



Vision 2020

A Transition Period Look Forward for the Department of Environmental Protection - Part 1

Prepared by the

**Citizens Advisory Council to the
Pennsylvania Department of Environmental Protection**

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Introduction

This *Vision 2020* report has been prepared by the Citizens Advisory Council (“Council” or “CAC”) to the Pennsylvania Department of Environmental Protection (the “Department” or “DEP”) to provide perspectives in assisting the transition of administrations that will occur in January 2015. The Council’s transition report is being prepared in two parts. Part 1, reflected in this report, focuses on issues relating to leadership, internal organizational and budgetary challenges, public credibility and public involvement, and interstate and regional cooperation. Part 2 will identify and discuss long term policy issues and challenges.

The Council is an 18-member nonpartisan advisory organization created by the Department’s enabling legislation,¹ statutorily charged to (1) review all Commonwealth environmental laws and suggest appropriate revisions, modifications and codifications thereof, (2) consider, study and review the work of the Department, and (3) advise the Department and make recommendations for improvement of the work of the Department. Created in 1971, the CAC’s extensive experience with DEP and the varied experience and perspectives of the Council’s members provide a foundation for the recommendations contained in this report. Our purpose and intent is to offer advice to the Governor-elect and future leadership of the Department during this critical transition period, providing suggestions to improve efficiency and effectiveness of Pennsylvania’s environmental protection and management programs.

Substantial progress has been made in terms of environmental quality improvements and environmental science since the Department’s inception. The environmental awareness raising of the 1960s, followed by significant federal and state environmental legislation and regulatory initiatives over the past four plus decades, have contributed to tangible positive trends in water and air quality, recycling and waste management, and efforts to address the legacy of past mineral extraction and industrial activities. However, with such substantial progress as has been made, the Commonwealth faces continuing and new environmental and natural resource challenges on a regional, state and interstate basis. Continuing the Commonwealth’s environmental momentum and meeting those challenges in an era of federal and state budgetary and fiscal constraints will require thoughtful priority setting, management innovation, public and private collaboration, and an abiding commitment at all levels of public and private activity to the twin goals of environmental quality and economic prosperity. The Council’s goal has been and remains to move the Commonwealth toward an improved environmental, economic and

¹ 71 P.S. §§ 158, 510-22.

social future, achieved through collaborative, inclusive processes that engage *all* Pennsylvanians (individuals and businesses) as stewards of our shared environment.

Environmental stewardship is not a “we” versus “them” proposition. We may all come from different perspectives and interests (the fisherman and steelworker, the business owner and citizen activist), but irrespective, we all share a common interest in a robust and resilient economy, a healthy environment, and the wise conservation and use of natural resources to serve the present and future needs of our Commonwealth and nation. As we have noted in the past, a *holistic* approach to environmental management recognizes the inextricable link between a healthy environment, a dynamic and growing economy, and the well-being of Pennsylvania citizens and communities. To make progress in one area, we must strive and achieve progress in all. In considering that holistic approach, we need to reach beyond recent patterns of discourse to find common ground for real innovation and progress. It is in that spirit that the Council offers the observations and recommendations provided below.

1. Addressing the Department’s Internal and Leadership Challenges

The Department is an organization undergoing profound transition, and ongoing management of that transition will be an important task for the Department’s leadership. While the public focus is often just on the major policy issue of the day, addressing the Department’s internal and leadership challenges is just as important.

1.1 Leadership

Selection of the Secretary and senior staff is among the most significant environmental decisions facing the Governor-elect. The qualities and skills of an effective Secretary and senior staff should include:

- ***Leadership and vision.*** Experienced in managing a complex and diverse organization, as well as a strong understanding of the many elements of environmental management. Capable of developing partnerships and coalitions for addressing current and forthcoming environmental challenge.
- ***Positive communication skills.*** The ability to both *listen* and *lead*, actively open to hearing and considering diverse perspectives and fostering dialogue between and among diverse, sometimes antagonistic stakeholder groups in order to find pathways to resolve complex issues. Able to effectively communicate the Department’s and Administration’s environmental and natural resources agenda to the General Assembly, the general public and regulated community, and defend and advocate environmental concerns in the public arena.
- ***Skillful administrator.*** Capable of establishing and guiding accomplishment of long-term agency goals and priorities. Able to attract a team of talented and well-qualified senior staff having technical backgrounds commensurate with their respective

responsibilities. Committed to fostering a team approach that avoids silos and promotes cross-program collaboration, while maintaining accountability for performance at all operating levels of the agency.

