



# Citizens Advisory Council

to the Department of Environmental Protection of the Commonwealth of Pennsylvania

## **Pennsylvania Constitution**

### **Article I, Section 27**

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

## 2017 Annual Report

Donald S. Welsh  
Chair

Lee Ann H. Murray  
Executive Director

0940-RE-DEP5035 11/2018

## Council Overview

Since its inception in 1971<sup>1</sup>, the Citizens Advisory Council (“Council” or “CAC”) has been actively involved in environmental issues affecting the Commonwealth of Pennsylvania. The Council was originally created to establish a non-partisan body to represent citizen viewpoints and provide objective analyses of the Department of Environmental Protection’s (“Department” or “DEP”) performance on environmental issues. With the passage of legislation, the Council was given three specific charges:

- I. The Citizens Advisory Council shall review all environmental laws of the Commonwealth and make appropriate suggestions for the revision, modification, and codification thereof;
- II. The Council shall consider, study, and review the work of the Department of Environmental Protection and, for this purpose, the Council shall have access to all books, papers, documents, and records pertaining to or belonging to the Department; and
- III. The Council shall advise the Department upon request, and shall make recommendations upon its initiative, for the improvement of the work of the Department.

Because of this legislation, the Citizens Advisory Council is the only legislatively-mandated advisory committee with the comprehensive charge to review all environmental legislation, regulations, and policies affecting the Department of Environmental Protection.

Additionally, the 1992 amendments to Pennsylvania’s Air Pollution Control Act require DEP to consult with the Council in developing state implementation plans and regulations developed by the Department to implement the federal Clean Air Act. The Council also can “consider, study and review department policies and other activities related to the Clean Air Act...” and provide a summary of its relevant activities for inclusion in the Department’s evaluation of the effectiveness of its Clean Air Act programs to be submitted to the General Assembly every five years.<sup>2</sup>

The Council is comprised of the Secretary of the Department of Environmental Protection (ex officio), six members appointed by the Governor, six members appointed by the President Pro Tempore of the Senate, and six members appointed by the Speaker of the House of Representatives<sup>3</sup>. The term of office for each of the appointed members of the Council is three years and may continue beyond three years until a successor is appointed. All actions of the Council are by majority vote. According to the statute, the CAC shall meet quarterly; however, the Council tends to hold monthly meetings, except in August and December.

An important part of the Council’s mission is to encourage public participation and engagement from citizens of the Commonwealth. The CAC seeks to represent all people of the

---

<sup>1</sup> The Citizens Advisory Council is an independent advisory board of the Department of Environmental Protection housed within the DEP and charged with reviewing all environmental issues, legislation, regulations, policies, and programs pursuant to Sections 448(p) and 1922-A of the Administrative Code of 1929, as amended by Act No. 1970-275 and Act No. 2016-07, 71 P.S. §§158(p) and 510-22.

<sup>2</sup> Act of January 8, 1960, P.L. (1959) 2119, No. 787, as amended, known as The Air Pollution Control Act (35 P.S. § 4001, et seq.).

<sup>3</sup> No more than three members nominated by each of the respective authorities may be from the same political party.

Commonwealth and bring a collective view of the public interest in the environment through a diversity of personal experiences and perspectives.

The CAC members are integrated into the oversight structure of the Department because they are also elected to serve on various boards and advisory committees within the DEP. The CAC designates five of its members to serve on the Environmental Quality Board, four members to the Mining and Reclamation Advisory Board, four members to the Aggregate Advisory Board, as well as one member to each of the following: Air Quality Technical Advisory Board (“AQTAC”), Low-Level Waste Advisory Committee (“LLWAC”), Solid Waste Advisory Committee (“SWAC”), Oil and Gas Technical Advisory Board (“TAB”), Environmental Hearing Board Rules Committee (“EHB”), and the Radiation Protection Advisory Committee (“RPAC”). (Appendix A - 2017/2018 CAC Committee and Board List)

Within the CAC, committees focus on specific areas of interest. The Legislative Committee, Policy and Regulatory Oversight Committee, Strategic Issues Committee, Public Participation Committee, and Executive Committee meet on an as-needed basis and report back to the full Board on topics and issues brought before their respective Committee.

At the end of the year, the CAC summarizes its activities and provides an Annual Report to the Governor, the General Assembly, the Department, and the public. This Annual Report highlights the activities of the Council and provides an opportunity for interested stakeholders to provide feedback on the work of the CAC and offer suggestions for improvement or future areas of focus for Council.

### **Council Membership**

The CAC is comprised of a dedicated group of concerned citizens appointed to the Council by either the Governor or the General Assembly. Each member brings with him or her a unique perspective and wealth of knowledge on environmental issues. Diversity of experience and thought allows for a comprehensive understanding and analyses of Department regulations and policy initiatives. The Council engages in thoughtful discussion prior to counseling the Department or alerting relevant decision-makers of necessary action to be taken.

