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west virginia department of environmental protection

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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
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## **Environmental Protection Advisory Council 2012 Annual Report**

### **I. INTRODUCTION**

This Annual Report is submitted in accordance with W. Va. Code § 22-1-9(e)(6), to apprise the Joint Committee on Government and Finance of the activities undertaken by the Environmental Protection Advisory Council for the period of January 1, 2012 through December 31, 2012. The Council was created in 1994 by an Act of the West Virginia Legislature, and it is currently organized and administered within the auspices of the Department of Environmental Protection (“DEP”). In addition to the preparation and submission of this Report, the Council’s mission, set forth in W. Va. Code § 22-1-9, embraces the following duties:

- (1) To consult with and advise the DEP Cabinet Secretary on program and policy development, problem solving, and other appropriate subjects;
- (2) To identify and define problems associated with the implementation of the legislative statement of purpose and policy set forth in W. Va. Code § 22-1-1(b) (a full recitation of which is made below) and observed by DEP;
- (3) To provide and disseminate to industry and the public early identification of major federal program and regulatory changes;
- (4) To provide a forum for the resolution of conflicts between constituency groups; and
- (5) To strive for consensus, to the extent possible, on the development of overall environmental policy.

### **II. COUNCIL MEMBERS**

Eight members comprise the Council. The Cabinet Secretary is an *ex officio* member and serves as the Chair. The remaining seven members are appointed by the Governor, typically for full terms of four years, and any member may serve successive terms upon renewal of appointment. The balance of constituencies among the Council members is fixed by statute

and must be maintained: two members are associated with industries regulated by DEP; two members represent organizations advocating environmental protection; one member represents local government organizations; one member represents public service districts; and one member represents the largest coal miner's labor organization in the State.

There were no changes among the seven appointed members during 2012:

<b>MEMBER</b>	<b>APPOINTMENT</b>	<b>REPRESENTS</b>	<b>TERM EXPIRES</b>
Lisa K. Dooley Madison, West Virginia	10/01/1999 2002, 2005	Local Governments	June 30, 2009
Charles "Larry" Harris, Ph.D. Morgantown, West Virginia	10/12/1995 1997, 2002, 2005	Environmental Organizations	June 30, 2009
Jacqueline A. Hallinan, Esquire Charleston, West Virginia	11/02/1995 1999, 2002, 2006	Environmental Organizations	June 20, 2010
Karen Price Charleston, West Virginia	05/18/2005	Industry	June 30, 2010
William Raney Charleston, West Virginia	10/12/1995 1996, 2000, 2004	Industry	June 30, 2008
Charles "Rick" Roberts, Jr. Charleston, West Virginia	10/12/1995 1996, 2000, 2004	Public Service Districts	June 30, 2008
Ted Hapney Roane County, West Virginia	10/29/2010	UMWA	June 30, 2014

### **III. SUMMARY OF ACTIVITIES DURING 2012**

The Council met four times during 2012. The first meeting, on March 15, discussed the 2012 Regular Session of the Legislature as it pertained to environmental laws. At the June 21 meeting, DEP presented for the Council's review and comment the entire slate of agency rules proposed for 2013. The September 20, 2012 meeting was an open discussion with DEP's Cabinet Secretary, Randy Huffman. Topics discussed were hiring, pay-equity, retention and retirement issues with which the agency is currently dealing. The Council's final meeting for the year, on December 13, was devoted in large part to a briefing from the agency on its legislative agenda for the 2013 Regular Legislative Session. A more detailed recitation of the Council's discussions and actions appears in the Council's official minutes.

### **IV. STATEMENT ON DEP'S PERFORMANCE**

The Council is required to include within its Annual Report its findings with regard to DEP's performance in accomplishing the purposes set forth in W. Va. Code § 22-1-1(b). These statutory purposes, upon which DEP was established, are:

- (1) To strengthen the State's commitment to restore, maintain, and protect the environment;
- (2) To consolidate environmental regulatory programs in a single State agency;
- (3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment, and use of the natural resources of the State;

- (4) To supplement and complement the efforts of the State by coordinating its programs with the efforts of other governmental entities, public and private organizations, and the general public, to improve the quality of the environment, the public health and public enjoyment of the environment, and to propagate and protect animal, aquatic, and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism, and energy-producing industries;
- (5) To endeavor, insofar as federal environmental programs require State participation, to obtain and continue State primacy in the administration of such programs, to endeavor to maximize federal funds that may be available to accomplish the purposes of the State and federal environmental programs, and to cooperate with appropriate federal agencies to meet environmental goals;
- (6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;
- (7) To promote improvement in the quality of the environment through research, evaluation, and sharing of information;
- (8) To improve the management and effectiveness of State environmental protection programs;
- (9) To increase the accountability of State environmental protection programs to the Governor, the Legislature, and the public generally; and
- (10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use, or other source reduction opportunities.

