

**Draft Minutes of the
July 15, 2009 Meeting of the
Water Resources Advisory Committee (WRAC)**

The regular meeting of the WRAC was called to order at 9:35 a.m. by Chairperson Stephen Rhoads on Wednesday, July 15, 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
Matthew J. Ehrhart, Chesapeake Bay Foundation
Art Gazdik, P.E., Ross Township
D. Ty Gourley, University of Pittsburgh
Jeffrey Hines, York Water Company
John K. Jackson, Stroud Water Research Center
Gary Merritt, Inter Power Development Corp.
Cory Miller, University Area Joint Authority
Nick J. Pinizzotto, Western Pennsylvania Conservancy
Stephen Rhoads, Pennsylvania Oil & Gas Association; **WRAC Chairperson**
Bob Wendelgass, Clean Water Action; **WRAC Vice Chairperson**
E. Charles Wunz, P.E., Herbert Rowland & Grubic, Inc.

The following committee members were not present:

Robert M. Cavett, Merck & Company, Inc.
Carol R. Collier, Delaware River Basin Commission
Edith Stevens, League of Women Voters of PA
Dr. Robert Traver, Villanova Urban Stormwater Partnership

The following DEP staff members were present:

Jim Boswell, Bureau of Waterways Engineering (BWE)
Douglas Brennan, Bureau of Regulatory Counsel
Phil Consonery, Bureau of Water Standards and Facility Regulation (BWSFR)
Dennis Dickey, BWE
Sid Freyermuth, Bureau of Watershed Management (BWM)
Ron Furlan, BWSFR
John Hines, Deputy Secretary, Office of Water Management
Dan Lapato, DEP Policy Office
Kevin McCleary, BWSFR
Ken Murin, BWM
Shelby Reisinger, BWM
Glenn Rider, BWM
Andrew Zemba, Water Planning Office

The following guests were also present:

Mary Anna Babich, EQT Production
Sara Marie Baldi, Electric Power Generating Association
Teresa Copenhaver, Triad Strategies
Jamie Davis, US Environmental Protection Agency
Terry Dayton, Foundation Coal
Josie Gaskey, PA Coal Association
Stan Geary, Consol Energy
Grant Gulibon, PA Builders Association
Melissa Hamsher, REX Energy
Nathan havens, PA Game Commission
Pat Henderson, PA Senate Environmental Resources and Energy Committee
Steve Hoffman, Independent Regulatory Review Commission
Kelly Rogers, Greenlee Partners
Matt Royer, Chesapeake Bay Foundation
Tom Shervinski, PA Fish & Boat Commission
Pete Slack, PA Municipal Authorities Association
Becky Snyder, Hart Resource Technologies
Carla Suszkowski, Range Resources
James Wheeler, PA State Association of Township Supervisors
Sue Wilson, Citizens Advisory Council to DEP

General WRAC Business**Approval of Minutes**

The minutes of the April 8, 2009 meeting were approved as corrected.

Unfinished Business

Gary Merritt asked whether the Department had taken any action on the creation of a stakeholders group to discuss high total dissolved solids (TDS) in the Monongahela River. Don Bluedorn announced that DEP staff had contacted him to say that the Department is currently working with regional authorities to determine the best way to hold discussions regarding the Monongahela watershed and that this could be a possible parallel path to the development of regulations.

New Business**Chapter 105, Dam Safety**

Dennis Dickey, dedickey@state.pa.us, Senior Civil Engineering Manager, Dam Safety division of the Bureau of Waterways Engineering, returned to WRAC with responses to members' questions about proposed changes to the dam safety portion of Chapter 105. Topics included

cost assessments and financial responsibility, public notice for permit issuance and emergency action plan (EAP) approval, corrections for changes in annual rainfall due to climate change, safety factors for earthen dams, and whether EAP exercises should be required.

Chairman Rhoads asked Mr. Dickey about the Department's timeframe for implementation of these changes. Mr. Dickey said the changes would be presented to the Environmental Quality Board (EQB) at its October 2009 meeting, followed by a thirty-day public comment period.

Gary Merritt moved to approve the proposed Chapter 105 regulations as presented for submission to the EQB.

The motion was adopted.