Below is a list of CAC Members in 2017:

Cynthia Carrow, Allegheny County

Mark Caskey, Washington County

Terry L. Dayton, Greene County

David Dunphy, Philadelphia County

William C. Fink, Bedford County

John Hines, Lebanon County

Walter Heine, Cumberland County

Duane E. Mowery, Cumberland County

John R. Over, Jr., Fayette County

James Sandoe (Vice Chair), Lancaster County

James Schmid, Delaware County

Jerome Shabazz, Philadelphia County

John St. Clair, Indiana County

Thaddeus Stevens, Tioga County

John J. Walliser, Esquire, Allegheny County

Donald S. Welsh (Chair), Chester County

James Welty, Cumberland County

Timothy Weston, Esquire, Cumberland County

Patrick McDonnell, DEP Secretary, ex-officio

The Department of Environmental Protection provides an Executive Director to serve as a liaison between the Council and the Department. The Executive Director also assists the Council with its administrative functions. The Council has the statutory authority to hire experts, stenographers, and assistants as may be deemed necessary to carry out its work.

### **Officers**

During the 2017 meetings of the CAC, Donald S. Welsh and James Sandoe were elected Chair and Vice Chair, respectively. William C. Fink, Cynthia Carrow, and Timothy Weston were also elected to serve on the Executive Committee, along with the Chair and Vice Chair pursuant to the Bylaws.

### **Highlights of Council Activities**

#### **Mining Issues**

The Bureau of Mining, along with an independent geologist, presented an overview of **Karst Geology** and sinkholes in Pennsylvania. Sinkholes, which are caused or accelerated by human activities, can be triggered by water level declines and certain construction activities. Subsurface disturbance and drainage changes can have an impact on the development of sinkholes. Council

heard an in-depth presentation on the karst formation over the millennia, sinkhole formation and triggers, climate change and storm intensity, sinkhole investigation and remediation, and sinkhole prevention and construction practices.

The Bureau of Mining programs provided a progress report on **Act 54 Recommendations for Best Management Practices**. Currently, 25 of the 45 issues have been addressed. Some of the issues that need to be addressed are long term, while others are subject to executive decisions and available funding. Several major DEP initiatives, such as electronic monitoring and e-permitting options are currently in progress and should contribute to increased staff efficiency, timeliness, and transparency when fully implemented. According to DEP, the framework for the fifth report is currently being developed. The University of Pittsburgh is interested in continuing their work on the next report. The Department will collect the data for the University this time. If work proceeds on schedule, the report should be completed by April of 2019 and will be distributed sometime in the fall.

## **Water Issues**

Council was presented a **Safe Drinking Water** program update which was prompted by a letter from the Environmental Protection Agency noting several deficiencies with the Department's Drinking Water Program, mainly due to insufficient staffing levels. According to the Department, the Commonwealth is ranked fourth in the nation in terms of the number of public water systems (PWS), yet the number of sanitarians responsible for regulating the PWSs and ensuring that safe and potable drinking water is continuously provided to the 10.3 million customers is far below the national average. On average, the 54 sanitarians doing the inspections are each responsible for 158 systems. This far exceeds the number a 2007 workload analysis study indicated would be appropriate to ensure that quality inspections are done in a timely matter. To address the issue of funding shortfalls in the program, the Department is working on a fee package which will allow for the hiring of 33 new positions in the Safe Drinking Water Program.

**Pennsylvania in the Balance** is a collaborative stakeholder initiative driven by motivated leaders in agriculture and the environment who are looking to identify innovative solutions that can help to ensure vibrant and productive agriculture while meeting the water quality goals for Pennsylvania's rivers and streams, along with the Chesapeake Bay Total Maximum Daily Load ("TMDL") requirements. Penn State's Agriculture and Environment Center held a conference which helped to facilitate a discussion on how to ensure that the Commonwealth can maintain profitable and productive agriculture while also achieving its water quality goals. The strategy embraces agriculture and the culture of stewardship, while looking to leaders in agriculture to be a solution to clean water in Pennsylvania.

A presentation by the Chesapeake Bay Office in DEP's Office of Water Programs on the **Conowingo Dam** addressed issues surrounding the sediment trapping capacity of the Dam and its short-term and long-term impact on the Chesapeake Bay TMDL. The Susquehanna River is the largest influence on the water quality of the Chesapeake Bay. It is approximately half of the freshwater inflow to the Bay and contributes 41% of the nitrogen load, 25% of the phosphorus load, and 27% of the sediment load. Assumptions were made that the current trapping capacity

of the Conowingo Dam would continue until 2025. Unfortunately, studies indicate that is no longer happening and now that equilibrium has been reached, what goes into the Dam comes out of the Dam to flow downriver into the Bay. The loss of net sediment trapping has an impact on how upstream pollution management practices translate into downstream impacts on water quality. The current trapping and transport issues surrounding the Dam are being incorporated into the Chesapeake Bay modeling tools. Additional reductions and the date at which they will need to be achieved will occur within the Bay Programs Principle Staff Committee. Possible implementation solutions are being, and will continue to be, explored to address the impacts resulting from changed conditions.

Council was given a presentation by a private, commercial enterprise, Resource Environmental Solutions, on **Emerging Trends in Ecological Offsets**. An overview was provided on ecological offset drivers, wetland/stream mitigation, endangered species mitigation, water quality/stormwater offsets, and regulatory challenges.

## **Air Issues**

**Methane Reduction Strategies for Natural Gas Operations** was presented to the CAC by the Department's Bureau of Air Quality. Draft ideas related to new general permits were presented to the CAC, including updates to GP-5 and converting the existing Exemption 38 for natural gas well pads and remote drilling stations to GP-5A going forward. According to the presentation, new and existing facilities would have to comply with the updated Best Available Technology upon construction or an upgrade. The controls being sought in GP-5 and GP-5A would require efficiency of 98% or a greater reduction of methane and VOC emissions. Fugitive emissions would be monitored monthly by well site crew and quarterly by leak detection and repair (LDAR) program inspections or other approved methods. The Department also noted that based on recently published EPA Control Techniques Guidelines to address volatile organic chemicals from existing sources, DEP must create a State Implementation Plan ("SIP") for regulations to address emissions from existing sources within the next two years.

