



west virginia department of environmental protection

Executive Office
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0440

Austin Caperton, Cabinet Secretary
dep.wv.gov

Environmental Protection Advisory Council 2019 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, 2019 through December 31, 2019. 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.

On February 25, 2019, Governor Justice appointed Angie Rosser to fill a vacancy on the Council that had been created by the previous resignation of Dr. Jim Van Gundy. Ms. Rosser will be occupying the designated Council position for “Advocating Environmental Protection”. Her term expires 06/30/22.

On March 08, 2019, Governor Justice appointed Travis Blosser to the Council to succeed Lisa Dooley for the Council position “Representing Local Government”. His term expires June 30, 2021.

With those two appointments, the current Council membership consists of the following:

MEMBER	APPOINTMENT	REPRESENTS	TERM EXPIRES
Travis Blosser Weirton, West Virginia	2019	Local Governments	June 30, 2021
Charles “Larry” Harris, Ph.D. Morgantown, West Virginia	10/12/1995 1997, 2002, 2005, 2015, 2019	Environmental Organizations	June 30, 2021
Rebecca M. McPhail Huntington, West Virginia	01/22/2015 2019	Industry	June 30, 2022
William Raney Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015, 2019	Industry	June 30, 2020
Charles “Rick” Roberts, Jr. Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015, 2019	Public Service Districts	June 30, 2020
Ted Hapney Roane County, West Virginia	10/29/2010 2015, 2019	UMWA	June 30, 2022
Angie Rosser Charleston, West Virginia	2019	Environmental Organizations	June 30, 2022

III. SUMMARY OF ACTIVITIES DURING 2019

The Council met four times during 2019. At the first meeting on March 14, 2019, new Council members Travis Blosser and Angie Rosser were introduced; Laura Crowder was introduced as the new Acting Director of the Division of Air Quality and Terry Fletcher was introduced as DEP's acting Public Information Director; there was a review of the recently completed legislative session that included bills to create a new Adopt-A-Stream program within REAP, created the Oil and Gas Abandoned Well Plugging Fund, and updated the Water Quality Standards rules; and there was a discussion of how DEP calculates fines and penalties for Notices of Violations. At the June 6, 2019, meeting, Kathy Emery was introduced as the Acting Director for the Division of Water and Waste Management; the 2020 DEP Legislative Rules package was previewed; and updates were provided on major natural gas pipeline projects, EPA's Superfund designation for the town of Minden, and the status of permits for the Rockwool manufacturing facility in Jefferson County. At the September 17 meeting there were presentations on the newly created Governor's Downstream Jobs Task Force that is being headed by Secretary Caperton, Endangered Species Legislation and its impact on DEP Permitting, and Citizen monitoring of pipeline construction and associated concerns about adequate DEP enforcement manpower. There was also discussion about current civil and administrative penalty structures and the potential need to schedule a special EPAC meeting to address the situation. At the December 10 meeting there was a preview of the upcoming 2020 legislative session; a presentation on recent bankruptcies and their impact on DEP Permitting and Enforcement and the State's Special Reclamation Fund; and a brief discussion concerning a possible increase in slots on the Council.

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:

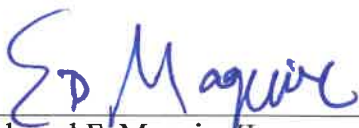
- (1) To strengthen the State's commitment to restore, maintain, and protect the environment;
- (2) To consolidate environmental regulatory programs in a single State agency;
- (3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment, and use of the 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 9th day of March, 2020.



Edward F. Maguire II
Environmental Advocate

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
March 14, 2019**

I. CALL TO ORDER

Ed Maguire, Ex Officio Chair designated by Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 1:35 p.m. on March 14, 2019 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: Bill Raney, Rebecca McPhail, Dr. Larry Harris, Angie Rosser, and Travis Blosser. Rick Roberts and Ted Hapney participated via phone conference.