Chapter 95, Wastewater Treatment Requirements

Kevin McLeary, kmcleary@state.pa.us, Chief, Facility Permits Section, and **Ron Furlan**, rfurlan@state.pa.us, Manager, Planning and Permits Division of the Bureau of Water Standards and Facility Regulation (BWSFR), returned to the WRAC with corrections and updates to the proposed changes to Chapter 95. He briefly reviewed changes since WRAC's April meeting, stating that there were a few minor adjustments but that the regulations remained essentially unchanged.

WRAC members asked specific questions about how the proposed regulations would pertain to abandoned and active minelands, and about precise definitions of the terms "new discharge" and "existing discharge." The main topic of discussion was the appropriateness of the Department's timeframe for moving the proposed regulations to the EQB and whether it might be more appropriate to perform more research.

Don Bluedorn moved to adopt the following text as WRAC's recommendation to the Department regarding the Chapter 95 draft rulemaking package:

WRAC recognizes and fully supports the protection of all of the Commonwealth's surface and ground waters. However, from the commentary received at WRAC's June meeting and today's discussions, it is clear that the draft Chapter 95 regulation to limit the discharge of total dissolved solids and several other pollutants affects not only the quality and uses of the Commonwealth's waters but also many different sectors of Pennsylvania's economy.

WRAC believes that the ramifications of the draft Chapter 95 regulations are wide ranging and have not been adequately analyzed by the Department. Specifically, WRAC believes that the draft regulation needs to be supported by science. Among other things, the Department needs to analyze more fully the surface water impacts of existing high TDS discharges, potential water quality impacts from new high TDS discharges, the treatment technologies needed to achieve compliance, and the impacts of the regulation on energy consumption, air emissions, residual waste generation and disposal, mine-land reclamation, and the economic impacts on the development of the Marcellus Shale and other affected sectors of Pennsylvania's economy.

Rather than proceeding to public notice with a proposed rule, WRAC recommends that the Department work in conjunction with WRAC to form a statewide stakeholders group to analyze the

issues and develop appropriate solutions. This approach was very successful in developing the Department's "Water Quality Antidegradation Implementation Guidance," and WRAC believes that it can be successful in this instance, too.

In the interim, WRAC encourages the Department to use the full range of regulatory resources at its disposal to ensure protection of the existing and designated uses in the Commonwealth's receiving streams.

The motion was adopted after debate and amendment.

Chapter 95, Stakeholders Group

The WRAC discussed the makeup and official purpose of the stakeholders group called for by the above motion. They also discussed the timeframe for the creation of this group, the time period over which it would meet, and the questions that the group should discuss. The Chair called for official recommendations for group members, technology vendors, and a group chair by July 24, and he said that he and Mr. Hines (Deputy Secretary for Water Management) would provide the WRAC with a summary of their discussion and proposals.

Chapter 96, Water Quality Standards Implementation

Andy Zemba, azemba@state.pa.us, of the Water Planning Office (WPO) and **Douglas Brennan**, dobrennan@state.pa.us, of the Bureau of Regulatory Counsel returned to the WRAC with corrections and updates to the proposed revisions and additions to Chapter 96. **Ann Smith**, annsmith@state.pa.us, of the WPO joined them via telephone. Changes included the removal or replacement of several terms and phrases, the addition of new definitions, and the clarification of the criteria needed to qualify to generate nutrient credits.

WRAC members asked questions or made suggestions on the following topics:

- The use of partial water-years in generating offsets
- Whether sediment is a tradeable commodity
- That trading of credits between watersheds is prohibited should be explicitly stated
- Whether any time limit exists for the request and award of credits
- Public notice requirements for offsets and NPDES permits
- The appropriateness of delivery ratios applied throughout the watershed.

Charles Wunz moved to endorse the offsets and tradable credits amendments in the new section of the Chapter 96 rulemaking package, provided that the regulation is revised to state that sediment credits may be traded, and that, in the preamble to its proposal to the Environmental Quality Board, the Department requests public comment on the application of delivery ratios to permit limits, when used in the trading program.

The motion was adopted after debate and amendment.

Chapter 105, Workgroup Report

Matt Royer of the Chesapeake Bay Foundation summarized the results of a series of workgroup meetings that began in January of 2008. The group discussed two parts of the Chapter 105 proposed regulations: (1) the Wetland Classification concept, and (2) the Aquatic Resource Compensation concept: Pennsylvania Integrated Ecological Services, Capacity Enhancement, and Support (PIESCES) program.

Both the group members and the WRAC want the group to continue to work with the Department as the development of these programs continues.

The meeting was adjourned at 1:05 p.m.