An update on the **Volkswagen (VW) Beneficiary Mitigation Plan (Plan)** described how the mitigation plan related to the unlawful emissions from VW's 2.0-liter and 3.0-liter diesel vehicles in model years 2009-2016. The Plan calls for DEP to receive proposals for projects and to rate the projects on established and publicized criteria, such as cost effectiveness, emissions reductions, and air quality where the project is located. DEP will grade the project applications to determine the best eligible projects, then apply to the Trustee for approval to fund those projects.

## **Oil and Gas Issues**

The DEP Office of Oil and Gas Management met with the Council to discuss **Seismicity in Pennsylvania and the Pennsylvania State Seismic Network (PASEIS)**. Specifically, the Lawrence County seismic event and the Department's work regarding seismic activity were presented. A series of low magnitude events occurred on April 25, 2016 near a location where an operator was actively hydraulically fracturing the Utica shale. Discontinuation of hydraulic fracturing operations at the site corresponded with the cessation of the seismic events. An extensive analysis was conducted establishing a relationship between the zipper fracturing being

conducted by the operator and the detected seismic events. Zipper fracturing is a practice whereby two wells parallel to each other and extending in the same direction are hydraulically fractured at the same time. The operator took immediate actions to fix the situation and the seismic events stopped shortly thereafter. Permits issued for wells in the Utica Shale require operators to develop a Seismic Monitoring Mitigation Plan. There is also the Pennsylvania State Seismic Network, which has been in progress for over 10 years. DCNR and DEP partnered to fund an expansion of the network from 10 stations to a total of 30 stations. The expanded network will be better able to monitor seismic events across the Commonwealth and to record and discriminate between the different types of seismic events.

## **Radiation Issues**

The Bureau of Radiation Protection provided an update on **Proposed Radiological Health Rulemaking and Radon Certification**. The radiological health amendments would help ensure that only trained professionals operate radiation sources and would provide greater clarity to the regulated community. The proposed changes would ensure the safety of the public and workers from the harmful effects of radiation. The proposed changes to the radon certification exemptions and the codification of current radon testing protocols were presented by the Department.

Council received a presentation by The Brattle Group analyzing the **Pennsylvania Nuclear Power Plants' Contribution to the State Economy**. The presenters were consultants engaged by the nuclear industry. This presentation argued that nuclear power plants contribute approximately \$2 billion to the state's gross domestic product, account for 15,900 in-state full-time jobs, and are responsible for \$69 million in net state tax revenues annually. The presenters claimed that without the energy from nuclear power plants, there would be a greater reliance on fossil fuel generation, which would increase carbon and other air emissions. The presenters cited studies indicating that nuclear power plants will help avoid over 37 million tons annually of CO<sub>2</sub> emissions and significant amounts of criteria pollutants over the next ten years, as well as help to keep electricity prices low.

## **Administrative and Program Issues**

A presentation was given by Sean Crager, Chief Information Officer of DEP's Bureau of Information Technology ("BIT") on **Information Technology Modernization**. The Department discussed its goals, objectives, and initiatives in the area of Information Technology. Specifically, BIT laid out its plans to: (1) implement a digital government strategy, modernizing technologies and applications, and modernizing the way DEP develops applications; (2) redesign DEP's internal and external website, increasing data transparency to the public, and creating an open data portal; (3) foster and empower a mobile workforce, increasing mobile technology capabilities, and implementing mobile applications; (4) strengthen strategic planning and governance, collaborating with other entities, and communicating strategies across DEP; and (5) implement service transformation, enhancing security services, and increasing disaster recovery capabilities.

DEP's Policy Office gave a presentation describing three policies which would soon be up for public comment: **Development and Review of Regulations Policy; Policy for the Development and Publication of Technical Guidance; and the Advisory Committee Guidelines Policy.** Updates to the regulatory review policy would provide greater transparency and clarity, as well as help to facilitate meaningful conversation between DEP and stakeholders who are interested in participating in policy development. The policy provides an overview of the regulatory review process, including how environmental regulations are crafted and what, why, and how DEP carries out its regulatory obligations. The technical guidance policy outlines DEP's key considerations for the development of technical guidance documents, the tools available to enhance transparency in the process, the public comment period, and maintenance and distribution of technical guidance documents. Suggested changes to the advisory committee policy are intended to provide clarity, ensure meaningful collaboration with DEP advisory committees and the public, and provide answers to questions that have been received since the policy was first put into place. (Appendix B - 2015 CAC Summary Report from the Public Participation Committee, in part) (Appendix C - CAC Comments to Public Participation Policies)

### **Legislative Issues**

The leadership of the Environmental Resource and Energy Committees in both the House and Senate met with the CAC for a **Legislative Update** to discuss their agendas for the upcoming session. Present were Representative John Maher, along with Republican Executive Director Jonathon Lutz; Richard Fox, House Democratic Executive Director from Rep. Mike Carroll's Office; and Joanne Manganello, Senate Minority Executive Director from Senator John Yudichak's Office. While the Budget and DEP funding topped the list of important issues, the collapsed system of e-recycling, the sunset date for recycling fees, underground storage tanks, and Growing Greener funding were also discussed.

