

WATER RESOURCES ADVISORY COMMITTEE

July 28, 2021 9:30 a.m.

Teams Meeting

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AGENDA

9:30 a.m. Call to Order, Introductions and Attendance – John Jackson, Chair

The meeting of the Water Resources Advisory Committee was called to order by John Jackson at 9:30 a.m., via Microsoft Teams due to the social distancing orders enforced during the covid-19 pandemic. A roll call was conducted, and of the 18 members of the committee, 10 were present and 8 were not present.

The following committee members were present:

Harry Campbell-Chesapeake Bay Foundation

Jenifer Christman-Western Pennsylvania Conservancy

Shirley Clark, Ph.D., P.E.-Pennsylvania State University

Kent Crawford, Ph.D.-Retired, USGS

Andrew Dehoff-Susquehanna River Basin Commission

Jeffrey Hines, P.E.-York Water Supply

John Jackson, Ph.D.-Stroud Water Research Center

Dean A. Miller-Pennsylvania Water Environment Association

Stephen Rhoads-Retired, Shell

Steven Tambini-Delaware River Basin Commission

The following committee members were not present:

Myron Arnowitt-Clean Water Action

Matthew Genchur-White Township

Theo Light, Ph.D.-Shippensburg University

Gary Merritt, P.G.-Northern Star Generation

Cory Miller-University Area Joint Authority

Jeff Shanks-Waste Management

Sarah Whitney-Pennsylvania Sea Grant

Charles Wunz, P.E.-Wunz Associates

9:35 a.m. Review and Approval of Minutes from March 24, 2021 Meeting – John Jackson, Chair

No corrections or suggested edits to the March 24, 2021 meeting minutes were proposed by any Committee members. Stephen Rhoads motioned to approve the meeting minutes. Drew Dehoff seconded the motion. The meeting minutes were unanimously approved.

9:45 a.m. 2021 Assessment Method Update and 2022 Integrated Report – Dustin Shull, Environmental Group Manager, and Timothy Wertz, Water Program Specialist, Assessment Section, Bureau of Clean Water

Mr. Shull and Mr. Wertz presented updates and revisions to various water quality assessment methods used by the Bureau, to include Thermal Fish Index (TFI), Discreet Physicochemical, Fish Consumption, and Delisting Methods. Mr. Shull provided updates to the 2022 Integrated Report and highlighted that the April 2022 submission of the Integrated Report will coincide with the 50th anniversary of the Clean Water Act. Mr. Shull further explained that public participation for the draft Integrated Report is projected for the Winter of 2021. Mr. Shull provided information on enhancements to the report to include additional numeric and statistical summaries, additional focus on water quality success and progress, and links to various data resources. This presentation was provided to the committee, and a version can be found on DEP's Water Resources Advisory Committee webpage.

During the presentation, Kent Crawford asked for clarification on a term used by Mr. Wertz. Mr. Wertz replied that the term was "Balanced Indigenous Community" and is a term used in federal 316 evaluations to describe a reference condition of a stream.

Regarding Balanced Indigenous Community, John Jackson asked how brown trout, as a cold-water fish, would be handled in a cold-water fishery as it is not indigenous. Mr. Wertz clarified that the term indigenous, in this regard, is not referencing native/non-native to a basin, but rather referencing a thermal classification, in that brown trout are indigenous to a cold-water stream.

Regarding the TFI, Mr. Crawford asked how snakehead fish are handled in the index. Mr. Wertz replied that the northern snakehead fish has not been specifically addressed in the TFI mainly because the index is weighted by proportional abundance. Also, due to low numbers, the northern snakehead impact on the index will be small. Mr. Wertz acknowledged that moving forward, DEP will continue to monitor snakehead impact on the TFI and will address accordingly if the need arises. Mr. Wertz added that, currently, snakeheads are occurring in warmer systems, and as the invasion is tracked, the TFI score will be tracked to make sure the index is still accurate and performing as it should and this will be addressed during recalibration events in the future.

Mr. Crawford further commented that based on a recent report, it was learned that several snakehead fish made it through the fish lift at the Conowingo Dam and some were captured but some were not. Mr. Crawford wanted to know if this was a new introduction of snakehead fish or are they already in the Susquehanna River. Mr. Wertz replied that the snakehead fish has been identified in the Lower Susquehanna and Delaware River basins for some time, but with regard to monitoring efforts, the snakehead is not a substantial portion of the fish assemblages. Mr. Wertz added that snakehead fish are being targeted as sport fish for angling in the Lower Susquehanna River in Maryland.

Mr. Crawford asked how the Rock Bass would be handled in the TFI, where once abundant, now not so abundant, and would that show in the index as an abundance of a species or is it simply presences/absence of a species. Mr. Wertz answered that the TFI score is based on percent abundance in that it uses all of the fish in their relative abundance to generate a TFI score, so subtle changes in a fish species will have little effect, but large changes in a fish species will have a greater effect. Mr. Wertz further explained that as streams degrade, the fish community becomes a warmer assemblage, including rock bass species, and smaller stream systems attaining will have fewer rock bass and more trout and sculpin species.

