

**MINUTES
CITIZENS ADVISORY COUNCIL MEETING
AUGUST 20, 2019**

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT:

Cynthia Carrow, Allegheny County	James Schmid, Delaware County
Mark Caskey, Washington County	John St. Clair, Indiana County
Terry Dayton, Greene County	Thad Stevens, Tioga County
Duane Mowery, Cumberland	Jim Welty, Cumberland County
John Over, Fayette County	Tim Weston, Cumberland County

CITIZENS ADVISORY COUNCIL (CAC) MEMBERS PRESENT VIA PHONE:

John Walliser, Allegheny County

CITIZENS ADVISORY COUNCIL (CAC) STAFF PRESENT:

Keith Salador, Executive Director

CALL TO ORDER:

Vice Chairman Weston called the meeting to order at 10:10 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, with a quorum.

APPROVAL OF JUNE 18, 2019 MEETING MINUTES:

Vice Chairman Weston solicited additions or corrections to the June 18, 2019 Minutes. Hearing none, the Chairman requested a motion to approve the Minutes.

James Schmid moved to adopt the June 18, 2019 meeting Minutes.

Duane Mowery seconded the motion, which was unanimously approved.

CHAIRMAN'S REPORT:

Keith Salador reported that the 2018 CAC Annual Report is being developed. A draft of the report was sent to members last week. Keith would like to have comments back by September 10 in order to have discussion and hopefully adopt the report at the September 17 CAC meeting.

PUBLIC COMMENT:

Rachel Gleason is the Executive Director of the Pennsylvania Coal Alliance, a principal trade organization representing underground and surface bituminous coal operators in the state. She came to offer comments on Senate Bill 763, sponsored by Senator Bartolotta, which provides DEP with more flexibility to manage the skyrocketing costs associated with the Act 54 Report. Given CAC's past interest in the Act 54 Report and knowing that some members of the CAC have expressed opposition to Senate Bill 763, Rachel stated that Senate Bill 763 is intended to reduce the excessive cost of the Act 54 Report, which has increased by over 300% during the last 15 years. The Act 54 Report is the result of a 1994 amendment to the Bituminous Mine Subsidence and Land Conservation Act that provided restore and replacement remedies to water supplies and certain surface structures and required the ongoing compilation and analysis of data. Per the statute, DEP is required to compile and analyze the data, using the services of professionals or institutions recognized in the field and present that data in report form every five

years. Senate Bill 763 continues to require the collection and analysis of data; however, the bill makes it clear that utilizing professionals or institutions will only be done if it is determined that there is a cost benefit to doing so, i.e., it will cost the Department less to contract outside the Department's existing inhouse professionals. Senate Bill 763 provides flexibility to DEP in choosing to compile the Report. If compiled, Senate Bill 763 requires the report to be sent to the House and Senate Environmental Resources and Energy Committees and the Governor every five years, which is consistent with other reports compiled by the Department. Senate Bill 763 provides flexibility and affords an opportunity for the Department to be fiscally responsible in appropriately allocating resources toward their regulatory programs. Given the exorbitant rate that the cost of utilizing professionals and institutions has increased over the past 15 years, the next report could cost close to \$1.3 million, an unnecessary expenditure that can be better managed if the General Assembly were to provide the DEP with the appropriate flexibility.

John Walliser commented via phone that the report was part of Act 54 when it was enacted back in 1994, and the purpose of the report was to see if changes in the law adequately protected surface features, including homes, water wells, streams, and other types of surface aquatic features like wetlands. The Pennsylvania Environmental Council is in opposition to the legislation because it changes the scope of the Act 54 report. The purpose was to determine whether changes to the law were adequately protecting streams, homes, and wetlands. Senate Bill 763 would change the purpose of the report solely to focus on compliance with existing law, so the metric as to whether the changes to the law are still adequately protecting the environmental features would be lost. The Pennsylvania Environmental Council would argue that successive iterations of the report are showing that Act 54 and the regulations promulgated underneath it are not doing their job, at least with respect to protecting surface waters and wetlands. The most recent report (2008-2013) by DEP underscored the reality that a marked increase in long-term and even permanent damage is being seen.

Terry Dayton offered that the intent of the House Bill is not to eliminate information that would determine whether underground mining is being conducted in a manner that protects environmental features. He believes the report contains too much information that is already being reported to the Department on a regular basis throughout the year and was intended for folks higher up in government who do not need to look at the detail that is currently being provided. Terry believes the cost of the report could be reduced significantly by summarizing the data. It is a very time consuming, redundant process that he believes would save the taxpayers a lot of money if DEP had the ability to pare down the report.