### **Actions Taken**

Throughout the year, Council undertakes a number of actions, including the review of regulations brought forward by DEP. Below is a list of specific actions taken by the CAC:

- **Budget Letter** to the General Assembly, with a focus on staffing concerns in the Department, especially the Safe Drinking Water Program;
- Joint letter with the Solid Waste Advisory Committee **encouraging action on the recycling sunset, as well as fixing the Covered Device Recycling Act;**
- Letter requesting legislative action on **SB144 (Yaw)** related to alternative systems in sewage facilities planning;
- Review and approval of draft final rulemaking for the amendment to the air regulations **Chapter 126;**
- Review and approval of the Department's completed **SO2 nonattainment area State Implementation Plans (SIPs);**
- **Strategic Planning Meeting** held to review and discuss the purpose of CAC and provide suggestions and focus for the upcoming year;
- Approval of new **CAC logo;** and



- Comment letters on DEPs **Development and Review of Regulations Policy; Policy for the Development and Publication of Technical Guidance;** and the **Advisory Committee Guidelines Policy.**

### **New Bylaws**

On February 4, 2016, the CAC voted to write Bylaws to replace the outdated Rules of Procedure to offer more structure for both Council and staff. A committee of members was formed and a draft version of the Bylaws was presented to the CAC for review and comment. The draft Bylaws were discussed and amended at the October 18, 2016 meeting. Comments were solicited and extended until November. The final version of the Bylaws was passed unanimously at the January 17, 2017 meeting of the CAC.

### **Public Participation**

As part of its mission, Council seeks to represent all people of the Commonwealth and bring a collective view of the public interest in environmental protection and natural resources through a diversity of personal experiences and perspectives. A regular part of the Council meetings is the public comment period, which allows citizens of the Commonwealth to provide written or oral testimony to the Council on various concerns involving environmental resources of the Commonwealth. Minutes of the CAC meetings list anyone who provides public comments to the Council, as well as a summary of their concerns. Comments from concerned citizens help to inform the Council members on issues and allow the Council to follow up with the Department if necessary.

For more information, please go to:

<http://www.dep.pa.gov/PublicParticipation/CitizensAdvisoryCouncil/Pages/default.aspx>

or contact Lee Ann H. Murray, Executive Director at [leemurray@pa.gov](mailto:leemurray@pa.gov).

## Appendix A

### ENVIRONMENTAL QUALITY BOARD

#### MEMBERS:

- Cynthia Carrow
- Terry Dayton
- William Fink
- Jim Sandoe
- Don Welsh

#### ALTERNATES:

- James A. Schmid
- John St. Clair
- John Walliser

*Meetings: Generally, held the same days as CAC meetings in Harrisburg. Approximately, ten (10) meetings per year.*

### MINING AND RECLAMATION ADVISORY BOARD

#### MEMBERS:

- Cynthia Carrow
- Terry Dayton
- John St. Clair
- James Schmid

#### ALTERNATE:

- Lee Ann H. Murray

*Meetings: Generally, four (4) total meetings. Three (3) in Harrisburg and one at an off-site location.*

### AGGREGATE ADVISORY BOARD

#### MEMBERS:

- Terry Dayton
- Thad Stevens
- William Fink
- Tim Weston

#### ALTERNATE:

- Lee Ann H. Murray

*Meetings: Generally, four (4) total meetings. Three (3) in Harrisburg and one at an off-site location.*

## **AIR QUALITY TECHNICAL ADVISORY COMMITTEE (AQTAC)**

### **MEMBER:**

- John Walliser

*Meetings: Generally, seven (7) meetings scheduled. Last year four (4) were cancelled and one (1) was turned into a webinar.*

## **LOW-LEVEL RADIOACTIVE WASTE ADVISORY COMMITTEE (LLWAC)**

### **MEMBER:**

- Lee Ann H. Murray

*Meetings: One (1) meeting per year.*

## **SOLID WASTE ADVISORY COMMITTEE (SWAC)**

### **MEMBER:**

- Jim Sandoe

*Meetings: Generally, four (4) meetings a year.*

### **ALTERNATE:**

- Lee Ann Murray

## **OIL AND GAS TECHNICAL ADVISORY BOARD (TAB)**

### **APPOINTEE:**

- (Bryan McConnell, Chair)

*Meetings: Generally, five (5) meetings a year.*

*Note: This member is selected by the CAC from a list of three (3) people who meet the criteria. Once selected, the name is given to the Governor. (see TAB Bylaws)*

<http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/TechnicalAdvisoryBoard/2015/TAB%20Bylaws.pdf>

## **ENVIRONMENTAL HEARING BOARD RULES COMMITTEE (EHB)**

### **APPOINTEE:**

- (Gail M. Conner, Esquire)

*Note: One member appointed by the Chairman of the CAC.*

<http://ehb.courtapps.com/public/rulesCommittee.php>

## **RADIATION PROTECTION ADVISORY COMMITTEE (RPAC)**

### **APPOINTEE:**

- Lee Ann H. Murray

*Meetings: Generally, anywhere from two (2) to four (4) a year.*

## Appendix B

### **Citizens Advisory Council (CAC) Public Participation Committee Report Recommendations for Making DEP's Advisory Committees More Effective**

The Citizens Advisory Council's Public Participation Committee developed this report, which includes a series of recommendations for making the Department of Environmental Protection's (DEP) advisory committees more effective and recommendations for revising the agency's 1998 Policy #012-1920-002: Advisory Committee Guidelines. The recommendations are based on a survey the Committee sent to the Chairs of 22 of DEP's Advisory Committees soliciting suggestions on how to improve public participation in the agency's development of regulations, policies, procedures, standards, and technical guidance; a roundtable discussion on October 21, 2014, to which the chairs of DEP's advisory committees and DEP staff serving as liaisons to advisory committees were invited; and the Committee's own review of the Advisory Committee Guidelines during an October 1, 2014 conference call.

