

MINUTES
CITIZENS ADVISORY COUNCIL MEETING
January 21, 2015

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:

Cynthia Carrow, Allegheny County
Walter Heine, Cumberland County
David Hess, Dauphin County
Burt Waite, Crawford County
Terry Dayton, Greene County
Mark Caskey, Washington County
Thaddeus Stevens, Tioga County
Joi Spraggins, Philadelphia County
Seth Mendelsohn, Dauphin 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 10:05 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 introduced Mark Caskey who was recently appointed to serve on the CAC by former Speaker of the House of Representatives Sam Smith. Mr. Caskey noted to Council that he is from Washington, PA, and is the President of Steel Nation, Inc., a company that designs and builds transmission, storage and compression facilities for the mid-stream and transmission operations of the oil and gas industry throughout the Marcellus, Utica and other American Shale gas plays. He expressed his appreciation for being appointed to Council and noted his eagerness to participate on Council to not only provide his input, but to learn the perspectives and insights of his colleagues on the CAC. Following Mr. Caskey's remarks, Chairman Dayton announced that John Hines was also recently appointed to the CAC by Governor Corbett. Mr. Hines previously worked for DEP and served in numerous executive management positions within the Department, most recently as the Executive Deputy Secretary for Programs. Mr. Hines is currently employed by the Shell Oil Company and serves as the company's Government Relations Advisor.

In other business, Chairman Dayton noted to Council that the terms of two of Council's members to the Mining Reclamation Advisory Board (MRAB) will be expiring and that action by Council is necessary to reappoint the members to the MRAB. The members in question include Dave Hess and Burt Waite who both expressed interest in continuing to serve on the MRAB.

Cynthia Carrow moved to reappoint Dave Hess and Burt Waite for an additional two-year term, respectively, on the MRAB. Seth Mendelsohn seconded the motion, which was unanimously approved by Council.

Chairman Dayton noted that in addition to Dave Hess and Burt Waite, CAC's representatives on the MRAB include himself and Cynthia Carrow, with Michele Tate and Mark Killar serving as

alternates.

Chairman Dayton announced that a resolution was developed to recognize the contributions of Janet Keim to the CAC, who served over 8 years on Council from her initial appointment in 2006 to October 2014. Chairman Dayton asked for a motion to approve the resolution, which would be sent to Ms. Keim with Council's appreciation.

Walter Heine moved to adopt the resolution prepared to honor and recognize the contributions of Janet Keim to the CAC. Tim Weston seconded the motion, which was unanimously approved by Council.

APPROVAL OF NOVEMBER 18, 2014, MEETING MINUTES:

With no corrections or additions recommended by Council, Chairman Dayton asked for a motion to approve the November 18, 2015, Council meeting minutes.

Burt Waite moved to adopt the November 18, 2014, meeting minutes as presented to Council. Dave Hess seconded the motion, which was unanimously adopted by Council.

INTRODUCTION OF DEP ACTING SECRETARY JOHN QUIGLEY:

Chairman Dayton introduced Acting DEP Secretary John Quigley to Council, who was recently nominated by Governor Wolf on January 14, 2015, to serve as Secretary of DEP. Acting Secretary Quigley expressed his appreciation and respect of Council and its work and noted that he looks forward to working with the CAC and receiving its input on a number of issues. He stressed that he wants to recommit DEP to transparency and to collaborating with its stakeholders across the board to ensure the agency is communicating with, not at, the public. As a part of this effort to increase transparency, he noted the agency needs to evaluate not only how it communicates to the public but by what means or tools. He stated that raising public confidence in the agency, including improving the morale of its employees, are his priorities for DEP as well as obtaining the resources the Department needs to accomplish its mission. He also noted that the modernization of the state's oil and gas regulations will be a priority for DEP during the Wolf Administration, including tailoring regulations to those areas or activities that cause the most impact. Acting Secretary Quigley also emphasized the need for DEP to better respond to public concerns and for the agency to improve management information systems to enhance internal communication. In his closing remarks, he stressed that Governor Wolf's "fresh start" approach to state government includes bringing a fresh set of eyes on issues and finding new solutions.