Mr. Crawford asked, regarding climate change and the TFI, how frequently DEP will sample to see if the increased temperature (climate change) is impacting the fish community. Mr. Wertz replied that DEP plans to maintain reference sites, which are sites not influenced by outside drivers. Those sites will be used as a subset to monitor the fish community for impacts from climate change scenarios.

Regarding the addition of PFOS (perfluorooctane sulfonic acid) advisory levels to the revision of the Fish Consumption Assessment method, Mr. Crawford wanted to know the units for PFOS concentrations. Mr. Wertz answered that it is in parts per million. Mr. Crawford clarified that that would be milligrams/gram and confirmed that DEP does not have any results back from PFOS testing in fish to judge whether there are any issues in Pennsylvania fish relative to PFOS. Mr. Wertz affirmed Mr. Crawford's comments and stated that DEP hopes to have some results within 30 days. Mr. Crawford further inquired if DEP sampled fish from suspected PFOS hotspots around the state. Mr. Wertz confirmed that samples were taken at suspected PFOS hotspots in the southeast, west, and northeastern parts of Pennsylvania. Mr. Crawford asked if the fish species sampled were uniform. Mr. Wertz replied that the fish species sampled were not uniform and provided an example that carp and American eel were targeted in the southeast, which tend to have the highest levels of contamination from contaminants like DDT, PCBs, etc., so DEP uses the evidence of other contaminants to direct the species that are available and is large bodied in the systems that DEP is targeting.

Regarding TFI, Mr. Wertz asked John Jackson if he could provide DEP with additional reference sites in the southeast for evaluation. Mr. Jackson said he would coordinate with Mr. Wertz to get him that information.

Regarding Fish Consumption assessments and PFOS advisory, Jeff Hines wanted to know if other states that have implemented similar measures have seen the advisory level concentrations in fish yet? Mr. Wertz replied that while New Jersey is not using the same numbers as PA, he believes they have issued some PFOS advisories. Steve Tambini responded to Mr. Hines that the Delaware River Basin Commission is doing similar studies with fish tissue and PFOS and said they are finding the presence of PFOS in fish tissue. Mr. Tambini offered to get Mr. Hines more data if he wanted it.

Regarding the 2022 Integrated Report, Mr. Jackson asked if the primary presentation for the report is going to be an online presentation. Mr. Shull replied that the report will be online, but instead of a code-based format it will be an ESRI ArcGIS StoryMap format. Mr. Shull added that DEP is still legally required to submit a "PDF" version of the Integrated Report to EPA.

10:30 am Chapter 92a.51(a) Draft Proposed Rulemaking – Sean Furjanic, Environmental Program Manager, NPDES Permitting Division, Bureau of Clean Water

Mr. Furjanic presented DEP's proposed revision to the 25 Pa. Code § 92a.51(a) regulation that addresses schedules of compliance for National Pollutant Discharge Elimination System (NPDES) permits. DEP is seeking to revise § 92a.51(a) to provide an exemption for NPDES permits authorizing combined sewer overflow (CSO) discharges. NPDES permits require permittees with CSOs to develop Long-Term Control Plans (LTCPs) to achieve water quality standards. Completion of the activities prescribed in LTCPs typically extends beyond the 5-year permit term. This has been an ongoing issue with the EPA. DEP should not be authorizing the implementation of LTCPs over a period exceeding 5 years unless an enforcement action such as a consent decree is executed outside of the permit. DEP does not have the resources to execute and maintain enforcement actions against 130 CSO dischargers. As a result, NPDES permits for CSO dischargers that had not fully implemented their LTCPs were administratively extended until DEP and EPA could work out a solution. After several years of consideration, DEP and EPA jointly agreed that amending Section 92a.51(a) to allow CSO dischargers to implement LTCPs over a period exceeding 5 years was in the public's best interests. Section 92a.51(a) is more stringent than federal regulations and would remain so for all situations except for CSO dischargers to provide sufficient time to implement their LTCPs. DEP would continue to review LTCPs and revisions to LTCPs and seek to limit implementation periods to the shortest practical time but allow these timeframes to exceed 5 years. DEP will propose to the Environmental Quality Board that Section 92a.51(a) be revised to remedy this issue with CSO discharge permits. EPA has agreed that this modification will resolve a long-standing impasse on the reissuance of Pennsylvania NPDES permits to CSO dischargers, many of which have been administratively extended for more than 5 years. This change essentially codifies DEP's historical practice of allowing the implementation of LTCPs over a period of time exceeding 5 years. No harm is anticipated from this proposed rulemaking. A benefit will be that DEP will finally be able to reissue NPDES permits to CSO dischargers and incorporate the latest in environmental protection in these permits. This presentation was provided to the committee, and a version can be found on DEP's Water Resources Advisory Committee webpage.