**Survey:** On August 25, 2014, the CAC's Public Participation Committee submitted a survey to the chairs of 22 of DEP's advisory committees. The following questions were included in the survey:

1. How could DEP make better use of the expertise on your advisory committee?
2. Does your advisory committee receive feedback from DEP when it provides comments to the agency?
3. How well is your advisory committee being supported by DEP, including timely notice of meetings, distribution and posting of meeting handouts, and reimbursement for expenses?
4. What comments do you or your advisory committee have on DEP's Advisory Committee Guidelines (1998)?
5. What does your advisory committee believe are its most significant accomplishments or where does your advisory committee believe it has made its most significant impact?

**Survey Population:** The CAC submitted surveys to the chairpersons of the following DEP advisory committees:

Agricultural Advisory Board  
Air Quality Technical Advisory Committee  
Cleanup Standards Scientific Advisory Committee  
Climate Change Advisory Committee  
Coastal Zone Advisory Committee  
Environmental Justice Advisory Board  
Laboratory Accreditation Advisory Committee  
Low-Level Waste Advisory Committee  
Mine Families First Response and Communication Advisory Council  
Mining and Reclamation Advisory Board  
Radiation Protection Advisory Committee  
Oil and Gas Technical Advisory Board

Sewage Advisory Committee  
Recycling Fund Advisory Committee  
Small Water Systems Technical Assistance Center Board  
Small Business Compliance Advisory Committee  
Solid Waste Advisory Committee  
State Board for the Certification of Water and Wastewater System Operators  
State Board for the Certification of Sewage Enforcement Officers  
Technical Advisory Committee on Diesel-Powered Equipment  
Storage Tank Advisory Committee  
Water Resources Advisory Committee

**Survey Responses:** Of the 22 DEP advisory committee chairpersons surveyed, the CAC received responses from 18 advisory committees, resulting in an 82% survey response rate. The individual responses, organized in alphabetical order by advisory committee, are included in Appendix A.

Overall the responses to the questions about DEP's use of the advisory committees, feedback received from DEP when committees did offer comments, and the support received by the committees was very positive.

The committees felt they were being listened to by DEP, received feedback from the agency about their comments, and thought they generally received meeting information and handouts and other support from DEP staff in a timely manner. Each of the committees pointed out one or more significant accomplishments the committees had working with the Department.

A number of advisory committee chairs made recommendations for improvements, including: the Sewage Advisory Committee, the Environmental Justice Advisory Board, the Solid Waste Advisory Committee, Small Water System Technical Advisory Board, Oil and Gas Advisory Board, and the Climate Change Advisory Committee. Among their recommendations were:

- Provide advisory committees with a clear expectation of their role and responsibilities and what they could expect to do and not do, as the Advisory Committee Guidelines require.
- Requested to be involved earlier in the process of developing regulations and policies, even if it is just concepts or background information on the issues the Department is trying to address.
- Make sure meeting information and materials are sent to committee members and posted on the agency's website at least two weeks prior to a meeting as the Advisory Committee Guidelines require.
- Provide consistent and more specific guidance on the Sunshine Act requirements for giving public notice and an opportunity to participate in subcommittee meetings, workgroup meetings, and conference calls among advisory committee members.
- Include higher-level Department staff in advisory committee meetings so committee members can talk directly to decision-makers.

**Review of Advisory Committee Guidelines:** Members of the CAC's Public Participation Committee offered many of the same comments as DEP's advisory committee chairs during its own discussion of the agency's 1998 Advisory Committee Guidelines in an October 1, 2014 conference call. Overall, the Committee felt the Guidelines were well thought out and have withstood the test of time.

Committee members also pointed out issues related to adequate Sunshine Act notices for subcommittee meetings, workgroup meetings and conference calls, clarifying the roles and responsibilities of each advisory committee, possibly annually, timely posting and delivery of meeting materials in accordance with the Advisory Committee Guidelines, standardizing the method of reporting comments from advisory committees to the Environmental Quality Board, making sure the Advisory Committee Guidelines apply to regional office roundtables, and having a standard policy for catering advisory committee lunches.

Committee members noted several instances where the Guidelines needed to be updated, for example: to include the most recent Management Directives, eliminating the reference to the Deputy Secretary for Federal-State Relations since that position no longer exists within the agency, and including a public comment period at each advisory committee meeting in compliance with a more recent statute.