1.2 Intergenerational Excellence and Professional Development

The retention and professional development of both technical and management staff, coupled with institutionalization of quality assurance mechanisms for continued improvement accountability, are essential to the Department’s ability to meet its current and future mission.

Over the past several years, and projected to continue over the coming years, a large number of senior professionals and lead staff across virtually all programs within the Department are retiring or reaching retirement eligibility. As indicated in the table below, as of October 2014, the number of DEP staff members currently eligible for retirement or anticipated to be eligible over the next four years represents up to 30% of central office and field program staff, and nearly 42% of the Office of Chief Counsel.

Table 1. DEP Staff Retirement Eligibility

	<i>Total Employees</i>	<i>Currently Eligible</i>	<i>Eligible Within 1 Year</i>	<i>Eligible Within 2 Years</i>	<i>Eligible Within 3 Years</i>	<i>Eligible Within 4 Years</i>	<i>Total Within 4 Years</i>
Secretary - Executive Staff	45	2	4	3	1	0	-22%
Office of Chief Counsel	93	15	4	9	6	5	-42%
Administration & Mgmt.	185	23	5	12	7	10	-31%
Programs (Central + Regional Offices)	2149	264	94	85	90	82	-29%
DEP Total	2472	304	107	109	103	97	-29%

As a result, the Department faces a looming and daunting staffing gap, where even if complement replacement is not slowed or hindered, turnover of personnel will almost certainly result in delays as replacement employees are recruited, hired and trained. Given that many of the Department’s positions are technical or professional in nature, the agency will need a concerted recruitment program to attract qualified, diverse, and enthusiastic candidates committed to carrying forward DEP’s mission. The Department should consider focused outreach to campuses and professional associations to advertise employment opportunities and recruit promising applicants. At the same time, given competition of job opportunities in the private sector, attention must be given to assuring that agency staff and leadership positions are accorded reasonably competitive salary and benefits such as to encourage promising candidates with solid qualifications to give serious consideration to public sector careers.

At the same time, the anticipated number of retirements across the Department means that the “institutional knowledge base” of many programs – the understanding of how programs have evolved, what regulations mean, and how to apply rules and policies in a practical and effective manner – will be diminished unless concerted steps are taken toward effective training, mentoring and professional development of younger technical and administrative staff. Some efforts in this regard have been undertaken, including the convening of a Legacy Corps (former Secretaries and Deputy Secretaries) to provide seminars and mentoring for promising staff members, and invocation of Executive Staff training sessions for regional and headquarters staff members. But these efforts must be redoubled in the next few years to assure that institutional knowledge and strong management skills are passed on to the next generation of Department program leaders.

Ultimately, a culture of ongoing intergenerational excellence must become the hallmark of staff recruiting, training, mentoring and development across the entire Department.

1.3 Improvement of Program and Management Information Technology Systems

Over the past decade, significant strides have been made in some aspects of DEP’s information technology systems, including development of geographic based information systems. At the same time, the agency remains some distance behind private enterprise in terms of information management, with almost all permits still being submitted and managed in paper formats. Over the next five years to 2020, the goal should be to move toward a much more streamlined and efficient information system for major permitting programs, allowing applications to be submitted and managed in electronic form. At the same time, increased public transparency can be gained by allowing public internet access to application information, related correspondence, comment/response documents, and similar materials (with appropriate exclusions for homeland security and confidential and proprietary data excepted from disclosure under the Pennsylvania Right-to-Know Law). A plan should be developed, and appropriate investments targeted, to implement such an IT modernization effort.

1.4 Budgetary Resources and Trends

Over the past 12 years, state and federal budgetary resources available to support DEP program operations have been under continuing downward pressure, with actual inflation-adjusted dollars devoted to maintaining professional and staff position levels diminishing. In large part, this trend has reflected the economic downturn that started in 2007, while rising pension and benefits costs have impinged on available program-support resources.