The Council finds that DEP has engaged in good-faith, reasonable efforts to accomplish the statutory purposes with which it is charged, a fair representation of which are outlined in DEP's Annual Report and State of the Environment publications. It is recognized that the challenges facing the agency in fulfilling its mission are not static, but instead demand constant adaptation. DEP strives to do the best possible job with all resources it may access to implement the letter and the spirit of the Legislature's charge.

## V. CONCLUSION

SUBMITTED this 31st day of December, 2012.

  
Kristin A. Boggs, General Counsel

## ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

### MEETING MINUTES

March 15, 2012

#### I. CALL TO ORDER

**Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman**, called to order the regular meeting of the Environmental Protection Advisory Council at 1:55 p.m. on March 15, 2012 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

#### II. ROLL CALL

Members present: Jackie Hallinan, Larry Harris (via telephone), Karen Price (via telephone, Bill Raney (via telephone), and Rick Roberts. Lisa Dooley and Ted Hapney were absent.

The meeting was also attended by the following DEP personnel: Randy Huffman, Cabinet Secretary; Kathy Cosco, Chief Communications Officer; Debbie Hughes, Human Resources; and Pamela Nixon, Environmental Advocate. Also present was Jason Bostic from the West Virginia Coal Association.

#### III. OLD BUSINESS

**Minutes of the December 15, 2011 Meeting.** The minutes were provided to Council via email and in hard copy for their review. Mr. Roberts moved for approval of the minutes, Ms. Hallinan seconded the motion, and it was carried by acclamation of Council.

**2011 Annual Report.** The report was provided to Council via email and in hard copy for their review. Ms. Hallinan moved for approval of the report, Mr. Roberts seconded the motion, and it was carried by acclamation of Council.

#### IV. DEP HR PRESENTATION

Secretary Huffman and Debbie Hughes, a manager in DEP's Human Resources Section, gave a presentation regarding employee retention, retirement, and pay equity issues that face the agency. Council decided to write a letter to the Governor stating the concerns they have as a result of hearing this presentation and receiving and reviewing the handouts provided therewith. Mr. Raney will undertake the first draft of the letter and will circulate it among Council for their input and approval. Council also declined to send the letter on DEP letterhead.

## V. DEP LEGISLATIVE INITIATIVES FOR THE 2012 SESSION

Ms. Boggs summarized DEP's legislative initiatives for the 2012 Legislative Session, and she and Secretary Huffman answered questions regarding the same:

### **INTRODUCED BY THE DEP:**

- HB 4320 – Relating to the settlement of the Hazardous Waste Management Act by consent agreements: The purpose of this bill is to authorize the Secretary of DEP to propose legislative rules to settle violations of the Hazardous Waste Management Act by consent agreements, as an alternative to instituting a civil action in the circuit courts of the State. This bill was signed by Governor Tomblin on March 13, 2012 and will become effective on June 4, 2012.
- SB 496 – Modifying DEP requirement of greenhouse gas emissions' inventory: The purpose of this bill is to modify the DEP's requirements to inventory emissions of greenhouse gases and eliminate unneeded provisions of the Code. It allows reporting of greenhouse gases under the USEPA's *Mandatory Reporting of Greenhouse Gases Rule* to satisfy greenhouse gas reporting requirements in West Virginia. This bill is awaiting the Governor's signature, and will become effective 90 days from passage.
- SB 497 – Awarding attorney fees and costs for administrative proceedings under the West Virginia Surface Coal Mining and Reclamation Act: The purpose of this bill is to authorize the Surface Mine Board or the reviewing circuit court to award attorney fees and costs in administrative proceedings that arise under the West Virginia Surface Coal Mining and Reclamation Act. This bill is awaiting the Governor's signature, and will become effective 90 days from passage.
- SB 562 – Establishing DEP procedure for biologic component compliance with narrative water quality standard: The purpose of this bill is to establish a procedure by which the DEP is to measure compliance with the biologic component of the narrative water quality standard. This bill is awaiting the Governor's signature, and became effective upon passage.
  - ◆ Secretary Huffman offered an extensive explanation of the importance and necessity of SB 562, and Council agreed that it is an important and the
- SB 579 – Increasing the special reclamation tax on clean coal mined: The purpose of this bill is to raise the special reclamation tax from 14.4 cents to 27.9 cents per ton of clean coal mined. The entirety of the increase will be dedicated to the Water Reclamation Trust Fund. This bill is awaiting the Governor's signature, and becomes effective on July 1, 2012.
- SB 253 – DEP Rules Bundle: The purpose of this bill is to authorize the DEP to repeal one Air rule and promulgate nine Air rules, two solid waste management rules, and the voluntary remediation and redevelopment rule. This bill is awaiting the Governor's signature, and became effective upon passage.