PUBLIC COMMENT:

Stephen P. Kunz, on behalf of the Citizens Coal Council: Stephen Kunz, a Senior Ecologist with Schmid & Company, provided comments on behalf of the Citizens Coal Council. Mr. Kunz noted he was hired by the Citizens Coal Council to conduct a review of the most recent Act 54 Report released by DEP in December 2014. He stated that once his review of the report is complete, he will provide his assessment of the Act 54 Report to the CAC, including making a formal presentation to Council at an upcoming meeting.

In his remarks to Council, Mr. Kunz highlighted several facts from the current Act 54 report that covers the period from August 2008 to August 2013. He noted that while the data included in the report indicates that the number of acres being undermined in the state is decreasing, the reported

effects from underground mining are increasing, with most of the mine-related impacts caused by longwall mining. He stated that these trends are consistent with the findings he determined when he compared the second Act 54 report to the third report. He commended the University of Pittsburgh staff selected by DEP as the contractor to complete the report and noted that the report included practical suggestions and recommendations to improve data collection and data management by the Department. Despite the merits of the report, Mr. Kunz emphasized that the real problem is with Act 54 itself and the damage that it allows to occur from underground mining as long as the damage is fixed or compensated for. He stressed the fact that under the fourth assessment period, DEP determined that seven streams had been irreparably damaged by longwall mining. In concluding his remarks, he stated that the Citizens Coal Council will be working hard in the upcoming year to advocate for changes to Act 54 and that he and the Citizens Coal Council hope that the CAC will be an ally in that effort.

Roberta Winters, League of Women Voters of Pennsylvania: Roberta Winters submitted comments to Council on behalf of the League of Women Voters of Pennsylvania prior to the January 21, 2015, meeting, which Michele Tate read and entered into Council's record at the meeting. Ms. Winters' comments centered on three issues included on the CAC's meeting agenda, including implementation of Act 162 of 2014, the Department's Act 54 report, and DEP's recently released TENORM study on the Oil and Gas Industry. First, she expressed the League's hope that DEP addresses ways in which the Commonwealth intends to comply with national anti-degradation and Chesapeake Bay restoration standards in light of the passage of Act 162, and that DEP protects landowners and taxpayers from unintended costs and consequences resulting from this action. Second, Ms. Winters' expressed the League's concerns about Act 54 and the effects longwall mining can have to alter the hydrogeology of impacted lands. She noted in her comments that laws must be written to prevent environmental harm and recommended Act 54 be revised and/or eliminated. Last, in regard to DEP's TENORM study report, she urged prompt action so that the recommendations included in the report can be pursued and further data collected, in particular at well pads and in leachate of potentially impacted landfills.

In her closing remarks to Council, she referenced a recent Pittsburgh Post-Gazette article that highlighted a study completed by Duke University where high concentrations of iodide and ammonium were found in oil and gas drilling wastewater discharges from drilling sites and treatment plants in Pennsylvania and elsewhere. Given the potential for contamination of our water by these toxic substances and the apparent inadequacy of treatment facilities to handle these contaminants, she urged immediate regulatory attention and action on the issue. Ms. Winters' comments also highlighted the proposed construction of a hazardous chemical waste treatment and storage facility in Falls Township, Bucks County. She urged the CAC and DEP to conduct an environmental impact study of the proposed facility prior to taking any action on the site application.

IMPLEMENTATION PLAN FOR ACT 162 of 2014:

Ken Murin, with DEP's Wetlands, Encroachment and Training Division, provided a presentation to Council on the Department's interim final policy 310-2135-001: Implementation Plan for Act 162 of 2014. He was accompanied by Jennifer Orr who also works in DEP's Wetlands, Encroachment and Training Division, and Meg Murphy, Assistant Counsel in DEP's Bureau of Regulatory Counsel. Although the Department is implementing the interim final policy as of its issuance date of December 20, 2014, DEP is accepting comments on the policy until February 18, 2015.