The Department’s budget is one of the more complicated among state agencies, with a plethora of special grants, special funds, line appropriations and user fees. Hence, gaining a full and complete picture of fiscal resources available to support program operations is often difficult, and making year-to-year comparisons is challenging. What we see, however, are several trend lines: (1) state appropriations which, when adjusted for inflation and benefits costs, are

substantially down; and (2) an increasing reliance on federal grants (which require matches), permit fees and special funds (such as the Hazardous Sites Cleanup Fund, Clean Air Fund and others) to support certain programs. In the three fiscal years prior to the current FY 2014-15 budget, approximately \$2.3 billion in funding was cut or diverted from environmental programs, with a notable \$1.4 billion in reductions and attendant staff reductions and furloughs occurring under the prior administration.² The current Commonwealth fiscal year budget, while nominally expressing an increase in DEP appropriations, is expected to cover only about 9 of 12 months in ongoing agency spending when steep increases in pension and benefits costs are taken into account. While an official “freeze” has not been announced, the fact is that state agencies, including DEP, have been required to hold back funds and manage complement in order to survive on current appropriations.

Much of public attention and debate has been focused on the high-profile oil and gas program, which over the past several years has witnessed significant increases in personnel complement supported by permit fees. Indeed, over the past year, the oil and gas program complement has grown to 202 employees (83 of whom have inspection responsibilities), with 25 positions added supported by fee increases. The support for other programs, such as the water management function (both quality and quantity) remain largely dependent on General Fund appropriations, and those programs have encountered severe budgetary constraints to the point that certain functions (such as general water resource planning for the future) have few if any remaining staff or other resources.

The Council’s observation is that as budgetary resources have become more constrained, one of the key areas to suffer has been those efforts aimed at looking ahead to plan for and address coming environmental challenges. Planning efforts (including water resource planning, stormwater planning, sewage facilities planning) and policy development endeavors have been curtailed or effectively abandoned. At the same time, resources aimed at environmental education – where we arguable have the best opportunity for changing behaviors and attitudes toward more sustainable pathways – have been serious curtailed. The Commonwealth’s environmental programs have become much more reactive, as proactive, solution-oriented approaches have fallen to other budget imperatives.

The time has come for a full, frank and systematic discussion of the Department’s budgetary and programmatic future. We are cognizant of the projected fiscal shortfall conditions facing the Commonwealth’s 2015-16 budget, and the concurrent likelihood that budgetary and grant support from Washington will be constrained or reduced. The Department cannot continue to shoulder a myriad of mandates and commitments without the resources necessary to frame

² Pennsylvania Environmental Digest, *Analysis: Time to Stop the Slow Budget Bleeding at DEP, Fund Real Restoration Efforts* (containing a summary of budget cuts over the past 12 years) available at: <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=27958>.

appropriate standards, thoughtfully review required permits, and put “boots on the ground” to assure ongoing compliance. To be sure, there are some environmental protection programs and resource management assignments that lie at the core of DEP’s mission, while others may have lesser perceived immediacy or contribution to near-term environmental health and quality. There may be opportunities for finding increased efficiency through avenues such as increased use of general permits and permits by rule for minor activities, and for boosting financial support of particular programs through permit application or emission/discharge fee adjustments. But the bottom line remains that the statutory mandates and fiscal resources need to be brought in better alignment -- muddling through is not an option, where the goal and commitment involves protection of public health, safety and key environmental resources.

To this end, the Council recommends that the Department’s senior leadership, in consultation with CAC, undertake a systematic program performance and efficiency review of all major DEP programs. This evaluation should include consideration of (1) what the agency is mandated to do under currently applicable statutes and regulations, (2) what the agency is currently doing (and the degree to which that meets current mandates), (3) how the program measures its performance, and whether those measurements include appropriate environmental quality indicators (e.g., not just counting number of inspections conducted, but rather what trends are evidenced in water and air quality), and (4) identification of gaps and areas for improvement, with recommendations for program adjustments that can be made to improve delivery of environmental quality.

2. Public Credibility and Public Involvement

2.1 Steps Toward Renewal of Public Trust in DEP

There is little doubt that public confidence in the Department’s commitment and competence with respect to environmental protection and implementation of environmental programs is critical to its ability to perform its mission and address new challenges. Moreover, public trust in the Department is equally important to the regulated community, where lack of such trust can lead to contentious permit appeals, citizen suits, and collateral attacks on development projects.

