

**Draft Minutes of the
April 8, 2009* Meeting of the
Water Resources Advisory Committee (WRAC)**

*The regular meeting of the WRAC, begun on April 8, 2009, was adjourned and continued on two later dates: April 23 and April 29, 2009. The attendance at these meetings and the times at which each was called to order and adjourned have been recorded at the end of this document.

The regular meeting of the WRAC was called to order at 9:32 a.m. by Chairperson Stephen Rhoads on Wednesday, April 8, 2009 in Room 105 of the Rachel Carson State Office Building, Harrisburg, PA.

The following committee members were present:

David M. Anderson, P.G., Moody & Associates, Inc.
Buddy Beach, P.E., CONSOL Energy (retired)
Donald C. Bluedorn II, Esquire; Babst, Calland, Clements & Zomnir
Robert M. Cavett, Merck & Company, Inc.
Carol R. Collier, Delaware River Basin Commission
Matthew J. Ehrhart, Chesapeake Bay Foundation
Art Gazdik, P.E., Ross Township
D. Ty Gourley, University of Pittsburgh
Jeffrey Hines, York Water Company
Cory Miller, University Area Joint Authority
Nick J. Pinizzotto, Western Pennsylvania Conservancy
Stephen Rhoads, Pennsylvania Oil & Gas Association; **WRAC Chairperson**
Edith Stevens, League of Women Voters of PA
Dr. Robert Traver, Villanova Urban Stormwater Partnership
Bob Wendelgass, Clean Water Action

The following committee members were not present:

John K. Jackson, Stroud Water Research Center
Gary Merritt, Inter Power Development Corp.
E. Charles Wunz, P.E.; Herbert, Rowland, & Grubic, Inc.

The following DEP staff members were present:

Duke Adams, Office of Policy and Communications
Dean Auchenbach, Bureau of Watershed Management (BWM)
Marylou Barton, Bureau of Regulatory Counsel (BRC)
Jim Boswell, Bureau of Waterways Engineering (BWE)
Phil Consonery, BWSFR
Dennis Dickey, BWE
Sid Freyermuth, BWM
John Hines, BWM
Shamus Malone, Water Planning Office (WPO)
Ken Murin, BWM
Meg Murphy, BRC
Gary Obleski, WPO

Shelby Reisinger, BWM
Glenn Rider, BWM
Diane Wilson, BWM
Andrew Zemba, WPO

The following guests were also present:

Mary Anna Babich, Regulatory Supervisor, EXCO-North Coast Energy
John Bohman, Lehigh County Conservation District
Janis Dean, Citizens Advisory Council to DEP (CAC)
Steven Beckman, MacDonald Illig
Jamie Brinkman, K & L Gates, LLP
Karl Brown, PA State Conservation Commission
Ellie Frazier; Buchanan, Ingersoll, & Rooney
Steve Gorman, Waldameer Park, Inc.
Gwendolyn Crews, USDA - Natural Resources Conservation Service (USDA-NRCS)
Dan Dostie, USDA-NRCS
Grant Gulibon, PA Builders Association
Mark Johnson, American Society of Landscape Architects (ASLA)
Jan Keim, CAC
Kathy Kunkel, Electric Power Generation Association
Susan Marquart, PA Association of Conservation Districts
Richard Martin, PA Forest Coalition
Donald McNutt, Lancaster County Conservation District
Anne Misak, Clean Water Action
Erik Ross, National Association of Water Companies
Matt Royer, Chesapeake Bay Foundation
Dan Snowden, PennDOT
Carla Suszkowski, Range Resources
Randy Wood, Rettew Associates, Inc.

General WRAC Business

Approval of Minutes

The minutes of the January 8, 2009 meeting were approved as presented.
The minutes of the February 25, 2009 meeting were approved as presented.

Chapter 105: Dam Safety and Waterway Management

Dennis Dickey, Senior Civil Engineering Manager, Dam Safety, dedickey@state.pa.us, presented on proposed revisions to Chapter 105. Significant changes to the Dam Safety Program will include but are not limited to the following:

- Rewriting of several subsections for clarity
- Proof of financial responsibility required for existing Hazard Category 1 and 2 dams
- Requirement of a preconstruction meeting and a final inspection
- Permit time limits and types of permits issued

- Specific requirements for the development, approval, review, and update of Emergency Action Plans
- The creation of a fourth Hazard Category to align the State's designation system with expected revisions of the National Dam Safety Program

Questions were asked about exceptions for Exceptional Value (EV) and High Quality (HQ) streams, upstream development's potential effect on downstream dam safety, new downstream development in a dam's inundation area, and what documents will be required to be published in the PA Bulletin.

