



Citizens Advisory Council

to the Department of Environmental Protection

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Testimony Presented by

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Citizens Advisory Council to DEP

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Senate Environmental Resources and Energy Committee

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Convocation Center

Butler County Community College

Good morning, Madam Chair and Members of the Committee.

I am David Strong, Chair of the Citizens Advisory Council to the Pennsylvania Department of Environmental Protection. With me today is Sue Wilson, Executive Director of the Council.

I am pleased to have been invited today to offer comments on Council's behalf on Pennsylvania's antidegradation program. The Council has always had a strong interest in protecting our water resources, and has been involved in helping to shape the antidegradation program for many years.

Council supported the regulation as published last year. The newly implemented process is an improvement over both the old program and the regulation as it had originally been proposed. For instance, the goal of the program is now to protect all of the waters of the Commonwealth from degradation. The regulations clarify that the intent of the program is to protect existing uses, as required by federal law. Finally, the new regulations include stronger public participation requirements. Early and effective public participation is critical, and we support requiring notification of all municipalities containing waters subject to an evaluation or assessment.

Social and Economic Justification

At the same time, Council remains concerned about the lack of clarity provided on some of the issues. In particular, the regulation postponed the details of Social and Economic Justification (SEJ) until the *Antidegradation Implementation Guidance* is revised. This decision is critical because ideally, it should determine when a project has such significant public value that it should be permitted to degrade a high quality stream. Such decisions should carefully weigh both the benefits and costs of proceeding with a



given project as well as all feasible non-discharge alternatives. For example, while a project might create much-needed jobs, the resulting degradation might concurrently decrease tourism or other income in the same area. In this way, the antidegradation program will not prohibit development, but instead ensures that development does not unfairly impair the best quality waters in our state.

The Council has been highly dissatisfied that the *Guidance* has not yet been available for public review but is pleased that it reportedly will be available this fall. The issues to be addressed in the *Guidance* are critical to the program, and deserve and require equal attention, to ensure effective implementation of the program.

Chemical and Biological Testing

It is Council's position that stream designations should be based solely on scientific water quality information related to the actual characteristics of the body of water and its associated resources. The only time that other, more subjective types of information should be used is when a waterbody is being considered for Exceptional Value status (that is, it is already High Quality, but has some additional qualifications that elevate it to EV) or during the Social and Economic Justification process, when we are trying to balance environmental harm against social and economic factors.

Council also supported the change from the requirement that a water meet both chemical and biological conditions to requiring it to meet either chemical or biological conditions. Requiring extensive chemical and biological data is potentially burdensome; we should be able to definitively determine water quality by appropriate use of one or the other. We need to balance adequate information against the cost of obtaining that information. We must recognize the resource needs and associated cost to collect and analyze samples for a large number of parameters over a long term and keep the number of parameters that must be collected to a reasonable amount. At the same time, we need to retain the flexibility to consider additional chemical and toxicity information that characterizes water quality on a case-by-case basis. We are a long way from fully understanding chemical synergies, long term accumulation and cumulative impacts in the natural environment; at times information on additional parameters will be needed, but should not necessarily be required in all cases.

Flow Requirements

We have commented in past years about the necessity to address low flow needs of High Quality and Exceptional Value streams as they relate to the permitting programs for obstructions and water withdrawals. Such permitted activities can have a negative impact on the quality of these streams and we supported the development of stringent requirements to protect the integrity of these streams from these permitted activities.

The issue of stream flow impacts on designated uses and stream quality was highlighted during the Council's recent field trip to Greene County to look at the surface impacts of longwall mining. We saw and heard about instances where such mining has affected both streambed characteristics and stream flow. Since stream quality includes the aquatic insects and fish communities that inhabit the stream, changing these characteristics clearly can affect the stream's quality and use. The coal company that hosted our tour indicated its clear intention to repair the impacts it had caused, but we

raise this issue in the broader context of looking beyond discharges to other impacts such as flow that affect stream quality and uses.

Funding

Some stream redesignations become highly charged due to the perceived conflict between protection of the stream and local economic development. Protection of a stream does not necessitate a ban on development; rather it requires changing our approach to seek out and evaluate nondischarge alternatives. Most importantly, it requires that the Commonwealth commit sufficient funds and resources to the task of completing its assessment of the state's waters so that these designations can be made before they become part of a development controversy.

Thank you again for the opportunity to provide Council's comments. I note for the record that Council's discussions at both the committee and full Council levels reflect the controversial nature of several of these provisions. On some issues, the vote was not unanimous, but a majority of the members present supported the comments relayed here.

We would be happy to try to answer any questions you might have.