The meeting was also attended by the following DEP staff: Harold Ward, Deputy Cabinet Secretary, Director of Division of Mining & Reclamation (DMR), and Acting Director of Division of Water & Waste Management (DWWM); Scott Mandirola, Deputy Cabinet Secretary and Chief Science Officer; Jason Wandling, General Counsel and Chief of Office of Legal Services; Rob Rice, Director of Division of Land Restoration (DLR); Laura Crowder, Acting Director of the Division of Air Quality (DAQ); Laura Jennings, Technical Analyst for DAQ; and Terry Fletcher, Public Information Specialist for the Public Information Office.

Jason Bostic with the West Virginia Coal Association was also present.

III. OLD BUSINESS

- ❖ **Status of Council Members Terms of Office.** Secretary Caperton briefly addressed the Advisory Council and welcomed two new members, Angie Rosser and Travis Blosser. The remaining Council members have all been reappointed by Governor Justice.
- ❖ **Minutes of the December 13, 2018 Meeting.** The minutes were provided to Council via email and in hard copy for their review. Mr. Raney moved for approval of the minutes, Mrs. McPhail seconded the motion, and it was carried by acclamation of Council.

IV. INTRODUCTION OF ADDITIONS AND CHANGES TO EXECUTIVE STAFF

- ❖ **Laura Crowder.** Ms. Crowder was appointed as the Acting Director of the Division of Air Quality. Ms. Crowder replaces Fred Durham who retired on December 28, 2018.
- ❖ **Terry Fletcher.** Jake Glance, the Chief Communications Officer, left the agency in December. Mr. Fletcher has been with the Public Information Office for approximately 2½ years working under the direction of Mr. Glance. As a result of Mr. Glance's departure, Mr. Fletcher will be the primary contact for the Public Information Office and is responsible for routing media inquiries, conducting public meetings, responding to

Freedom of Information Act (FOIA) requests, etc. Mr. Fletcher briefed the Council on the new State Government Communications Hub which is located in the capitol. The Hub was created in October of 2018 at the direction of Governor Justice to established consistent and clear messaging from all state agencies in West Virginia. Mr. Fletcher indicated this has been beneficial in establishing an avenue of communication and coordination between the agencies in addressing and responding to citizens and the media. Ms. Rosser raised concerns about inconsistencies with DEP's public notice process. Mr. Maguire tabled the discussion of DEP's public notice procedure to be put on the agenda for the June meeting.

V. DEP HOT TOPICS & GENERAL DISCUSSION

❖ 2019 Legislative Session

- Scott Mandirola and Jason Wandling gave an overview of the 2019 Legislative Session and answered questions of the Council regarding the following legislation:
 - **SB 147.** Bill shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities. This bill reduced by almost one-third the money DEP has to spend on closing old landfills where there is no owner or responsible party.
 - **SB 160 to 166.** DAQ Rules Bundle. Consists of seven air rules. Changes mostly consisted of corrections or updates to stay consistent with federal air regulations in order to retain primacy.
 - **SB 167.** DEP Rule relating to Water Quality Standards (WQS). There were two changes made to WV Code last year that DEP updated the rule this year to be consistent with that dealt with overlapping mixing zones and harmonic mean flow being used to calculate permit limits for human health criteria. There were a number of technical corrections that were grammatical issues and updates in federal references. Another change dealt with the use of water effect ratios and the BLM process which is a way of calculating site specific copper limits. The human health criteria updates, which involved 60 parameters being updated to the 2015 federal recommendations, were taken out with a provision that requires DEP to gather additional information available between now and October of 2019; review that information by April of 2020; and get it into the 2021 rulemaking cycle which starts in May 2020.
 - **SB 413.** Creating Adopt-A-Stream Program. Citizens volunteer to clean up a 1 mile stretch of stream. Similar to Adopt-A-Highway, DEP will provide supplies, such as gloves, bags, etc. DEP may need to go back to legislature to get a funding source for this program.