There is no easy prescription for building public trust in the agency and its mission. Clearly, public trust must be *earned*. While the frequency, manner and method by which the Department communicates its efforts are clearly important factors, public trust building is not a “PR” function. It requires openness to public communication and public input at all levels, including in the early stages of major policy decisions, and timely, substantive responses to public complaints and inquiries.

One aspect of public confidence building involves an open door to all stakeholders, and indeed a concerted fostering of dialogue between and among such stakeholders. The public distrusts policies which are perceived to be developed behind closed doors, or through a dialogue with only limited perspectives at the table. While there will always be times when discussions with

individual stakeholder groups are appropriate and useful, the Department’s leadership should encourage roundtable discussions -- either through its advisory committees or other forums -- between and among divergent groups on key issues. Such constructive dialogues can be effective at development of new concepts and proposals, as seen in the efforts of groups such as the Center for Sustainable Shale Development, which brought together representatives of key environmental organizations and major production companies to develop recommendations on best practices in unconventional natural gas development. The Department can and should be an active convener, fostering such constructive discussion, which can bring new perspectives and concepts for better policies and program approaches.

2.2 More Effective Use of Departmental Advisory Committees

The Department has a substantial number of advisory committees, some created by particular statutes and some via administrative action, providing input on a wide range of issues. To be sure, the CAC is the overarching Department-wide advisory group. But in addition, the current roster of advisory groups includes:

Aggregate Advisory Board	Recycling Fund Advisory Committee
Agricultural Advisory Board	Sewage Advisory Committee
Air Quality Technical Advisory Committee	Small Business Compliance Advisory Committee
Certification Program Advisory Committee	Small Water Systems Technical Assistance Center
Chesapeake Bay Management Team	Solid Waste Advisory Committee
Cleanup Standards Scientific Advisory Committee	State Board for the Certification of Sewage Enforcement Officers
Climate Change Advisory Committee	State Board for the Certification of Water and Wastewater System Operators
Environmental Justice Advisory Board	Statewide Water Resources Committee and 6 Regional Water Resources Committees
Laboratory Accreditation Advisory Committee	Storage Tank Advisory Committee
Low Level Waste Advisory Committee	Technical Advisory Committee on Diesel-Powered Equipment
Mine Families First Response & Communications Advisory Committee	Water Resources Advisory Committee
Mining & Reclamation Advisory Board	
Oil & Gas Technical Advisory Board	
Radiation Protection Advisory Committee	

The Council recently undertook a survey of the Department’s advisory committees, in an effort to evaluate whether the advisory committee process was working effectively and how it could be improved. The process included both a written survey and meeting with the various committee chairs, and the results were enlightening. Based on that review, the Council has formulated the following recommendations:

- 1. Review Advisory Committee Responsibilities:** Council and DEP should conduct a review of advisory committees established to offer advice to the Department to determine if their assignments are overlapping, if there are gaps in the subjects they cover, if they are meeting their purpose or no longer needed, if they have a full complement of members and DEP staff support and if their focuses should be changed to make them more effective.
 - For example, DEP has a number of Advisory Committees related to water resources that seem to have overlapping responsibilities or do not have their full complement of members or staff support (i.e. the Statewide Water Resources Advisory Committee). As another example, there is an Advisory Committee for small drinking water systems, but there is no committee for the Drinking Water Program generally.
 - Other Committees have been set up temporarily or by DEP for specific tasks, like the Chesapeake Bay Management Team, but do not follow the Advisory Committee Guidelines policy in posting membership or how the membership was selected and other basic information on their responsibilities.
 - There are also gaps in the way DEP uses Advisory Committees to comment on proposed Technical Guidance and program policies. For example, the recent proposed changes in the Oil and Gas Program Enforcement Policy was not shared with any Advisory Committee before it was published for public comment. DEP also does not uniformly have Advisory Committees review new or revised General Permits.
- 2. Periodic Review of Existing Regulations, Technical Guidance and Programs:** DEP should establish, with the collaboration of Advisory Committees, a program to periodically review existing regulations, technical guidance and agency programs for their effectiveness and efficiency, how new technologies can be incorporated into their implementation and whether DEP has adequate resources to carry out its responsibilities and statutory mandates. A five year review cycle may be appropriate.
- 3. Establish and Share Best Practices:** DEP and Advisory Committees should identify and share best practices between the Committees and DEP liaison staff to ensure compliance with the Advisory Committee Technical Guidance, including (1) providing advisory committees with a clear expectation of their role and responsibilities; (2) involving advisory committees earlier in development of regulations and policies; (3) developing agendas on a cooperative and collaborative basis; (4) providing advisory committees with appropriate technical and other support; (5) distributing and posting materials at least two weeks prior to meetings; (6) including high level DEP staff in committee discussions; (7) establishing clear methods for advisory committees to provide input and advice; (8) providing specific and consistent guidance on Sunshine Act requirements for subcommittee, workgroup and conference call meetings; (9) standardizing the information posted on advisory committee webpages, including listings of committee members; and (10) training DEP liaison staff in such procedures.

