

PA Environment Digest

An Update On Environmental Issues In PA

Edited By: David E. Hess, Crisci Associates

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DEP Citizens Advisory Council To Invite Ideas On Improving Public Participation

Members of the [DEP Citizens Advisory Council](#) voted unanimously Tuesday [to invite the public](#) and members of other DEP advisory committees to submit ideas on how to improve the public participation process for developing regulations and technical guidance at the agency.

Noting that DEP was at a very early stage of developing changes to this policy, the Council members felt it would be helpful to the department to provide input into potential changes the agency should consider.

The Council was informed that DEP Secretary Michael Krancer was opposed to the Council soliciting ideas for improving public participation because he felt it would create confusion with the public as the agency went ahead with its more formal process for updating its public participation policies.

The Council will be putting out a formal announcement inviting comments in the next few weeks.

Also adopted by the Council was its [2013 Strategic Workplan](#) setting out priority issues the Council will focus on in the coming year. The Workplan was prompted in part by the significant cuts in the CAC's budget over the last few years. The priorities established in the Workplan include--

- The Department's performance in advancing transparency and public participation in policy development, program implementation, public service, enforcement actions and permitting decisions.
- Ongoing review and analysis of Department activities as mandated by state statutes (for example, the Bituminous Mine Subsidence and Land Conservation Act and the Air Pollution Control Act).
- Providing a forum for issues brought by the public to the CAC, as appropriate. Council will review pending issues quarterly.
- Consult with, and bring issues to the attention of, the legislature.
- The Department's ability to fulfill its statutorily mandated responsibilities and mission in light of continued budget cuts at the state and federal level.

Council took action on two other issues--

- **Air Quality Regulations:** Council voted to recommend approval of final Chapter 121 Air Quality

regulations related to particulate matter controls and recommended DEP move ahead with proposed changes to Chapter 129 Air Quality regulations setting RACT requirements for major sources of NO_x, although the Council said more study was needed on the substance of the proposal; and

-- **Transparency:** Council voted to draft a letter to DEP urging the agency to be more transparent in providing information to the public based on recommendations of the PA League of Women Voters. Council members would have the opportunity to review the letter before it is sent.

Other issues discussed at the Council meeting included:

Permit Review Public Participation: Robert Altenburg, DEP Policy Office, presented the Council with a very draft policy setting out public participation options on individual permit reviews during the meeting and asked for Council comments by March 5.

Altenburg said the new policy represents a complete re-writing and updating of the previous policy focused on fixing the obvious things which were out of date, clarifying the types of public participation tools available-- hearings, meetings, informal conferences, and authorizing options involving new technology like web meetings.

New to the policy are guidelines on public conduct during hearings and meetings.

DEP expects to put the revised policy out for formal public review by the end of March, but the draft document DEP presented to the Council they said should not be shared with the public.

The Council voted to host a webinar with DEP on its current public participation policies on permit reviews and on DEP's proposed changes, once those become available to help educate the public on the public participation tools DEP has available.

Environmental Justice Public Participation: Holly Cairns, Acting Director of DEP's [Office of Environmental Advocate](#), said DEP's draft revisions its Environmental Justice Public Participation Policy, which kicks in during reviews of individual permits, is still undergoing internal review at the department.

Cairns did said the geographic areas, called Environmental Justice Areas, were just updated by DEP using the most recent population and economic data. Due to an increased number of census tracts created in 2010 and other factors, the number of Environmental Justice Areas have increased significantly.

Several Council members expressed an interest in learning more details about why there has been an increase in the number of EJ Areas and Cairns offered to be part of a conference call with interested members.

Permit Backlog: Dana Aunkst, DEP Deputy Secretary for Field Operations, provided an update on the new Permit Decision Guarantee Process noting the release of the agency's [first quarterly report](#) last week. Aunkst cautioned the report includes very preliminary data on the first 10 weeks of the program and not even a full quarter.

Aunkst said DEP was taking steps to eliminate the agency's backlog in permit applications which he said was as high as 11,000 applications. When the new Decision Guarantee Program started in September the backlog was just over 9,900 applications.

Currently there are just over 6,000 applications in the backlog and the agency has a goal of eliminating those applications by July 1. Aunkst said many of the applications knocked off the list so far

have been inactive or unwanted applications submitted to the agency, in some cases, years ago.