- **HB 2673.** Creating the Oil and Gas Abandoned Well Plugging Fund. Establishes a new fund to plug abandoned and orphaned wells funded by a tax on marginally producing wells.
- **Additional Legislative Discussions.** There were additional discussions regarding other topics of interest to DEP during the 2019 Legislative Session that did not pass as follows:
 - **HB 2974.** Legislation exempting businesses relating to transporting certain used tires to storage, disposal, or recycling locations from provisions of chapter. DEP was permitted to introduce an amendment to this bill; however, it died in the Senate.
 - **SB 665.** Allowing for expedited oil and gas well permitting. This bill was supported by industry. Passed the House and Senate but died on the last night.
 - **SB 384.** Providing proceeds from certain oil and gas wells whose owners are unknown to be kept in special fund. This bill would have allowed proceeds from certain oil and gas wells that are due to persons whose name or address are unknown to be kept in a special fund. If unclaimed within seven years, the proceeds would be transferred to the Oil and Gas Reclamation Fund. The bill did not pass.
 - **HB 2834.** Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells.
 - **Senate Concurrent Resolution 39.** To create a Joint Select Committee on Requirements Governing Water Quality. Introduced February 19, 2019.

❖ **DEP Notice of Violations: Fines/penalty calculations and assessments.**

- Harold Ward, Acting Director of the Division of Water and Waste Management (DWWM), presented an overview and answered questions regarding DEP's process and matrices for calculating and assessing fines for non-compliance. Mr. Ward answered questions of the Council.

❖ **New DEP Procedural Rule: Proposed Rule for Aquatic Life Assessment Methodology**

- Scott Mandirola outlined the rule and gave a brief history. It is being prepared to satisfy Senate Bill 562, which passed in 2012 and SB 687, which passed in 2017. It is about defining the aquatic life component of the narrative water quality standard and its thresholds.

❖ **Division of Land Restoration (DLR)**

- Rob Rice, Director of DEP's Division of Land Restoration (DLR), presented an overview and answered questions about DLR and the offices under his direction.
 - AML – Office of Abandoned Mine Lands
 - OSR – Office of Special Reclamation
 - LCAP – Landfill Closure Assistance Program
 - OER – Office of Environmental Remediation
 - Brownfields Assistance Program/Voluntary Remediation
 - Superfund

VI. OTHER BUSINESS

❖ **2019 EPAC Meeting Dates**

- June 6, September 12, December 12

VII. ADJOURNMENT

All business being considered, and discussions concluded, the meeting was adjourned at 3:20 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES**

June 6, 2019

I. CALL TO ORDER

Ed Maguire, Ex Officio Chair designated by Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 1:40 p.m. on June 6, 2019 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 at meeting: Larry Harris, Rebecca McPhail, Bill Raney, and Rick Roberts. Angie Rosser participated via phone. Travis Blosser and Ted Hapney were absent.

The meeting was also attended by the following DEP personnel: Harold Ward, Deputy Cabinet Secretary and Director of the Division of Mining and Reclamation (DMR) and John Vernon of DMR; Kathy Emery, Acting Director of the Division of Water & Waste Management (DWWM), Joe Sizemore, and Julie Wandling from DWWM; Laura Crowder, Director of the Division of Air Quality (DAQ), and Laura Jennings from DAQ; Rob Rice, Director of DLR/OER, John Meeks and Casey Korbini; Jason Wandling, General Counsel and Director of the Office of Legal Services; Terry Fletcher, Acting Communications Director; and Jason Harmon, Deputy Chief of the Office of Oil and Gas (OOG).

III. OLD BUSINESS

Minutes of the March 14, 2019 Meeting. The minutes were provided to Council via email and in hard copy for their review. Mr. Raney moved for approval of the minutes, Mr. Roberts seconded the motion, and it was carried by acclamation of Council.

IV. NEW BUSINESS

INTRODUCTION OF ACTING DIRECTOR OF DIVISION OF WATER AND WASTE MANAGEMENT:

Mr. Harold Ward introduced Kathy Emery, who was recently appointed as Acting Director of the Division of Water and Waste Management.

PROPOSED 2020 LEGISLATIVE RULES:

Division of Air Quality

- ❖ **45CSR8 - *Ambient Air Quality Standards*** – Promulgated last in the 2019 session. This rule establishes and adopts ambient air quality standards in West Virginia for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act and promulgated by the United States Environmental Protection Agency under 40 C.F.R Part 50. Revisions to the rule include the annual incorporation by reference of 40 CFR Parts 50 and 53 promulgated by EPA as of June 1, 2019 including: Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides; Ambient Air Monitoring Reference and Equivalent Methods: Designations of One New Equivalent Method and Designation of One New Reference Method.
- ❖ **45CSR16 - *Standards of Performance for New Stationary Sources*** – Promulgated last in the 2019 session. This rule incorporates by reference the federal standards of performance for new stationary sources promulgated by the United States Environmental Protection Agency

(EPA) pursuant to §111(b) of the federal Clean Air Act, as amended. This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards.

