



**Minutes of the
January 30, 2020 Meeting of the
Water Resources Advisory Committee (WRAC)**

Call to Order, Introductions and Attendance – John Jackson called the meeting to order at 9:36 am on Thursday, January 30, 2020, in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA. Bob Haines was announced the new liaison for WRAC, and all attendees introduced themselves. Participation in this meeting of 16 members represents a quorum.

The following committee members were present:

Harry Campbell, Chesapeake Bay Foundation
Kent Crawford
Andrew Dehoff, Susquehanna River Basin Commission
Matthew Genchur, White Township
Jeff Hines, York Water Company
John Jackson, Stroud Water Research Center
Gary Merritt, NSG
Cory Miller, University Area Joint Authority
Stephen Rhoads

The following committee members were present (via phone):

Myron Arnowitt, PA Clean Water Action
Jenifer Christman, Western Pennsylvania Conservancy
Shirley Clark, Pennsylvania State University
Theo Light, Shippensburg University
Jeff Shanks, Waste Management
Steve Tambini, Delaware River Basin Commission
Sara Whitney, Pennsylvania Sea Grant

The following committee members were not present:

Charles Wunz, Wunz Associates
Dean Miller, Pennsylvania Water Environment Association

The following state agency staff members were present:

Roger Adams, DEP Bureau of Waterways Engineering and Wetlands
Hind Al Fayadh, DEP Bureau of Safe Drinking Water
Aneca Atkinson, DEP Office of Water Programs
Heidi Biggs, Bureau of Clean Water Brian Chalfant, DEP Policy Office
Susan Despot, Department of Agriculture Office of Chief Counsel
Kara Fetter, DEP Policy Office
Shelby Freyermuth, DEP Office of Water Programs
Sean Furjanic, DEP Bureau of Clean Water
Joseph Herbstritt, DCNR
Felica Lamphere, DEP Bureau of Clean Water



Ken Murin, DEP Bureau of Waterways Engineering and Wetlands
Andy Klinger, DEP Bureau of Waterways Engineering and Wetlands
James Long, DCNR
Bo Reiley, DEP Office of Chief Counsel
Dustin Shull, DEP Bureau of Clean Water
Jesse Walker, DEP Office of Chief Counsel
Susan Weaver, DEP Bureau of Safe Drinking Water
Ray Zomok, DCNR

The following guests were also present:

Jennifer Case, PA Municipal Authorities Association
Kelly Dell, Widener University Commonwealth Law School
Craig Fahenstock, PA Municipal Authorities Association
Glendon King, PA House
Barb Sexton, Chesapeake Energy

Review and Approval of Minutes from October 30, 2019 Meeting – Jeff Hines made a motion to approve the minutes. Gary Merritt seconded the motion. The motion was approved by unanimous vote.

Chapter 105 Regulatory Revisions- Andy Klinger (DEP Bureau of Waterways Engineering and Wetlands) – Roger Adams introduced Andy Klinger, the new Chief of the Division of Wetlands, Encroachment, and Training, who has taken over many of the duties of Ken Murin in the Bureau of Waterways Engineering and Wetlands. Ken Murin was brought back as an annuitant to work on the Chapter 105 revisions, and program counsel Jesse Walker, was also present. Mr. Klinger presented the proposed amendments to Chapter 105, which aim to clarify existing requirements, to delete or update obsolete requirements and references, to incorporate new or revised definitions, and to correct typographical errors.

A member of WRAC asked a question about what is considered “regulated waters of this Commonwealth” and Mr. Klinger explained that regulated waters of this Commonwealth is a term already defined in Chapter 105 and includes watercourses (e.g., streams) and bodies of water including wetlands, reservoirs, lakes, and their floodways.

Mr. Klinger provided some background on the development of this proposed rulemaking. DEP convened a Chapter 105 Agricultural Workgroup that included representatives from select county conservations districts (CCDs), the Natural Resources Conservation Service, and the State Conservation Commission. DEP also met with representatives of other state agencies, such as the Department of Conservation and Natural Resources and the Pennsylvania Fish and Boat Commission, as well as major dam owners and a wider group of CCDs.