- 4. Apply Advisory Committee Guidelines Policy to All Formally Established DEP Advisory Groups:** The Advisory Committee Guidelines policy should be applied to all formally established DEP advisory groups, such as the Regional Office Roundtables and other groups formally created temporarily or semi-permanently by DEP to give it advice.
- 5. Establish a Technical Guidance Agenda:** DEP should establish a Technical Guidance Agenda like the Regulatory Agenda it now has to publicly communicate the Technical Guidance, General Permits or other program policies it has under development or when they expect to be considered.
- 6. General Update To Advisory Committee Technical Guidance:** The Advisory Committee Technical Guidance should be updated to keep it current with newer statutes and the Department's organizational structure, for example: include a public comment period at each advisory committee meeting in compliance with a more recent statute; eliminate the reference to the Deputy Secretary for Federal-State Relations since that position no longer exists in the agency; and include the most recent Management Directives referenced in the Guidelines.

2.3 Rebuilding Bipartisan Support for Environmental Programs

At one time, Pennsylvania's environmental and natural resource programs enjoyed wide bipartisan support. As former Secretary Maurice Goddard expressed the point, there is no such thing as a Republican forest fire or a Democratic flood. Almost all of the major environmental legislation now on the books was the result of broad support across the aisles in both houses of the General Assembly.

Improving environmental quality should not be a divisive, partisan issue. Tackling environmental issues – be they legacy mine drainage or air quality challenges, water supply infrastructure or stormwater – requires long-term commitments, and such commitments to be successful must be built and sustained irrespective of which party might be in the majority.

Part of the challenge for the Department's new leadership will be endeavoring to rebuild that bipartisan approach.

3. Multi-State Regional Cooperation

Many of the environmental challenges that Pennsylvania confronts involve matters with multi-state dimensions, where multi-state and regional cooperation is needed to effectuate reasonable and consistent solutions. Environmental media (particularly air and water) do not honor manmade borders. Without our interstate and regional airsheds, constituents emitted in one state may readily traverse state borders, contributing to air quality in downwind states exceeding ambient air quality standards. Likewise, as water flows throughout our multiple interstate watersheds (the Ohio, Susquehanna, Delaware, Potomac and Great Lakes), activities impacting its quality and quantity are matters of interstate concern.

But beyond these obvious examples, regional cooperation is warranted to tackle regulatory issues in common. For example, unconventional gas development in the Marcellus and Utica Shales is now occurring in areas of Pennsylvania, Ohio and West Virginia (and perhaps someday in New York). Issues such as flowback and produced water management, the handling of drill cuttings, and most particularly the appropriate regulation of materials containing TENORM, are being addressed by environmental agencies in each state. Fostering environmentally sound management and best practices within an industry and activity that is clearly regional in nature calls for intense regional cooperation, collaboration, and development of more consistent standards and approaches. The goal should be to avoid the “lowest common denominator,” to share knowledge and experience, and to protect not just one state’s resources, but our common regional resources.

For this reason, the Council urges that the Department’s leadership continue and strengthen efforts at fostering regional cooperation, both through formal mechanisms, such as the river basin commissions, the Northeast and Ozone Transport Region and Environmental Council of the States, but also through informal and regular agency-to-agency leadership and staff communications and collaboration. In many respects, the Department’s Secretary is not just the executive leader of a state agency, but our chief “ambassador” in working with other states and the U.S. Environmental Protection Agency on issues of common concern requiring cooperative solutions.