**Roundtable Discussion:** The October 21, 2014 roundtable discussion was attended by six DEP advisory committee chairs, 7 DEP advisory committee liaison staff, seven members of the Citizens Advisory Council and staff, and Hayley Book, Director of DEP's Office of Policy. Much of the discussion mirrored the results of the survey and further sharpened the Committee's understanding of the issues raised in the survey results, as well as highlighted and identified other issues. These issues included:

- DEP advisory committee liaison staff should share best practices on advisory committee meeting management, consistent webpage content and layout, providing comments to DEP, and ensuring agency responses to committee comments. DEP liaison staff should be offered training in these best practices to avoid widely differing practices among the committees.
- Advisory committee members should be given more than two weeks to review regulatory and other proposals that come before them, especially when the proposals are lengthy and complex.
- A regular schedule should be established to review existing DEP regulations and policies for their effectiveness, cost of management and appropriateness given changes in technology, as well as changes in state and federal requirements.
- Advisory committees should be more involved up-front in developing regulatory and policy guidance and should do more strategic planning on what issues they will tackle in a collaborative effort with DEP staff. Meeting agendas, for example, should be developed with the active participation of committee chairs.
- Advisory committees should be given a more appropriate level of support to match the assignments they are given by DEP or by statute.

**Public Participation Committee Recommendations:** Overall the responses to the questions and the roundtable discussion about DEP's use of the advisory committees were very positive. The committees felt they were being listened to by DEP, they received feedback from the agency about their comments, and they thought they received meeting information and handouts and other support from DEP staff in a timely manner. Committees were generally proud of their accomplishments in working with DEP on important issues.

Based upon a review of the agency's 1998 Advisory Committee Guidelines, responses from the survey of 22 DEP advisory committee chairs and the roundtable discussion with DEP committee chairs and DEP liaison staff, the CAC's Public Participation Committee recommends to Council that the Department take these steps to improve the use of advice recommended by advisory committees and revise the Advisory Committee Guidelines accordingly:

**1. Review Advisory Committee Responsibilities:** Council and DEP should conduct a review of advisory committees established to offer advice to the Department to determine if their assignments are overlapping, if there are gaps in the subjects covered, if they are meeting their purpose or no longer needed, if they have a full complement of members and DEP staff support, and if their focuses should be changed to make them more effective.

- For example, DEP has a number of advisory committees related to water resources that seem to have overlapping responsibilities or do not have their full complement of members or staff support (i.e. the Statewide Water Resources Advisory Committee). As another example, there is an advisory committee for small drinking water systems, but there is no committee for the Drinking Water Program generally.
- Other committees have been set up temporarily or by DEP for specific tasks, such as the Chesapeake Bay Management Team, but do not follow the Advisory Committee Guidelines for posting membership or how the membership was selected and other basic information on their responsibilities.
- There are also gaps in the way DEP uses advisory committees to comment on proposed technical guidance and program policies. For example, the recent proposed changes in the Oil and Gas Program Enforcement Policy was not shared with any advisory committee before it was published for public comment. DEP also does not uniformly have advisory committees review new or revised general permits.

**2. Periodic Review of Existing Regulations, Technical Guidance and Programs:** DEP should establish, with the collaboration of advisory committees, a program to periodically review existing regulations, technical guidance, and agency programs for their effectiveness and efficiency, how new technologies can be incorporated into their implementation, and whether DEP has adequate resources to carry out its responsibilities and statutory mandates. A five-year review cycle may be appropriate.



**3. Establish and Share Best Practices:** DEP and Advisory Committees should identify and share best practices between the Committees and DEP liaison staff to ensure compliance with the Advisory Committee Technical Guidance touching on these areas:

- Provide advisory committees with a clear expectation of their role and responsibilities and what they could expect to do and not do as the Advisory Committee Guidelines require on an annual basis.
- Involve advisory committees earlier in the process of developing regulations and policies, even if it is just concepts or background information on the issues the Department is trying to address.
- Developing agendas cooperatively with advisory committee chairs and collaborate more on planning for what issues the committees will consider.
- DEP should provide advisory committees with technical and other support appropriate to the assignments they are given by the Department or by statute.
- Make sure meeting information and materials are sent to committee members and are posted on the agency's website at least two weeks prior to a meeting as the Advisory Committee Guidelines require. More time for advisory committee review should be given for long or complex proposals.
- Include higher-level Department staff in advisory committee meetings in order to talk directly to decision-makers.
- Establish clear methods advisory committees can use to provide advice to the Department, for example, by letter, including comments and questions in Committee Minutes or by other means, and clarify the form of the response DEP will make back to the committee.
- Provide specific and consistent guidance to advisory committees on the Sunshine Act requirements for subcommittee, workgroup, and conference calls meetings. Advisory committees and DEP should provide as much notice as possible to give the public an opportunity to become involved in the committee process if they choose.
- Standardize the information posted on each advisory committee webpage to include a current list of advisory committee members, their contact information, and DEP staff liaison to each committee, along with their contact information and all handouts reviewed by the committees.
- DEP liaison staff should be trained in these procedures.

**4. Apply Advisory Committee Guidelines Policy to All Formally Established DEP Advisory Groups:** The Advisory Committee Guidelines should be applied to all formally established DEP advisory groups, such as the regional office roundtables and other groups created temporarily or semi-permanently by DEP to give it advice.

**5. Establish a Technical Guidance Agenda:** DEP should establish a Technical Guidance Agenda like the Regulatory Agenda it now has to publicly communicate the Technical Guidance, General Permit, or other program policies it has under development or when they expect to be considered.

**6. General Update To Advisory Committee Technical Guidance:** The Advisory Committee Technical Guidance should be updated to keep it current with newer statutes and the

Department's organizational structure, for example: include a public comment period at each advisory committee meeting in compliance with a more recent statute, eliminate the reference to the Deputy Secretary for Federal-State Relations since that position no longer exists in the agency, and include the most recent Management Directives referenced in the Guidelines.