Chapter 85, Bluff Recession and Setback Rules and Regulations

Andy Zemba, Environmental Planning Manager, Coastal Zone Management Program (CZMP), azemba@state.pa.us, presented amendments to the final Chapter 85 rulemaking being prepared for the June meeting of the Environmental Quality Board (EQB). He was assisted by **Gary Obleski**, Environmental Group Manager, WPO, gobleski@state.pa.us, and **Shamus Malone**, Environmental Planning Supervisor, CZMP, smalone@state.pa.us. The Department requested a formal record of the WRAC's recommendations to the EQB.

Mr. Zemba described how Bluff Recession Hazard Areas (BRHAs) are identified and established. He described how setback distances are determined and how property development in BRHAs is regulated by municipal ordinances. He also listed changes made to the proposed rulemaking as a result of public comment, such as not including vegetation management in the regulation, and more clearly identifying the location of BRHAs.

WRAC members asked questions on the following topics:

- the locations of BRHAs
- whether setbacks would move as land recedes
- the enforcement of the deed notice requirement
- the classifications of structures as related to setback distances
- the process through which the DEP's tentative designations of BRHAs become permanent when adopted by the EQB

The Department provided draft language for Sections 85.12 (c) and 85.26, that clarified that the locations of BRHAs are identified in Sections I and II of the Department's 2004 study. Mr. Zemba also discussed research conducted on the requirement of deed notices, and he recommended deleting that language from the regulation. Committee members supported these changes.

Steven Beckman, attorney with Erie law firm MacDonald, Illig, Jones, & Britton, asked the WRAC to amend the Chapter 85 rulemaking with specific language to address a particular property in a BRHA designated area. Debate began amongst the WRAC about adding more flexibility to the rulemaking to make variances easier to obtain. DEP staff studied the language of the Bluff Recession and Setback Act, discussed some initial ideas about variances, and made a commitment to return to the continuation of the meeting with additional information. At the April 23 meeting, Mr. Zemba explained that, based upon further review, the Department did not recommend any changes to the regulations regarding variance language.

Bob Cavett moved that the WRAC recommend to the Environmental Quality Board that they approve the Chapter 85 rulemaking with the understanding that there is a controversy over the details of the Bluff Recession Hazard Areas as they are measured.

The motion was adopted after debate.

Chapter 102, Erosion and Sedimentation Control

Ken Murin, Chief of the Waterways, Wetlands, and Stormwater Management Division, kmurin@state.pa.us, presented an overview of amendments to the draft Chapter 102 rulemaking being prepared for the June meeting of the EQB. Mr. Murin was assisted by Meg Murphy, attorney with the Bureau of Regulatory Counsel, mamurphy@state.pa.us. The Department requested a formal record of the WRAC's recommendations to the EQB.

The WRAC discussed each section of the proposed changes in detail as it was presented over the three days of the meeting. Members' chief concerns were in the following areas:

- costs associated with establishing and maintaining buffers
- length of time of the obligation to maintain buffers after project completion
- strictness of requirements for removal of non-native, noxious, and invasive species
- issues arising from land ownership
- allowing buffers to have an average width
- whether buffers should be required on EV and/or HQ streams
- what types of professionals qualify to establish, maintain, or consult on projects
- whether specific storm-event information should be in the regulations or in the guidance documents
- specific language describing the amount of land that would be required to have a buffer
- allowing stricter local requirements to apply in addition to the proposed 102 regulations

Chairman Rhoads stated for the record that he does not believe that buffers should be mandatory, that they are not the only way to protect waters, and that permittees should be allowed the flexibility to operate.

The members present at the April 29 meeting, recognizing that the DEP is moving forward with the draft rulemaking to the June meeting of the EQB, resolved to draft a letter to the EQB recommending that, to ensure the effectiveness of Chapter 102, continuous improvement of Best Management Practice (BMP) manuals be achieved through updates or amendments to guarantee that the most up-to-date BMPs are benefiting Pennsylvania citizens. They resolved also to recommend that a minimum of three public hearings be held, followed by a minimum sixty-day public comment period, and that public suggestions should be solicited on the following three questions:

- Should HQ watersheds be eligible under Permit-by-Rule?
- Should riparian buffers be mandatory for permitted activities in EV watersheds?
- What should be the length of time and the scope of long-term Operations and Maintenance of buffers, and whose responsibility should this be?

The chair adjourned the April 8 meeting at 3:09 p.m. to reconvene at 9:30 a.m. on April 23 in room 1710 of the Labor & Industry Building, Harrisburg, PA.

