthly Council meeting. Council noted that such an examination by the Department should include not only how the Department could alter internal protocol to allow the consideration of proven and well-tested

alternative technologies to be included in the municipal Act 537 Sewage Facilities Act planning process, but also a comprehensive review of the Act 537 program in general so that improvements to the overall program could be identified. Council noted that in January 2014, Secretary Abruzzo requested that Council identify priorities of the Department for action. In response to his call, Council collectively agreed that the Act 537 program should be a priority for the Department and emphasized its willingness to be a partner in the process to assist the Department in reviewing this program.

Tim Weston moved for Council and the Sewage Advisory Committee to collectively draft a letter to Secretary Abruzzo recommending the Department prioritize the review of the Act 537 program in order to address the impediments associated with the use of alternate technologies in the onlot planning phase of the Act 537 program and to identify opportunities to strengthen and reform the overall sewage planning and management program in Pennsylvania. Thaddeus Stevens seconded the motion, which was unanimously approved by Council.

In response to the adoption of the motion, Mr. Weston and Mr. Stevens volunteered to draft the letter to Secretary Abruzzo, with assistance from Mr. Mowery. It was also discussed that the draft letter would be circulated to Council for review and comment before being presented to Secretary Abruzzo.

DEP REPORT TO COUNCIL:

In her report to Council, Hayley Book, Director of DEP's Policy Office, updated Council on the finalization of the Community Environmental Projects Policy, which provides protocol for the Department's acceptance of Community Environmental Projects in lieu of some penalty assessments. She noted the policy and an accompanying comment and response document would be advertised for availability in the April 19, 2014, issue of the *Pennsylvania Bulletin*. Council had previously provided the Department with comments on the draft version of the policy. In other news, she informed Council that the Department is unlikely to finalize the proposed Chapter 78 oil and gas well drilling surface regulations until sometime in 2015. She noted that the Environmental Quality Board received over 25,000 comments on the rulemaking, which is a new record for the Board. She emphasized that the Department is planning to review the comments with the agency's Oil and Gas Technical Advisory Board this summer. Ms. Book also noted that the Department is considering using the optional procedure of an Advanced Notice of Final Rulemaking to inform the public of changes made to the proposed rulemaking and to solicit public comment on those changes.

Ms. Book provided a copy of a white paper recently submitted to the federal Environmental Protection Agency by the Department that outlines the Department's recommended framework for the forthcoming federal Section 111(d) regulations for reducing carbon dioxide emissions from existing fossil fuel-fired power plants. EPA, as a part of President Obama's Climate Action Plan, is expected to release its regulatory proposal for existing power plants in June 2014 with a final rulemaking anticipated by June 2015. In response to an inquiry by Council, Ms. Book noted that the priorities for DEP in the coming year include service, excellence, stewardship and transparency. Lastly, Ms. Book updated Council on a notice of violation that was sent to Chevron as the result of the gas well fire that occurred in Greene County in February 2014. She noted that the NOV included provisions that resulted from Chevron's failure to provide DEP staff with unlimited access to the permitted well facility area. While access was granted to inspectors, that access was not unrestricted.

PUBLIC COMMENTS:

Bonita Hoke, PA League of Women Voters: Bonita Hoke, Executive Director of the PA League of Women Voters, provided comments to Council in which she emphasized the League's continued concerns regarding Act 54. She urged Council's careful review of the forthcoming Act 54 Mine Subsidence Report, given the continued problems with structural damage and water supply issues created by mining. She noted the Department's obligation to protect the Commonwealth's surface areas and waters, but noted that Act 54, as written, does not provide adequate safeguards to protect Pennsylvania's streams and surface properties.

Stephen Kunz, Schmid and Company, Inc.: Stephen Kunz with Schmid and Company, Inc. provided comments to Council in which he urged it and the Department to reexamine the assumptions and models that led to the passage of Act 54 to determine if these are still applicable today. For example, he noted the technological improvements that have been made in longwall mining since Act 54 was enacted over 20 years ago and how these advancements have increased modern longwall panels and the probability of them producing more subsidence over a much broader area. Mr. Kunz noted that there should be more emphasis in avoiding surface and water impacts from underground mining operations than just a focus on mitigation. He noted that he had developed several observations and recommendations for Council's consideration as they review the draft Act 54 Mine Subsidence Report and would forward those to Michele Tate for distribution to Council.

CAC 2014 STRATEGIC PLANNING AND DEP PRIORITIES:

Council reviewed the list of strategic issues it had identified at its March 18, 2014, meeting in order to prioritize them for action in 2014. Council prefaced its discussion by noting its limited resources and that it should narrow its focus on those issues where Council would have the greatest impact. In addition to assisting the Department in examining the sewage planning and management program, which Council identified as a priority for the Department, Council concurred that it would focus on the following issues in 2014:

- Enhancing DEP Public Participation and Transparency;
- Analyzing DEP Program Performance, including a review of the impact budget and staffing cuts have had on DEP and its ability to meet core functions and responsibilities;
- Reviewing the Act 54 Mine Subsidence Report;
- Continuing to support the adoption of construction standards for private water wells in Pennsylvania;
- Continuing its required review of air quality and other regulations presented to Council;
- Monitoring discussions on Climate Change through its participation on the Air Quality Technical Advisory Committee;
- Advancing, where applicable and appropriate, public/private partnerships for abandoned mine reclamation through its participation on the Mining and Reclamation Advisory Board.

EXECUTIVE DIRECTOR REPORT:

Michele Tate announced that Marjorie Hughes, former Executive Director of Council, is being employed as an annuitant by Council to complete the CAC's 2013 Annual Report. Ms. Tate asked for Council's participation in the review of the draft report and to provide her with any suggestions or edits. She noted that it is Council's intention to finalize and release the report by June 2014.

NEW/UNFINISHED BUSINESS:

Chairman Dayton as well as Council noted that they did not have any new or unfinished business to discuss.

ADJOURN:

With no further business, Chairman Dayton requested a motion to adjourn the meeting. Burt Waite motioned to adjourn the meeting, which was seconded by Pat Lupo. The April 15, 2014, Council meeting was adjourned at 2:45 p.m.