### **INTRODUCED BY OTHERS:**

- SB 615 – Conforming the West Virginia Water Pollution Control Act with the federal Clean Water Act: The purpose of this bill is to clarify that compliance with the effluent limits contained in a NPDES permit is deemed compliance with the West Virginia Water Pollution Control Act and to make the NPDES program in West

Virginia consistent with the federal Clean Water Act. This bill is awaiting the Governor's signature, and became effective upon passage.

**VI. OTHER BUSINESS**

The next meeting of the Council is June 21, 2012 at 1:30 p.m.

**VII. ADJOURNMENT**

All business being considered and discussions concluded, the meeting was adjourned at 2:55 p.m.

# ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

## MEETING MINUTES

June 21, 2012

### I. CALL TO ORDER

**Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman**, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on June 21, 2012 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

### II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Ted Hapney, Bill Raney (via telephone), and Rick Roberts. Larry Harris and Karen Price were absent.

The meeting was also attended by the following DEP personnel: Lisa McClung, Deputy Cabinet Secretary; Tom Aluise, Acting Chief Communications Officer; Jim Mason, Division of Air Quality; Tom Clarke and Charlie Sturey of the Division of Mining & Reclamation; Scott Mandirola, Pat Campbell, Sudhir Patel, Ken Holliday, Joe Sizemore, and Mike Zeto from the Division of Water & Waste Management; James Martin from the Office of Oil & Gas; Danny Haught and Greg Rote from REAP; and Pamela Nixon, Environmental Advocate. Also present was Corky DeMarco from the West Virginia Oil & Natural Gas Association.

### III. OLD BUSINESS

**Minutes of the March 15, 2012 Meeting.** The minutes were provided to Council via email and in hard copy for their review. Ms. Dooley moved for approval of the minutes, Mr. Roberts seconded the motion, and it was carried by acclamation of Council.

### IV. PROPOSED 2013 LEGISLATIVE RULES

#### Division of Air Quality

- ❖ 45 CSR 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration* – Revisions to the rule include changes to the federal counterpart, “Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs.” The proposed revision defers for a period of three years the application of the PSD requirements to biogenic CO<sub>2</sub> emissions from bioenergy and other biogenic stationary sources. The result of this revision is that, during the proposed three year period, biogenic CO<sub>2</sub> emissions will not be required to be counted for applicability purposes under the PSD permitting program set forth in 45 CSR 14.

- ❖ 45 CSR 16 – *Standards of Performance for New Stationary Sources* – Annual incorporation by reference amendments to the NSPS.
- ❖ 45 CSR 18 – *Combustion of Solid Waste* – The revised rule incorporates by reference the amended Standards of Performance for New Commercial and Industrial Solid Waste Incineration Units and sets forth emission guidelines for existing commercial and industrial solid waste incineration units.
- ❖ 45 CSR 25 – *Control of Air Pollution for Hazardous Waste Treatment, Storage and Disposal Facilities* – Revisions to the rule include annual incorporation-by-reference updates.
- ❖ 45 CSR 30 – *Requirements for Operating Permits* – Revisions to the rule incorporate changes to the federal counterpart, “Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs.” The proposed revision defers for a period of three years the application of the Title V permitting requirements to biogenic CO<sub>2</sub> emissions from bioenergy and other biogenic stationary sources. The result of this revision is that, during the proposed three year period, biogenic CO<sub>2</sub> emissions will not be required to be counted for applicability purposes under the Title V permitting program set forth in 45 CSR 30.
- ❖ 45 CSR 34 – *Emission Standards for Hazardous Air Pollutants* – Annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule. EPA has not provided any additional funding to implement these new federal area source air toxics rules. Further, DAQ considers these standards to be resource-intensive and costly to implement, as a practical matter, without achieving commensurate air quality benefits. Therefore, West Virginia is one of several states in EPA Region 3 that is adopting some, but not all, of the federally proposed standards. EPA regional offices will be implementing those standards not adopted by the states, thereby providing a measure of regulatory certainty and consistency.
- ❖ 45 CSR 36 – *Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 USC or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)* – This revised rule incorporates by reference the following provisions of 40 CFR 93: Revisions to the General Conformity Regulations, Transportation Conformity Rule, Motor Vehicle Emission Simulator (MOVES) Regional Grace Period Extension, and Transportation Conformity Rule Restructuring Amendments.
- ◆ *There were no questions regarding DAQ’s proposed rules.*