James Schmid commented that he and his colleagues have looked at the Act 54 reports over a number of years in considerable detail and each report has documented the ever-increasing damage from long-wall mining. The scope of the reports has not been necessarily the most cost effective. The University has indicated that they have put most of the funds from the Department into repairing a geographical information system to package data which in itself is not a bad thing, but it does not seem that the successive iterations of the report make any use of the prior work that was done by the University nor is he aware that any use has been made of the GIS by the Department. James is concerned that there were many questions raised by the CAC about the most recent report, the fourth report, which remain open, and he is interested in seeing whether the forthcoming report addresses those issues. He believes the Act 54 report should

continue to come before the CAC for review, and he is hopeful that the fifth report that will be coming out shortly shows some response to the concerns expressed by the CAC on the previous report.

DEP REPORT:

In Secretary McDonnell's absence, Executive Deputy Secretary for Programs Ramez Ziadeh provided a brief update on the following:

PAG 01 & PAG 02

PAG 01 is the new general NPDES permit that is being developed for small projects with less than five acres of disturbed land and will not be available in special protection waters or watersheds. The permit was taken to the Agricultural Advisory Board. The board is interested in this permit as it appears that it will help farmers; however, the board requested that the Department look at expanding the impervious area beyond 20,000 square feet. The Department is currently looking at that issue and will meet again with the Ag Advisory Board. A draft will be finalized shortly and will be published in the *PA Bulletin* for public comment.

The existing PAG 02 permit is due to expire at the end of 2019, and the new draft permit was recently published in the *PA Bulletin*. Public comment will be taken for 30 days. There are minor administrative changes, but no significant changes as far as technical requirements. The Department worked extensively with the EPA the last two years to resolve all outstanding issues the EPA had with the permit. The Department fought to keep the process as is and not make it more complicated. The new master PAG 02 permit should be issued on time. The previous permit was only good for three years, but this time around it will be a five-year permit.

Driving PA Forward

DEP awarded funding to four recipients under Round 1 of the Class 8 Truck and Transit Bus Grant Program totaling close to \$4 million. The projects are expected to significantly reduce annual emissions. Five recipients were awarded funding under the DC Fast Charging and Hydrogen Fueling Grant Program totaling close to \$1.25 million. The projects will include installation of publicly available direct current fast chargers for electric vehicles in five locations in southeastern and southwestern PA. Grant programs and rebates are still available. The second and final round of applications for the Class 8 Truck and Transit Bus Grant Program ends on September 23, 2019. Currently almost \$2.4 million is available for this round. The second and final round of applications for the DC Fast Charging and Hydrogen Fueling Grant Program ends on October 11, 2019. The \$3 million Level 2 Electric Vehicle Charging Rebate Program remains open with funding still available. The \$3 million Ocean-Going Vessel ShorePower Grant Program opened in June, and the application submission deadline is October 30, 2019. The \$3 million Electric Cargo Handling Grant Program also opened in June, and the application submission deadline is November 15, 2019. Lastly, the Onroad Rebate Program is currently closed, but is expected to reopen in 2020, and the PA State Clean Diesel Grant Program is also currently closed but is expected to reopen in late 2019 or early 2020. Applications are to be submitted electronically through the Department's e-grant system, and businesses, nonprofits, government agencies, and other organizations are eligible to apply for all the programs.

Small Business Advantage Grants

The grant opened on July 26 and has \$1 million available for funding to Pennsylvania small businesses and farmers for energy efficiency, pollution prevention, and natural resource protection projects. New to the program this year is the opportunity for small business owners to install solar hot water systems for their business operations. Some examples of eligible projects that reduce energy use or pollution are HVAC and boiler upgrades, high-efficiency LED lighting, or solvent recovery and waste recycling systems. Natural resource protection projects may include planting riparian buffers, installation of streambank fencing to keep livestock out of streams, and investing in agricultural stormwater management projects, with the goal of reducing sediment and nutrient loads in our waterways. Pennsylvania based small businesses can apply for 50% matching funds of up to \$7,000 to adopt or acquire energy efficient or pollution prevention equipment or processes. The applications will be considered on a first-come, first served basis and will be accepted until funds are exhausted, or April 12, 2020, whichever comes first. The complete grant application package, which includes step-by-step instructions and instructional videos for completing the online application, is available by visiting the DEP Small Business Ombudsman's Office website.

Restore PA

The Governor and Department Secretaries have been involved in Restore PA events. Secretary McDonnell and DEP staff have been traveling around the state to promote Restore PA.

On July 10, DEP Southeast Regional Director Pat Patterson and his staff joined local elected officials and leaders in Pottstown to discuss how Restore PA could help address critical storm sewer infrastructure needs in the borough.