The continuation of the regular meeting of the WRAC was called to order at 9:40 a.m. by Chairperson Stephen Rhoads on Thursday April 23, 2009 in room 1710 of the Labor & Industry Building, Harrisburg, PA.

The following committee members were present:

Robert M. Cavett, Merck & Company, Inc.
Carol R. Collier, Delaware River Basin Commission
Matthew J. Ehrhart, Chesapeake Bay Foundation
Art Gazdik, P.E., Ross Township
D. Ty Gourley, University of Pittsburgh
Gary Merritt, Inter Power Development Corp.
Stephen Rhoads, Pennsylvania Oil & Gas Association; **WRAC Chairperson**
Edith Stevens, League of Women Voters of PA
Dr. Robert Traver, Villanova Urban Stormwater Partnership
Bob Wendelgass, Clean Water Action
E. Charles Wunz, P.E.; Herbert, Rowland, & Grubic, Inc.

The following committee members were not present:

David M. Anderson, P.G., Moody & Associates, Inc.
Buddy Beach, P.E., CONSOL Energy (retired)
Donald C. Bluedorn II, Esquire; Babst, Calland, Clements & Zomnir
Jeffrey Hines, York Water Company
John K. Jackson, Stroud Water Research Center
Cory Miller, University Area Joint Authority
Nick J. Pinizzotto, Western Pennsylvania Conservancy

The following DEP staff members were present:

Duke Adams, Office of Policy and Communications
Dean Auchenbach, Bureau of Watershed Management (BWM)
John Hines, BWM
Shamus Malone, Water Planning Office (WPO)
Ken Murin, BWM
Meg Murphy, Bureau of Regulatory Counsel
Gary Obleski, WPO
Glenn Rider, BWM
Diane Wilson, BWM
Andrew Zemba, WPO

The following guests were also present:

Jim Barnes, Chairman, PA State Board of Landscape Architects
Steven Beckman, MacDonald Illig
Jamie Brinkman, K & L Gates, LLP
Paula Conolly, Philadelphia Water Department
Steve Hoffman, Independent Regulatory Review Commission
Kathy Kunkel, Electric Power Generation Association
Susan Marquart, PA Association of Conservation District

The chair adjourned the meeting at 11:40 a.m. to reconvene at 11:00 a.m. on April 29 in the Susquehanna Room of DEP's Southcentral Region Office, Harrisburg, PA.

The continuation of the regular meeting of the WRAC was called to order at 11:10 a.m. by Chairperson Stephen Rhoads on Wednesday April 29, 2009 in the Susquehanna Room of DEP's Southcentral Region Office, Harrisburg, PA.

The following committee members were present:

Robert M. Cavett, Merck & Company, Inc.
Carol R. Collier, Delaware River Basin Commission
Art Gazdik, P.E., Ross Township
D. Ty Gourley, University of Pittsburgh
John K. Jackson, Stroud Water Research Center
Gary Merritt, Inter Power Development Corp.
Stephen Rhoads, Pennsylvania Oil & Gas Association; **WRAC Chairperson**
Dr. Robert Traver, Villanova Urban Stormwater Partnership
Bob Wendelgass, Clean Water Action

The following committee members were not present:

David M. Anderson, P.G., Moody & Associates, Inc.
Buddy Beach, P.E., CONSOL Energy (retired)
Donald C. Bluedorn II, Esquire; Babst, Calland, Clements & Zomnir
Matthew J. Ehrhart, Chesapeake Bay Foundation
Jeffrey Hines, York Water Company
Cory Miller, University Area Joint Authority
Nick J. Pinizzotto, Western Pennsylvania Conservancy
Edith Stevens, League of Women Voters of PA
E. Charles Wunz, P.E.; Herbert, Rowland, & Grubic, Inc.

The following DEP staff members were present:

Duke Adams, Office of Policy and Communications
Barb Beshore, Bureau of Watershed Management, BWM
John Hines, BWM
Ken Murin, BWM
Meg Murphy, Bureau of Regulatory Counsel
Glenn Rider, BWM

The following guests were also present:

Keith Ashley, Harrisburg Builders Association
Patty Davenport, Citizens Advisory Council to DEP
Grant Gulibon, PA Builders Association
Mary Lou Harris, Independent Regulatory Review Commission (IRRC)
Kathy Kunkel, Electric Power Generation Association

Sarah Miller, IRRC
Troy Rohrbaugh, K & L Gates, LLP
Matt Royer, Chesapeake Bay Foundation

The chair adjourned the meeting at 2:55 p.m.