## Appendix C



November 14, 2017

**Allegheny County**  
Cynthia Carrow  
John J. Walliser, Esq

**Bedford County**  
William Fink

**Chester County**  
Donald S. Welsh

**Cumberland County**  
Duane E. Mowery  
James Welty  
R. Timothy Weston, Esq

**Delaware County**  
James A. Schmid

**Fayette County**  
John R. Over, Jr.

**Greene County**  
Terry L. Dayton

**Indiana County**  
John St. Clair

**Lancaster County**  
James Sandoe

**Lebanon County**  
John Hines

**Philadelphia County**  
David Dunphy  
Jerome Shabazz

**Tioga County**  
Thaddeus K. Stevens

**Washington County**  
Mark Caskey

Secretary Patrick  
McDonnell, Ex-officio

Laura Edinger  
Regulatory Coordinator  
Policy Office  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17105

Re: Advisory Committee Guidelines (012-1920-002)

Dear Mrs. Edinger:

The Citizens Advisory Council ("CAC" or "Council") was established pursuant to Sections 448(p) and 1922-A of the Administrative Code of 1929, as amended by Act No. 1970-275 and Act No. 2016-07, 71 P.S. §§ 158(p) and 510-22. Pursuant to Section 1922-A of the Administrative Code of 1929, the CAC is charged, in part, to advise the Department of Environmental Protection ("DEP" or "Department") and make recommendations to help improve the work of the Department. As part of the CAC's overview of the Department's work, Council may make official comments on policies established by DEP.

The Department recently updated its Advisory Committee Guidelines and published the draft Document Number 012-1920-002 on DEP's eComment page. The CAC thanks the Department for reviewing this policy document and allowing Council and the public the opportunity to provide comments on its guidelines. Council notes that the Department incorporated many changes suggested by the CAC in its *Public Participation Committee Report* and commends the Department for its actions. The goal of the aforementioned report was to provide clarity to the Department's advisory committees, including the CAC, to better aid the Department in implementing State and Federal environmental laws in the Commonwealth.

Council would like to highlight the directive on Page 6, Section C. of the Advisory Committee Guidelines which states, in part, that "DEP Deputy Secretaries and Bureau Directors will ensure that program staff coordinate with DEP liaisons to inform advisory committees early in the process of developing DEP policies, guidance, regulations or other technical documents." The CAC believes that utilizing the expertise of the members of the various Departmental advisory committees will provide great benefits to the Department. As such, Council is looking forward to a more proactive role in the development of the Departments policies, guidance, regulations and other technical documents.

On Page 2, Section A. under the heading *Sunshine Act*, Council believes there should be

clarification in the language related to advisory committee meetings of subcommittees and workgroups in relation to the Sunshine Act. While the language does state that an advisory subcommittee that has delegated decision-making authority is subject to the Sunshine Act, the language later states that "DEP's policy is to conduct meetings for every advisory committee subject to this guidance document, **including subcommittees and workgroups**, as though they are subject to the Sunshine Act." This creates an undue burden on subcommittees and workgroups who do not have delegated decision-making authority.

Often, the purpose for subcommittees and workgroups is to informally meet and listen to information from the Department or other stakeholders and/or to discuss whether a topic should be brought before the full advisory committee for a decision. In many circumstance, these subcommittees and workgroups **do not** have the authority to make final decisions on behalf of the full committee and are sometimes formed to discuss a potential topic for full advisory committee review without much notice. To require every impromptu conference call or meeting to be subject to the Sunshine Act would be counterproductive by limiting both their effectiveness and frequency. As such, Council contends that **the requirement to subject subcommittees and workgroups to the Sunshine Act should clearly be limited to only those subcommittees and workgroups that have final decision-making authority.**

The CAC would like to thank the Department once again for considering the recommendations of Council and updating the Advisory Committee Guidelines to ensure participation in the Department's development of regulations, policies, procedures, standards, and technical guidance documents. Please feel free to contact Lee Ann H. Murray, Esq., Executive Director for the Citizens Advisory Council at 717-787-8171, or [leemurray@pa.gov](mailto:leemurray@pa.gov) if you have any further questions or concerns.

Sincerely,



Donald S. Welsh, Chair  
Citizens Advisory Council

cc: Lee Ann H. Murray  
Executive Director  
Citizen Advisory Council



November 14, 2017

**Allegheny County**  
Cynthia Carrow  
John J. Walliser, Esq

**Bedford County**  
William Fink

**Chester County**  
Donald S. Welsh

**Cumberland County**  
Duane E. Mowery  
James Welty  
R. Timothy Weston, Esq

**Delaware County**  
James A. Schmid

**Fayette County**  
John R. Over, Jr.

**Greene County**  
Terry L. Dayton

**Indiana County**  
John St. Clair

**Lancaster County**  
James Sandoe

**Lebanon County**  
John Hines

**Philadelphia County**  
David Dunphy  
Jerome Shabazz

**Tioga County**  
Thaddeus K. Stevens

**Washington County**  
Mark Caskey

Secretary Patrick  
McDonnell, Ex-officio

Laura Edinger  
Regulatory Coordinator  
Policy Office  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17105

Re: Development and Review of Regulations (012-0820-001)

Dear Mrs. Edinger:

The Citizens Advisory Council ("CAC" or "Council") was established pursuant to Sections 448(p) and 1922-A of the Administrative Code of 1929, as amended by Act No. 1970-275 and Act No. 2016-07, 71 P.S. §§ 158(p) and 510-22. Pursuant to Section 1922-A of the Administrative Code of 1929, the CAC is charged, in part, to advise the Department of Environmental Protection ("DEP" or "Department") and make recommendations to help improve the work of the Department. As part of the CAC's overview of the Department's work, Council may make official comments on policies established by DEP.