On July 16, Northcentral Regional Director Marcus Kohl hosted a public open house where multiple agencies shared information on streams impacted by flooding and erosion and discussed how Restore PA can help communities better prepare for and deal with the aftermath of flooding. The Department is working with the Bradford County Conservation District to find a streamlined and simplified solution to authorize projects that meet what is called a pilot stream project. The District had developed a pilot program where they could take measurements of a stream, look at the dynamics of the stream, and then come up with a design to restore the channel. The Department is working with the District on how best to authorize these projects on an expedited manner versus going through an extensive permitting process. The District agreed to amend their delegation agreement in the Chapter 105 program to authorize emergency permits directly for projects that meet the criteria of that program. A lot of funding is needed to do even larger scale stream restoration and flood control projects where they are feasible. Restore PA could help provide the funding that is needed. Many historic communities are in the floodway along the rivers. Some of them are somewhat protected by existing Army Corps flood control projects that are 50-60 years old or by Commonwealth flood control projects that are old as well. Those projects are reaching the end of their life expectancy in many cases. There is a need to upgrade, rehabilitate, and replace some of that infrastructure for flood protection.

On July 24 Secretary McDonnell joined community leaders at the Lurgan Lions Club Park in Roxbury to discuss how Restore PA could support stream restoration projects to prevent erosion and protect communities across the Commonwealth.

On August 5, Secretary McDonnell toured the proposed Lower Broadway Recreation Complex in Nanticoke to discuss how the Restore PA proposal could help communities rehabilitate vacant land for recreational use.

DEP-Related Legislation – Pipeline Safety Board Bill (HB1568)

Deputy Secretary Ziadeh will provide testimony at a public hearing in front of the House Veterans Affairs and Emergency Preparedness Committee regarding House Bill 1568, which seeks to establish a Pipeline Safety and Communication Board. The proposed Pipeline Safety and Communication Board would include DEP, the PUC, DOH, PennDOT, PEMA, and the Office of the State Fire Commissioner, and its purpose would be to provide more communication and transparency surrounding pipelines and issues dealing with pipelines in the state. He will discuss the interagency coordination process that the Department has right now with the PUC, PEMA, and PA One Call relating to compliance issues and will also discuss the Department's role in pipeline siting. His testimony will mainly be focused on the Department's role in permitting pipeline construction, as well as the Department's pipeline compliance and enforcement activities and efforts DEP has taken toward interagency coordination to increase communication and transparency surrounding pipeline projects.

In response to a question from Thad Stevens regarding the Administration's rationale in Restore PA to extract the entire support from a single extractive industry, Ramez stated his understanding is that it is a very modest tax. There is a great need for infrastructure work in PA for which a funding source needs to be found. Thad stated that he could not deny infrastructure work is needed, but he does not understand the singular target. He feels the unconventional gas industry, which has been burdened by an impact fee, has been very supportive of the communities that it has been impacted. Ramez stated that there have been a lot of adverse impacts from the industry from a variety of large-scale projects.

Tim Weston questioned whether the industry is a reliable revenue stream.

Jim Welty commented that the industry negotiated the impact fee in 2012 in Act 13. The impact fee has raised \$1.7 billion since 2012, much of which has gone to infrastructure projects throughout the state. The industry pays every tax required by the Commonwealth like every other business and then on top of that it has paid \$1.7 billion since 2012 in impact fees. The purpose of the impact fee is to go in part to offset those impacts that the industry has created. Mr. Welty stated that the Restore PA proposal would levy a severance tax on top of the impact fee and make Pennsylvania the highest taxed state in the country for the unconventional natural gas industry. He pointed out that the tax is only on the unconventional, one segment of one industry, and creates significant concerns, particularly when talking about the competitiveness of the Commonwealth's business structure. The Commonwealth is in competition not just across the country but across the globe. More impact fee taxes were collected in Pennsylvania last year than Colorado, Arkansas, Ohio, and West Virginia combined.

John Over commented that the northcentral region is not alone in their flash flooding issues. Southwestern Pennsylvania has had significant issues recently. One of the townships in his area has had six events over the course of the last 12 months where 3-5 inches of rain was received in

less than an hour. The residents of the communities that are being impacted have been reaching out to DEP, the Conservation Districts, and the local municipalities. The response from DEP's Southwest Regional Office has been to advise citizens to contact an attorney and sue their municipalities. John does not understand the direction that is being given to the residents. Ramez stated that local municipalities continue to approve building permits along the rivers and the streams in the floodways. Under the Floodplain Management Act, the municipalities are required to develop floodplain management programs that meet the national flood insurance program requirements from FEMA. When a floodway is obstructed, there is the potential to increase flooding. If the local municipalities are not doing their job, development continues to pop up and over time it starts to change the flood plan delineation that was published by FEMA and increases the 100-year water surface elevation. That is a chronic problem.