Aunkst noted the department denied 1.31 percent before the Permit Decision Guarantee and after the Guarantee Program 1.36 percent.

Natural Gas Industry Radiation Study: Vince Brisini, DEP Deputy Secretary for Waste, Air, Radiation and Remediation, provided an overview of a study the agency is doing to comprehensively monitor and document naturally occurring radiation coming from the waste products of Marcellus Shale drilling.

Called TENORM (technologically enhanced naturally occurring radioactive material), many of the waste materials associated with Marcellus Shale drilling are naturally radioactive to some extent, but until now there has not been a comprehensive study to document the extent and potential hazards associated with these wastes.

The study will include measuring and evaluating naturally occurring radiation from wastes such as drill cutting, wastewater sludges and radon gas in air emissions. In addition, the natural gas itself produced by the wells will be analyzed for its radon gas content even though radon gas has a half-life of just six days.

[Click Here](#) for background on the study and future updates.

Water Testing Protocols: Barbara Hall with TestAmerica, Inc., a provide laboratory which provides water testing services in the Marcellus Shale regions of the state to private clients and DEP, gave Council a briefing on water testing protocols.

During its last two meetings Council has been presented with [concerns and allegations](#) about DEP “hiding” some water sampling results from homeowners.

As a result of the presentation, it became clear there has been a misunderstanding about how test results are generated at a modern lab like TestAmerica.

Hall clarified that while modern testing equipment frequently provides sample results on a broad spectrum of substances in a sample at the same time, the client or DEP requests the individual results it wants by substance or parameter.

For example, in the controversy presented to Council, DEP was doing investigative sampling trying to determine if a water supply was affected by Marcellus drilling. Hall pointed out only a handful of parameters are necessary to make that determination and those are the results they report to their clients or DEP, even though their equipment might have automatically analyzed the sample for many more substances.

Hall said, unlike other states, Pennsylvania does not have a set list of parameters drilling companies should use to analyze water wells around their drilling sites, at a minimum within 2,500 feet. The Marcellus Shale Coalition, an industry group, Hall said will soon be publishing it own site of water sampling parameters for member companies to use.

Agency Monthly Report: DEP provided the Council with a 23-page long monthly report of its activities in each of the major agency program areas. The detailed report highlights major initiatives underway, regulatory and policy changes being considered, the status of certain key programs and much more. [Click Here](#) to read the report.

FY 2013-14 Budget Proposal: Holly Cairns, Acting Director of DEP's Office of Environmental Advocate said the agency will provide an update on the FY 2013-14 budget proposal to Council at its March 19 meeting. In lieu of a report by DEP, Council members were provided copies of these articles on the budget--

- [Corbett Proposes \\$10 Million Increase In Farmland Preservation, More DEP Staff Cuts](#)
- [\\$1.8 Billion Cut/Diverted From Environmental Programs Over Last 11 Years](#)
- [Growing Leaner: Shrinking Commitment To The Environment Over Last 10 Years](#)
- [DEP, DCNR Secretary Respond To Concerns About Budget Cuts](#)

In addition, the Council was provided with a brief overview of the [2011-12 Report on State Performance](#) which showed overall compliance with environmental regulations dropped 12 points between 2001 and the 2011-12 Performance Report.

Council Chair John Walliser asked members to think about how the Council should get involved in the budget deliberations in the General Assembly, given the 2013 Strategic Workplan highlights this issue as critical in the coming year.

Public Comment: During the public comment period three individuals presented comments:

- **Roberta Winters, PA League of Women Voters** expressed concerns about the decrease in funding and staffing for DEP; urged the CAC to examine whether DEP is accomplishing its mission of protecting the environment; and asked whether promoting advanced energy technology is in conflict with that mission.
- **Jeff Schmidt, PA Sierra Club** expressed concerns about the procedures used by DEP to providing water testing results to landowners in Marcellus Shale drilling areas; highlighted concerns about TENORM waste from drilling operations triggering alarms at landfills; and noted DEP's Environmental Justice permit review policy excludes Marcellus Shale gas drilling permits.
- **Steve Kunz, Schmidt & Company** said on December 27 DEP took action in Greene County to declare six streams beyond repair due to damage from longwall coal mining in the Bailey Mine. The company is appealing the determination.

The next meeting of the Citizens Advisory Council is March 19 in Room 105 Rachel Carson Building, Harrisburg. [Click Here](#) for available handouts for each meeting.