### **Division of Mining & Reclamation**

- ❖ 47 CSR 10 – *Mining NPDES Rule* – This revised rule is necessitated by the passage of Senate Bill 615 on March 10, 2012, which amended and reenacted W. Va. Code § 22-11-6 to make West Virginia’s Water Pollution Control Act consistent with the federal Water Pollution Control Act by clarifying that compliance with the effluent limits contained in a NPDES permit is deemed compliance with West Virginia’s Water Pollution Control Act. This proposed amendment reflects the changes made to the statute.

- ◆ *Director Tom Clarke answered questions of Council regarding the proposed rule.*

### **Division of Water & Waste Management**

- ❖ 33 CSR 12 – *Covered Electronic Device Recycling Rule* – This is a new rule, necessitated by the passage of Senate Bill 298 on March 12, 2010, which amended and reenacted W.Va. Code § 22-15A-25 to ban certain electronic devices from landfill disposal. This rule establishes requirements for commercial solid waste facilities’ and commercial recycling facilities’ handling and recycling of covered electronic devices.

- ◆ *Ms. Boggs answered questions of Council regarding the proposed rule.*

- ❖ 33 CSR 27 – *Hazardous Waste Administrative Proceedings and Civil Penalty Assessment* – This is a new rule, necessitated by the passage of House Bill 4320 on March 6, 2012, which amended and reenacted W.Va. Code § 22-18-17 to grant the Secretary the authority to enter into consent agreements settling violations of the Hazardous Waste Management Act. This rule provides a mechanism for the consent agreements to include appropriate penalty calculations and corrective action orders, which will allow for the timely and effective administrative settlement of hazardous waste violations in this State while lessening the burden on the circuit courts.

- ◆ *There were no questions regarding this proposed rule.*

- ❖ 47 CSR 10 – *Water Pollution Control Permit Fee Schedules* – This revised rule establishes a reduced National Pollutant Discharge Elimination System (NPDES) permit fee for “public geothermal facilities.” Currently, the only public geothermal facility in West Virginia is the Morgan County Courthouse, which has installed a geothermal HVAC system. Morgan County authorities, as well as Delegate Cowles, have advised DEP that the fee imposed by the current rule is economically burdensome for the County, and DEP agreed to revise the rule in this manner.

- ◆ *Director Scott Mandirola answered questions of Council regarding this proposed rule.*

### **Office of Oil & Gas**

- ❖ 35 CSR 8 – *Rule Governing the Development of Horizontal Wells* – This is a new rule, necessitated by the passage of HB 401 on December 14, 2011. OOG has taken the

applicable sections of the existing rule governing conventional oil and natural gas wells (35 CSR 4 – *Oil and Gas Wells and Other Wells*) and transferred them to this new rule, and further expanded on the new Natural Gas Horizontal Well Control Act in the following areas: erosion and sediment control plan; site construction plan; water management plan; well site safety plan; casing and cementing standards; well records, including records and disclosure of chemicals used in the hydraulic fracturing process; water supply testing; and construction standards for large wastewater pits and freshwater impoundments.

- ◆ *Ms. Boggs answered questions of Council regarding this proposed rule, and Assistant Director Pat Campbell answered questions regarding the implementation of the Water Management Plan.*

## VI. OTHER BUSINESS

- ❖ Mr. Roberts inquired about the status of the letter from the Advisory Council to the Governor's Office stating the concerns Council has about recruitment, retention, and pay equity issues. Ms. Boggs advised Council that she would check with Mr. Raney regarding the status of that letter, as his proxy at the March 15 meeting volunteered him to draft it.
- ❖ Upon request of Ms. Hallinan and Ms. Dooley, Ms. Boggs agreed to send Council the Agency Approved rules when they are filed in August.
- ❖ The next meeting of the Council is September 20, 2012 at 1:30 p.m.