DEP held previous discussions about revisions to Chapter 105 with WRAC on 7/25/2019 and 10/30/2019, and the Agricultural Advisory Board on 11/12/2019 and 01/27/2020.

Mr. Klinger added that DEP is a planning to present this proposed rulemaking to the State Conservation Commission and DEP’s Citizens Advisory Council, and that program staff had previously gone to these bodies with preliminary proposed changes.

Mr. Klinger further explained that the plan is to move the proposed rulemaking forward to the Environmental Quality Board (EQB) by the 2nd quarter of 2020, with a goal upon approval to publish the proposed rulemaking in the *Pennsylvania Bulletin* for public comment.

WRAC member Kent Crawford asked a question concerning § 105.13, about an addition for an antidegradation demonstration. Mr. Crawford asked, “If the onus is on the person requesting the permit, then how would a person demonstrate antidegradation?” Mr. Klinger responded that is an existing Chapter 105 requirement for an applicant to provide analysis of the effect of the project on designated or existing uses of a surface water, and how water quality standards would be affected. If the project proposes a bridge, for example, what affect will there be on any waters? Mr. Crawford suggested that perhaps a hydraulic study would meet this requirement, for example. Mr. Klinger added that it would depend on the impact and a project’s anticipated effect on those uses.

WRAC member Gary Merritt asked about the removal of wetland functionality and how to treat manmade wetland treatment system. Mr. Klinger replied that the waiver under § 105.12(a)(5) answers this, and the waiver under § 105.12(a)(6) references facilities constructed and maintained for stormwater management purposes. Mr. Klinger noted that there are no proposed changes to those waivers.

Mr. Merritt asked how manmade structures were treated under DEP’s submerged lands license program. Mr. Merritt said this inquiry does not have to be answered today, but explained that there are some manmade harbors that were permitted in the 1930s and 40s that are still in existence and many mooring structures are built on someone else’s property. Mr. Merritt suggested a sit-down conversation may be more appropriate as there are many nuances involved. There was some added language to clarify moorings, as it is a complex issue. Mr. Merritt suggested that there should also be a conversation regarding an infiltration well on the edge of the river, which used to be part of the public water supply into sandy gravel. Mr. Merritt further noted that the whole structure still remains. Mr. Adams pointed out that DEP is proposing to strengthen language about abandoned structures in § 105.47 for public safety.

Program counsel Jesse Walker addressed the issue of tributaries in the southwest part of the state brought up by Mr. Merritt. Mr. Walker informed WRAC that the determination of whether a streambed is a submerged land of the Commonwealth is based on a determination of navigability. WRAC member Steve Rhoads also added that historic permits provided authorization to occupy submerged lands. Mr. Merritt clarified that he was not worried about occupancy, but rather persisting remediation concerns associated with past structures and activities.

Mr. Crawford asked if DEP was anticipating any fee changes as part of this proposed rulemaking. Mr. Adams explained that the last fee changes occurred on 2/16/2013, and that the 2013 rulemaking required DEP to conduct an analysis every three years to determine if there should be any changes in Chapter 105 fees. Mr. Adams noted that DEP conducted this analysis in 2016 and 2017 and did not then propose to change any fees. Mr. Adams noted that DEP is nearing another three-year review. Mr. Adams also mentioned that the existing language pertaining to Dam Permit Transfer fees added in 2013 was misleading and is proposed to be corrected in the current proposed rulemaking.

Mr. Crawford asked about proposed amendments to § 105.446 which would add a new section for periodic reviews. Mr. Crawford inquired whether that new obligation would require an increased use of staff time for periodic reviews. Mr. Adams replied that this would be considered in future analysis.

Mr. Rhoads asked about the timeline for public comments on the proposed rulemaking, after publication in the *Pennsylvania Bulletin*. Mr. Klinger stated that the program intends to propose a 60-day public comment period. Mr. Rhoads also asked if DEP would be conducting any outreach to the regulated community. Mr. Rhoads explained that there was outreach to the environmental side of the equation, but inquired whether impacted industries such as construction, road building, pipelines, and oil and gas industries would be given an opportunity for feedback during the comment period or before? Mr. Adams clarified that the revisions involve cross references, clarification of existing requirements, and that the program will be responsive to public comments, but that DEP did not anticipate any additional public meetings at this time. Mr. Rhoads recommended that DEP meet with the industries that would be most impacted.