Mr. Murin began his presentation by explaining that Act 162 was signed into law by Governor Corbett in 2014 and that the law amends Section 402 of the Pennsylvania Clean Streams Law in order to add new provisions addressing riparian buffer requirements in the state's Chapter 102 erosion and sediment control regulations. He noted the scope of Act 162 is limited to individual NPDES permits within 150 feet of a surface water with a designated use of HQ or EV. Under the new requirements, NPDES stormwater construction permit applicants may choose either to implement riparian buffers or riparian forest buffers or implement best management practices (BMP) that are equivalent in effectiveness to riparian buffers. Mr. Murin noted that Act 162 also requires replacement riparian buffer offsets in certain cases, including those projects that do not choose a riparian buffer BMP approach, but are located in a special protection watershed and where an earth disturbance activity associated with the project is located within 100 feet of a surface water. He emphasized that Act 162 does not eliminate the use of riparian buffers as a BMP, nor does it apply to or change the process for non-NPDES permits under the state's Chapter 102 regulations.

Mr. Murin identified a number of tools DEP is developing to implement Act 162, including a technical guidance document pertaining to Riparian Buffer and Riparian Forest Buffer Equivalency Demonstration (ID Number 310-2135-002) and a technical guidance covering Riparian Buffer and Riparian Forest Buffer Offsetting (ID Number 310-2135-003), which he estimates both will be open soon for a 60-day public comment period. He also noted extensive training and outreach DEP is conducting, including a recent webinar that was well attended by the public, and a Frequently Asked Questions document that is posted to DEP's website. Mr. Murin also stated that DEP is evaluating a minor rulemaking to amend *25 Pa Code* Section 102.14 to incorporate the requirements of Act 162.

Following DEP's presentation, Council inquired about the applicability of certain projects under the scope of the new Act 162 requirements, if or how the new law could affect BMP reporting mechanisms under the state's Chesapeake Bay TMDL requirements, and if the law provides a context that could allow future buffer requirements in non-special protection waters of the Commonwealth.

DEP REPORT TO COUNCIL:

Dana Aunkst provided the Department's report to Council by opening the floor to questions from Council members. Council inquired about the Department's proposed Environmental Protection Performance Standards at Oil and Gas Well Sites rulemaking and if the cancellation of the Department's Oil and Gas TAB meeting in January 2015 has placed DEP off schedule in meeting the two-year completion requirements of the rulemaking, as provided by the requirements of the Regulatory Review Act. Council also inquired about the status of the Aggregate Advisory Board, including when the Board may convene its first meeting, and the recent finalization of GP-5, which applies to natural gas compression and/or processing facilities.

DCNR FORESTRY PLANT REGULATIONS:

At the request of the Department of Conservation and Natural Resources (DCNR), Rebecca Bowen with DCNR's Division of Conservation Science and Ecological Resources provided a presentation to Council on a proposed rulemaking DCNR is developing to amend the agency's list of classified plants, as included in *17 Pa Code* Chapter 45. She provided background associated with the proposed rulemaking, including explaining the statutes that provide legal authority in Pennsylvania to regulate plants, the environmental review and study of plants that must occur in order to properly classify wild plants in the state, the various plant classifications currently in use,

and the listing process for adding, deleting and changing listings contained in 17 *Pa Code* Chapter 45. She reviewed the scope of changes included in the proposed rulemaking package, including the various name changes and edits proposed, as well as the classification changes that are recommended for certain species. In total, she noted that 82 name and reference changes are proposed in the rulemaking, including recommendations for delisting or removing 31 species from Chapter 45. She said DCNR expects to publish the proposed rulemaking in the *Pennsylvania Bulletin* for public comment soon.

CAC COMMITTEE REPORTS:

Policy and Regulatory Oversight Committee: Tim Weston presented for Council's approval nine issue papers that were developed as Part Two of Council's Transition Report to the Wolf Administration. Mr. Weston explained that the papers focus on long-term issues the CAC believes are of priority to DEP and that will be areas the Wolf Administration will want to focus on over the next four years. Each issue paper contains relevant background associated with the issue, specific challenges the issue presents in Pennsylvania, and a number of policy recommendations or considerations the Wolf Administration may want to contemplate as it develops its own strategy for each issue area. The papers address the following issues: allocation of a proposed natural gas severance tax to environmental programs, climate change, water and wastewater infrastructure, on-lot sewage systems program management improvements, implementation of the Chesapeake Bay TMDL commitments, water resources management, statewide water well standards legislation, the state's abandoned mine lands, and overall federal and state relations between DEP and the EPA.