Duane Mowery expressed his delight in the number of new State Board for Certification of Water and Wastewater Systems Operators and wondered if the Department knows why. He would encourage the Department to seize on that and encourage additional applications

On the Pittsburgh flooding issue, Ramez offered that there is a flood mitigation program with DCED that is open quite frequently. The maximum grant is \$500,000 and requires 50% match. Any government entity can apply for a grant to do localized work to address some of these issues.

On the flooding issue and municipalities allowing construction in floodplains, James Schmid stated that he sees this from time-to-time, particularly in those areas that are covered by the waiver where the Department does not regulate encroachments or obstructions, where the watershed is smaller than 100 acres. He thinks that is something that really needs to be looked into. There can be considerable opportunities for flooding for new construction that is built right up against streams, even in headwater areas.

Tim Weston offered that the Department, when it looks at an NPDES permit, does not get a plot of the 100-year floodplain. The Department is looking to see if E&S controls meet the requirements of Chapter 102. It is not a Chapter 105 permit, so the result is that different programs are looking at development. Generally the municipality, if it is running a zoning and land use program, will ask for certain things, but even there they may miss all the runoff impacts associated with routing of a new development. Ramez commented that the Department also looks at the stormwater management plan to ensure, if it involves a new impervious area, that runoff is going to be captured, minimized, and treated so it does not increase flooding in the stream. Uncontrolled runoff from a new development could make the flooding problem even worse.

PRESENTATION:

Roger Adams, Director of the Bureau of Waterways Engineering and Wetlands (BWEW), provided an overview of the main divisions within BWEW: Dam Safety; Project Development; Project Inspection; and Wetlands, Encroachment, and Training.

Dam Safety

Roger discussed the jurisdiction, hazard classifications, emergency action plans, annual inspections, and permits and authorizations for the regulation of dams within the Commonwealth.

Project Development

Project Inspection

Project Development and Project Inspection work closely together. The Division of Project Development handles the Stream Improvement Program (smaller projects to restore stream channels damaged by erosion during a flood event) and the Flood Protection Program (larger projects where flooding has caused damage to a significant number of homes or businesses in the community).

The Division of Project Inspection includes the Construction Section and the Completed Project Section. During design, the Construction Section is consulted using peer reviews where constructability comments are addressed, the section provides day-to-day inspection services, and the design staff attend biweekly construction conferences.

After construction, the Completed Project Section takes the lead and coordinates with the US Army Corps of Engineers for annual maintenance inspections and assists with determining if operation and maintenance repairs will require additional permits.

Both groups work on material submission approvals, change orders, and requests for information by contractors.

Wetlands, Encroachment, and Training

The Division of Wetlands Encroachment and Training directs and oversees regulatory permitting of water obstructions and encroachments in regulated waters of the Commonwealth and develops and coordinates guidance and program assistance to regional offices, oil and gas programs, mining, and delegated conservation districts for administering the Chapter 105 program. Encroachment and Training provides leadership and approval of stream and wetland restoration, compensatory mitigation and mitigation banking, submerged land license agreements, performs environmental reviews of dam safety and flood protection permits and projects, and dam removals.

In response to a question from Thad Stevens about a way to streamline permitting to accommodate a speed that meets economic needs, Roger indicated that the length of time has been a significant complaint and the Department is working to streamline the general permit process and do away with multiple review components. E-permitting should help.

Jim Welty offered that the oil and gas industry has worked with the Department to address some of the problems with the overall platform of e-permitting.

COMMITTEE REPORTS:

POLICY AND REGULATORY OVERSIGHT COMMITTEE

A discussion was held with the Bureau of Air Quality with respect to the final rulemaking on particulate matter_{2.5}. This is a set of regulations conform Pennsylvania's rules to the federal requirements. The Policy and Regulatory Oversight Committee discussed the proposed final rulemaking in depth and endorsed it unanimously.

Tim Weston moved that the CAC endorse the adoption of the final Chapter 121 and 127 rules for implementation of the PM_{2.5} nonattainment. Terry Dayton seconded the motion, which was unanimously approved.

AGGREGATE ADVISORY BOARD

Thad Stevens attended the Aggregate Advisory Board in Tunkhannock several weeks ago. There is a significant concern among the permittees that although bonding currently is working for active sites, the process overall has built a legacy of open pits that there will not be sufficient funding to close. The bonding program simply does not have funding for the significant burden and the industry practitioners are fearful that they will get snagged with the burden at some point.

NEW BUSINESS:

Presentations will be given at the September 17 meeting on the PFAS contamination issue across the state and an update on the regulatory process mechanics.

ADJOURNMENT:

With no further business, Vice Chairman Weston requested a motion for adjournment. Jim Welty moved to adjourn the meeting, which was seconded by James Schmid and all were in favor. The August 20, 2019 meeting of the CAC was adjourned at 12:27 PM.