WRAC member Drew Dehoff inquired about the definitions and use of the terms probable maximum precipitation (PMP) and probable maximum flood (PMF), and references to data from the National Oceanic and Atmospheric Administration (NOAA) and elsewhere in definitions, and the proposed incorporation of the United States Army Corps of Engineers design standards. Specifically, Mr. Dehoff inquired which data is used. Mr. Adams replied that PMF was tied into data from NOAA and since 1979 when the regulations first came out, and that NOAA has not been active with PMP reports to analyze, which led DEP to conduct its own PMP analysis. Mr. Adams added that the NOAA data was not referred to within the proposed definition, although the data is still used. Mr. Adams noted, however, that there is a lot more data to rely on now, and that the proposed PMF definition is more consistent with national standard.

WRAC member Harry Campbell inquired about the reference to the proposed Chapter 105 revisions in Pennsylvania's Phase 3 Watershed Implementation Plan (WIP) for the Chesapeake Bay and the associated sediment and nutrient reductions. Mr. Campbell asked how those numbers were derived. Mr. Klinger replied that the program could not comment on how the numbers in the Phase 3 WIP were derived. Mr. Walker added that the program will look into it and get back to WRAC, but that the comment is outside the scope of the proposed rulemaking itself.

Mr. Dehoff asked a question about the description of the intent of the alternatives analysis. Mr. Klinger explained that the program is clarifying existing DEP practices and that existing alternatives analysis language is vague. Mr. Klinger added that the proposed revisions are intended to give applicants a greater understanding of what DEP is looking for under the alternatives analysis requirement.

WRAC member John Jackson confirmed that the program's next step is go before EQB in the 2nd quarter of 2020 and that the program would like a motion from WRAC to move forward with the revisions. After much discussion and debate amongst members of WRAC, three motions were approved:

1. Mr. Rhoads made a motion to recommend to DEP to expand outreach on the proposed Chapter 105 regulation revisions to the regulated community before and during the public comment period to ensure greater transparency and feedback. Mr. Crawford seconded the motion. This motion was approved by a vote of 15-1.
2. Mr. Arnowitz made a motion to recommend to DEP to engage in outreach on the proposed Chapter 105 regulation revisions to local communities and elected officials, the public, and other associations that may be impacted by the proposed changes. Mr. Crawford seconded the motion. This motion was approved by a vote of 14-2.
3. Mr. Merritt made a motion to recommend to DEP to move forward with the proposed Chapter 105 regulation revisions to EQB. Mr. Rhoads seconded the motion. This motion was approved unanimously.

Mr. Jackson requested that, in the future, WRAC be notified ahead of time, if a DEP program is expecting WRAC to hold a vote.

It was recommended that if any WRAC members have any additional comments or suggestions, they to reach out to Mr. Adams directly.

Integrated Report Update- Dustin Shull (DEP Bureau of Clean Water) – Mr. Shull reviewed the 2020 Draft Integrated Water Quality Monitoring and Assessment Report and provided background on the report with regards to DEP’s obligation to produce a report every two years to fulfill requirements of sections 305(b) and 303(d) of the federal Clean Water Act. Mr Shull explained that – as with the 2018 Integrated Report, due to the overwhelmingly positive feedback from users – DEP will continue to produce the Integrated Report as an interactive storymap format.

Mr. Shull reviewed each section of the report and demonstrated the navigation functionality to access pertinent information for each section. Mr. Shull also highlighted the updated information and functionality from the 2018 Integrated Report for each section.

Mr. Shull also demonstrated the use of the Integrated Report Viewer GIS tool to access the data behind the Integrated Report storymap.

Mr. Shull addressed general questions from the committee.

Chapter 91/92(a) Fee Draft Final Annex A- Sean Furjanic (DEP Bureau of Clean Water) – Mr. Furjanic presented on behalf of Jay Patel, Bureau of Clean Water. Mr. Furjanic discussed the final rulemaking that DEP plans to take to EQB during 2020. This rulemaking is related to Water Quality Management (WQM) permit application fees and National Pollutant Discharge Elimination System (NPDES) permit application and annual fees under Chapters 91 and 92a, respectively.