Mr. Weston noted that after review of all issue papers developed, he had only minor modifications to recommend to the Climate Change paper. Specifically, he recommended that in lieu of stating Council believes DEP should explore participating in the Regional Greenhouse Gas Initiative (RGGI), the issue paper should be amended to state that the CAC recommends the Wolf Administration explore participation in multi-state or voluntary partnerships as a means to decrease compliance costs associated with the reduction of carbon dioxide emissions from the power sector.

Tim Weston moved to amend Council's issue paper on Climate Change by removing the reference to RGGI and restating that the CAC believes DEP should explore participating in multi-state or voluntary partnerships as a means to decrease compliance costs associated with the reduction of carbon dioxide emissions from the power sector. Joi Spraggins seconded the motion, which was unanimously adopted by Council.

Upon review of the remaining eight issue papers developed as Part Two of Council's Transition Report, no Council members suggested any edits or modifications.

Tim Weston moved to approve the eight remaining issue papers as presented to Council for consideration. Dave Hess seconded the motion, which was unanimously approved by Council.

Legislative Committee: Cynthia Carrow provided Council with an update on plans the Legislative Committee finalized during a recent conference call on January 5, 2015. She noted the committee is developing a number of outreach strategies in order to better coordinate and

communicate with the General Assembly. She stated that Michele Tate is in the process of developing an email to all General Assembly members to introduce and familiarize them with the CAC and the important work the Council accomplishes. The email will describe the history of the CAC, including its statutory origin, mandates and membership, and will include links to recent work of the CAC, including its most recent Annual Reports and the Transition Documents prepared for the Wolf Administration. In addition to this outreach, meetings will be scheduled with the leadership of the House and Senate Environmental Resources and Energy Committees to discuss important CAC priorities, as well priorities of the respective standing committees and how the CAC may work cooperatively with the committees on common goals.

Act 54 Report Ad Hoc Review Committee: Chairman Dayton reported that the CAC received the fourth Act 54 Report from the Department in late December and is preparing a number of activities to support Council's review of the report and to gain public comment on it. He noted that staff from the University of Pittsburgh, who were selected by DEP as the contractors to complete the report, have been invited to attend Council's February 17, 2015, meeting and will be providing a presentation on the report, including the analysis they completed as a part of the development of the report and the recommendations it has offered to DEP. He also announced that the CAC will be accepting written public comments on the report until March 31, 2015, and will be accepting public testimony on the report during Council's March 17, 2015, public meeting. He noted that it is the committee's goal to complete its review of the report, and provide its recommendations for Council's consideration at the April 21, 2015, CAC meeting. Following Chairman Dayton's remarks, Council discussed issuing a press release to advertise the opportunities available to the public to comment on the Act 54 report and discussed details associated with the public hearing, including its duration, and the length of time to be allotted to each commentator who wishes to provide testimony to the CAC on the Act 54 report.

DEP TENORM STUDY:

Vince Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation provided an overview of the results of the Department's TENORM study, which was recently released on January 15, 2015. The study analyzed the naturally occurring levels of radioactivity associated with oil and natural gas development in Pennsylvania, including the examination of radioactivity levels in flowback waters, treatment solids and drill cuttings, and drilling wastes during their transportation, storage and disposal. Deputy Secretary Brisini noted that while the study outlines recommendations for further study, it concludes there is little potential for harm to workers or the public from radiation exposure due to oil and gas development. He did note, however, that the results from the study led DEP staff to conclude there is the potential for radiological environmental impacts from fluids if spilled; therefore, DEP recommends that any reportable spills be tested for radium and that workers cleaning up spills should take appropriate precautions. Deputy Secretary Brisini further noted that it is the Department's recommendation that radium be added to the Pennsylvania spill protocol to ensure cleanups are adequately characterized. In response to Deputy Secretary Brisini's comment, Hayley Book, DEP Policy Office Director, noted that revisions to the Department's spill testing and response policy are being developed. Deputy Secretary Brisini also noted that DEP has provided additional guidance to landfills on how to properly dispose of waste, including waste from drilling operations that contain naturally occurring radiation.

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 moved to adjourn the meeting. The January 21, 2015, meeting of the CAC was adjourned at 1:20 p.m.