The Department recently updated its policy on the Development and Review of Regulations and published the draft Document Number 012-0820-001 on DEP's eComment page. The CAC thanks the Department for reviewing this policy document and allowing Council and the public the opportunity to provide comments on its guidelines. Council supports the Department's efforts to provide greater clarification of the process for the development and review of regulations.

CAC is encouraged by the Department's desire to include advisory councils, including the CAC, early in the process of developing proposed regulations and would like to emphasize that communication between the Department, Committee staff/liaisons, and Committee Chairs is essential to ensuring that advisory committees are able to be more involved up-front in developing regulatory and policy guidance. Early communication with advisory committees will allow the Department to utilize the expertise of committee members and will aid in the development of well thought out policies and regulations.

To ensure that advisory committees are better able to participate in the review and comment period for proposed regulations, Council asks that the Department be given more than two-weeks to review regulatory and other proposals that come before them,

especially when they are lengthy and complex. This is also important for information to be adequately placed on the advisory committee's web pages for public consumption. Council will note that this recommendation can be found in the *Public Participation Committee Report* authored by the CAC on improving the public participation process.

The CAC would like to thank the Department once again for considering the recommendations of Council and updating the policy for the Development and Review of Regulations to ensure participation in the Department's development of regulations, as well as clarification of the process for the development and review of regulations. Please feel free to contact Lee Ann H. Murray, Esq., Executive Director for the Citizens Advisory Council at 717-787-8171 or [leemurray@pa.gov](mailto:leemurray@pa.gov) if you have any further questions or concerns.

Sincerely,



Donald S. Welsh, Chair  
Citizens Advisory Council

cc: Lee Ann H. Murray  
Executive Director  
Citizen Advisory Council





November 14, 2017

**Allegheny County**  
Cynthia Carrow  
John J. Walliser, Esq

**Bedford County**  
William Fink

**Chester County**  
Donald S. Welsh

**Cumberland County**  
Duane E. Mowery  
James Welty  
R. Timothy Weston, Esq

**Delaware County**  
James A. Schmid

**Fayette County**  
John R. Over, Jr.

**Greene County**  
Terry L. Dayton

**Indiana County**  
John St. Clair

**Lancaster County**  
James Sandoe

**Lebanon County**  
John Hines

**Philadelphia County**  
David Dunphy  
Jerome Shabazz

**Tioga County**  
Thaddeus K. Stevens

**Washington County**  
Mark Caskey

Secretary Patrick  
McDonnell, Ex-officio

Laura Edinger  
Regulatory Coordinator  
Policy Office  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17105

Re: Policy for Development and Publication of Technical Guidance (012-0900-001)

Dear Mrs. Edinger:

The Citizens Advisory Council ("CAC" or "Council") was established pursuant to Sections 448(p) and 1922-A of the Administrative Code of 1929, as amended by Act No. 1970-275 and Act No. 2016-07, 71 P.S. §§ 158(p) and 510-22. Pursuant to Section 1922-A of the Administrative Code of 1929, the CAC is charged, in part, to advise the Department of Environmental Protection ("DEP" or "Department") and make recommendations to help improve the work of the Department. As part of the CAC's overview of the Department's work, Council may make official comments on policies established by DEP.

The Department recently updated its Policy for Development and Publication of Technical Guidance and published the draft Document Number 012-0900-001 on DEP's eComment page. The CAC thanks the Department for reviewing this policy document and allowing Council and the public the opportunity to provide comments on its guidelines. Council supports the Department's efforts to provide greater clarification of the purpose and intent of technical guidance documents, as well as an explanation of the comment process for such documents.

According to Section VI. (A)(1) and (2) on Page 4 of the policy, the Department may rescind or withdraw technical guidance documents if deemed no longer necessary. The Department should ensure that notification of such recession or withdrawal be accompanied by some notice as a way to provide transparency. If possible, the Department **may** want to allow for public comment prior to recession or withdrawal to ensure the document is no longer useful.

Additionally, the CAC would like further clarification on the Department's process for determining when the use and/or creation of a Standard Operating Procedure replaces a more open and transparent process, such as in the case of Technical Guidance. Council believes it is imperative for the Department to foster the perception of consistency for the regulated community. Such things as penalty calculations

and enforcement should be made public and could help to facilitate the resolution of enforcement matters by allowing citizen's and the regulated community to have a greater understanding of the Department's approach.

The CAC would like to thank the Department once again for considering the recommendations of Council and updating the Policy for Development and Publication of Technical Guidance to ensure participation in the Department's development of regulations, policies, procedures, standards, and technical guidance documents. Please feel free to contact Lee Ann H. Murray, Esq., Executive Director for the Citizens Advisory Council at 717-787-8171 or [leemurray@pa.gov](mailto:leemurray@pa.gov) if you have any further questions or concerns.

Sincerely,



Donald S. Welsh, Chair  
Citizens Advisory Council

cc: Lee Ann H. Murray  
Executive Director  
Citizen Advisory Council