## VII. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:35 p.m.

## ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

### MEETING MINUTES

September 20, 2012

#### I. CALL TO ORDER

Secretary **Randy Huffman** called to order the regular meeting of the Environmental Protection Advisory Council at 1:42 p.m. on September 20, 2012 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

#### II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Ted Hapney, Bill Raney and Karen Price. Rick Roberts and Larry Harris were absent.

The meeting was also attended by the following DEP personnel: Lisa McClung, Deputy Cabinet Secretary; Tom Aluise, Acting Chief Communications Officer; and Pam Nixon, Environmental Advocate.

#### III. OLD BUSINESS

**Minutes of the June 21, 2012 Meeting.** The minutes were provided to Council in hard copy for their review. Ms. Dooley moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

#### IV. DISCUSSION

- ❖ Pay Equity Issues
- ❖ Inspector Pay Equity Issue
  - Salaries for all inspectors making less than \$35,000 were raised to \$35,000
  - Inspector classification largest in agency
- ❖ OOG Hiring
  - Newly hired OOG Inspectors pay set by statute at \$35,000
  - Requirement of 2 years oil and gas experience
- ❖ Retirement of DEP Employees
  - State of WV's retirement rule of 80
  - Loss of knowledge and agency historical information due to retirement
- ❖ DEP's Internship Program

#### VI. OTHER BUSINESS

- ❖ Ms. Price requested the following two items be on agenda for December meeting.
  - Hazardous Waste Administrative Civil Penalties re: clarification on what is a minor versus major permit violation.

- Disposal of Electronic Devices re: clarification of the rule as to whether or not it applies to solid waste authorities, or only landfills.

❖ The next meeting of the Council is December 13, 2012 at 1:30 p.m.

**VII. ADJOURNMENT**

All business being considered and discussions concluded the meeting was adjourned at 2:20 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL**

**MEETING MINUTES**

**December 13, 2012**

**I. CALL TO ORDER**

**Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman**, called to order the regular meeting of the Environmental Protection Advisory Council at 1:40 p.m. on December 13, 2012 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

**II. ROLL CALL**

Members present: Larry Harris, Karen Price, and Bill Raney. Lisa Dooley, Jackie Hallinan, Ted Hapney, and Rick Roberts were absent.

The meeting was also attended by the following DEP personnel: Kathy Cosco, Chief Communications Officer; Pam Nixon, Environmental Advocate, and Josh Collins, Chief of Legal Services. Also present was Don Garvin of the Ohio Valley Environmental Council.

**III. OLD BUSINESS**

**Minutes of the September 20, 2012 Meeting.** The minutes were provided to Council via email and in hard copy for their review. As there was not a quorum present, Council did not vote on the minutes.

**IV. DEP LEGISLATIVE INITIATIVES FOR THE 2012 SESSION**

Ms. Boggs summarized DEP's legislative initiatives for the 2013 Legislative Session and answered questions of Council regarding the same:

- ❖ Land Stewardship Trust
- ❖ Termination of Jurisdiction of Special Reclamation Sites
- ❖ LCAP Fund Redistribution
- ❖ Informal Conferences for Mining Permit Applications

**V. OTHER BUSINESS**

- ❖ Council discussed the annual report that it must submit to the Legislature, but as a quorum was not present, no vote was taken on it. Further, Dr. Harris pointed out that the members had not been reappointed since the mid-2000s and expressed concern that the Council is not a high priority for the Governor's Office. Ms. Boggs, Mr. Raney, and Ms. Price all assured Dr. Harris that reappointment is a problem across all

boards and commissions in State government, and is not indicative of its importance to the Governor's Office.

- ❖ There was discussion among Council and DEP personnel about the ongoing issue of recruitment and retention in the inspector class. Ms. Boggs explained the success the agency had earlier this year with the DOP Board in getting all environmental inspectors raised to the minimum salary outlined in the Code for oil and gas inspectors, and she further explained the additional steps the agency is taking to solve the problem agency-wide. DEP personnel advised Council that OOG now has 17 inspectors, three inspector supervisors, and three inspector-specialists.
- ❖ Ms. Boggs introduced Josh Collins as the new Chief of the Office of Legal Services.
- ❖ Because there was no quorum present, Council did not schedule dates for 2013 meetings. Instead, Ms. Boggs advised she would send a range of dates to members via email so they could choose dates for next year's meetings.

## **VII. ADJOURNMENT**

All business being considered and discussions concluded, the meeting was adjourned at 2:25 p.m.