Harry Campbell asked if other states have similar language as it pertains to this particular issue in their respective regulations. Mr. Furjanic replied that Pennsylvania is more stringent than surrounding states and EPA regulations when it comes to schedules of compliance. Mr. Campbell clarified that no other state specifically calls out CSOs in this regard. Mr. Furjanic answered that other states do not, but other states do not restrict implementation to one permit term.

John Jackson commented that CSOs are one of Pennsylvania's biggest struggles due to the infrastructure challenges and wanted to know how effective the LTCPs will be looking into the future over the next 20-25 years. Mr. Furjanic replied that over the past 20 years, Pennsylvania has had 30-35 municipalities implement complete separation of their CSOs and others have implemented partial separation. Mr. Furjanic added that the majority of municipalities are implementing a presumptive approach to meet water quality standards, where through hydraulic modeling and proposed infrastructure improvements, they reduce CSO discharges to 4-6 per year, which to EPA is meeting water quality standards. Mr. Furjanic continued that this needs to be verified, and in 20-25 years from now, many of these municipalities will have implemented their LTCPs and will be in the process of verifying that they are meeting water quality standards. Mr. Jackson asked Mr. Furjanic to confirm that a reasonable target is 4 to 6 CSO discharge events per year. Mr. Furjanic confirmed that if municipalities choose the presumptive approach, per EPA CSO policy, no more than six CSO discharges are allowed in a year.

Mr. Campbell asked if with this proposed revision will it create a slippery slope in that other parties will ask for similar provisions under their NPDES permit and compliance schedule associated with it. Mr. Furjanic agreed and stated that it has been discussed internally, and DEP anticipates receiving public comments that a permittee's particular situation would warrant a timeframe of more than five years as well. Mr. Furjanic continued that it is DEP's plan to open this up in a narrow fashion for a very specific purpose, so if someone comes in with public comments, we will take it into consideration for future rulemaking, but we are focused on this particular issue to resolve this hurdle with EPA so DEP can resume issuing timely permits.

Mr. Jackson asked Mr. Furjanic what he would like from the committee with regard to the proposed rulemaking. Mr. Furjanic deferred to Brian Chalfant, DEP Deputy Policy Director. Mr. Chalfant replied that DEP would like a vote from the committee to support moving the rulemaking forward to the Environmental Quality Board (EQB).

After discussion amongst the committee members, the following motion was put forward by Kent Crawford and seconded by Dean Miller.

The members of WRAC support the changes to Ch 92a.51(a) as proposed by PA DEP on July 28, 2021. The committee acknowledges the infrastructure challenges that municipalities face with Combined Sewer Overflows (CSOs) but encourages the Department to use its permitting authority to ensure that Long-Term Control Plans (LTCPs) incorporate substantive infrastructure improvement to achieve ultimate compliance with water quality standards.

The committee voted on the motion, and the motion carried with one nay vote.

11:00 a.m. General Discussion/Agenda Topics Request – John Jackson, Chair

Bob Haines, DEP Liaison to WRAC, informed the committee that the next meeting scheduled for September 22, 2021 is planned as an in-person meeting with an option to participate virtually, however, there is a scheduling conflict with the usual meeting room, RCSOB Room 105, so the meeting may need to be rescheduled by a day or two. Mr. Haines said that the committee would be advised once the details are figured out.

Dean Miller asked about the progress of the Biosolids permit subcommittee and the timeline DEP has for submitting the draft biosolids permits. Kevin McLeary, DEP Municipal Facilities Division, Bureau of Clean Water, introduced himself as the individual responsible for the biosolids draft permits and stated that he

does not know the progress of the subcommittee as he has made several attempts to communicate with the subcommittee chair, Cory Miller, and has gotten no response. Mr. McLeary added that regarding the submission of the biosolids draft permits, the timeline will be pushed back at this point. Mr. McLeary further explained that four stakeholder meetings are scheduled to get comments on the draft biosolids permits, so DEP plans to issue draft permits in the fourth quarter of 2021.

Mr. Jackson asked Mr. Haines if Mr. Miller has contacted him regarding the status of the biosolids subcommittee. Mr. Haines replied that the last he heard from Mr. Miller, which was over a month ago, was that the subcommittee was still being formed. Mr. Jackson asked Mr. Haines to send an email to Mr. Miller inquiring about the status of the subcommittee and copy himself and Vice-Chair Crawford.

11:10 a.m. Public Comment Period – John Jackson, Chair

No public comments were shared with the Committee.

11:15 a.m. Adjourn – John Jackson, Chair

Dean Miller moved to adjourn the meeting. Stephen Rhoads seconded that motion. The motion to adjourn the meeting was unanimously approved.