Mr. Furjanic explained that WQM and NPDES permit fees assessed under Chapters 91 and 92a, respectively, fund administration and implementation of DEP’s statewide Clean Water Program, involving the review of 500 to 600 WQM permit applications and over 2,000 NPDES permit applications annually, as well as DEP’s duties and activities related to permits issued.

Mr. Furjanic noted that DEP presented information regarding the Chapters 91 and 92a proposed rulemaking twice in 2017 and once in 2019, and that the proposed rule was approved by EQB and published in the *Pennsylvania Bulletin* on March 30, 2019 for a 45-day public comment period.

Mr. Furjanic noted that most public comments viewed the proposed changes negatively, and that, in response to public comments, DEP is now proposing smaller fee increases than originally proposed for fees associated with the following WQM and NPDES individual permits:

- Joint Pesticides Permit (Chapter 91)
- Manure Storage and Wastewater Impoundment (Chapter 91)
- Small Flow Treatment Facility (Chapter 92a)
- Minor Sewage Facility < 0.05 MGD (Chapter 92a)
- Minor Industrial Waste Facility not covered by ELG (Chapter 92a)
- Minor Industrial Waste Facility covered by ELG (Chapter 92a)
- Industrial Stormwater (Chapter 92a)
- CAFO (Chapter 92a)

Mr. Furjanic also noted that DEP is proposing to remove provisions from the rulemaking that would have authorized DEP to adjust permit fees under both Chapter 91 and Chapter 92a every two years to account for inflation.

Mr. Furjanic also noted that DEP proposes to add language to both Chapter 91 and Chapter 92a exempting financially distressed municipalities from certain WQM and NPDES permit fees.

Mr. Furjanic explained that, in response to comments received on the proposed rulemaking, the changes to fees in the final rulemaking focus on permits that most impact small businesses and agriculture.

Mr. Furjanic explained that in comparison to other states, Pennsylvania is still comparable or well below other states regarding permitting fees for similar activities and facilities. Mr. Furjanic noted that DEP plans to take the Chapters 91 and 92a rulemaking to EQB as a final rulemaking during the second half of 2020.

Mr. Furjanic fielded questions from WRAC members. John Jackson asked if a recommendation from WRAC to proceed to EQB with the final rulemaking is needed. Mr. Chalfant replied that WRAC was welcome to provide such a recommendation, but that such a recommendation was not required for DEP to take the final rulemaking to EQB.

General Discussion – John Jackson reminded WRAC members and the DEP Liason to be aware of the wishlist of topics proposed by WRAC members and asked if anyone had additional ideas to add to the list.

Action Items

1. DEP presentations requested by WRAC members:
 - a. Impairment of the Susquehanna River **-presented at 5/23/2019 meeting.**
 - b. The Science of Manganese – **presented at 5/23/2019 meeting.**
 - c. Integration of the modifications to the Stormwater Management Control Manual and Chapter 102 into Mining and Reclamation for Coal/Non-Coal and Waste Management
 - d. ePermitting for Chapter 102 during beta-testing
 - e. Ongoing measures of adaptive management using Alternative Restoration Plans
 - f. Agricultural Operations Inspections - **presented at 5/9/2018 meeting.**

2. 6-9 month look ahead on potential regulatory and non-regulatory topics to WRAC for comment:
 - a. Chesapeake Bay Update
 - b. Water Allocation Permit Applications
 - c. Act 162 of 2014 Implementation Plan
 - d. Design Standards for Wastewater Facilities
 - e. Small Flow Treatment Facilities
 - f. Draft Technical Guidance: Methods to Consider to Complete Alternative Analysis
 - g. Draft Technical Guidance: Environmental Considerations for the Construction and Operation of Trenchless Technology
 - h. Per- and polyfluoroalkyl substances (PFAS)

Public Comment – None

A motion was made for the meeting to adjourn by Kent Crawford and was seconded by Jeff Hines. The meeting adjourned at 12:02 p.m.