- ❖ **45CSR25** - *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities* - Promulgated last in the 2019 session. This rule incorporates by reference emission standards for the treatment, storage and disposal of hazardous waste including any reference methods, performance specifications and other test methods that have been promulgated by the EPA pursuant to the Resource Conservation and Recovery Act (RCRA), as amended. This rule codifies the general procedures and criteria to implement emission standards set forth in 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 promulgated by EPA.
 - ❖ **45CSR34** - *Emission Standards for Hazardous Air Pollutants* - Promulgated last in the 2019 session. This rule incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) of 40 CFR Part 61 and 63 and 40 CFR Part 65 to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2019. The rule adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained under 40 CFR Parts 61 and 63. This rule also codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in § 112 (b) of the CAA, or one or more of the eight substances listed as hazardous air pollutants under 40 CFR § 61.01(a).
 - ❖ **45CSR40** – *Control of Ozone Season Nitrogen Oxides Emissions* - This rule establishes: (a) Nitrogen oxides (NOX) ozone season emission limitation, monitoring, recordkeeping, reporting, excess emissions, and NOX budget demonstration requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250mmBTU/hr, in accordance with 40 CFR §51.121; (b) NOX ozone season emission reduction, compliance plan, monitoring, recordkeeping and reporting requirements for affected stationary internal combustion engines; and (c) NOX ozone season control standards, compliance plan, monitoring, recordkeeping, and reporting requirements for applicable cement manufacturing kilns.
- *Laura Crowder, Director of DAQ, and Laura Jennings, Technical Analyst, answered questions of Council regarding the proposed rules.*

Division of Mining and Reclamation

- ❖ **38CSR2-16.2.c.2** – Last year’s Legislature passed SB 635, which amended §22-3-14 by adding subsection (e) which states, “The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.”

DMR, in compliance with SB 635, completed a review of the federal standards codified at 30 CFR §§ 817.121 and has elected to not adopt the federal standards wholesale. Instead, DMR proposes only to clarify that the WVDEP does not adjudicate property disputes between operators and surface owners by modifying 38-2-16.2.c.2 to read as follows:

16.2.c.2. Either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph only apply to subsidence related damage caused by underground mining activities conducted after October 24, 1992; Provided, however, 16.2.c.2 does not create additional property rights nor may it be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

- ❖ **38CSR2F-3.1** – The 2019 Legislature passed SB 635, which also amended §22-30-14 by adding subsection (g) which states, “The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.” Therefore, WVDEP is proposing to incorporate the relevant provisions of § 22-30 by making the following changes to 38-2F-3.1:

3.1. Hydrologic and water quality protection practices established Under the authority of W. Va. Code § 22.11 or W. Va. Code §22-3 or W. Va. Code §22-30 and the legislative rules promulgated thereunder, were enacted in part to protect groundwater and are hereby incorporated by reference into this rule.

The effect of this rule change will be to bring regulation of aboveground storage tanks into the ambit of the DMR, which will help avoid duplicative regulatory efforts and give our mining inspectors more authority to require corrections to aboveground storage tanks that they see on the mines for which they are responsible.

- *Harold Ward, Deputy Cabinet Secretary and Director of DMR, and John Vernon, Deputy Director of DMR, were present and answered questions of Council regarding the proposed rules.*

Division of Water and Waste Management

- ❖ **33CSR20 – Hazardous Waste Management System** – This rule regulates the generation, treatment storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment. The rule adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of August 21, 2019.
 - *Kathy Emery, Acting Director of DWWM, Laura Jennings, Joe Sizemore, and Julie Wandling were present and answered questions of Council regarding the proposed rules.*

Division of Land Restoration/Office of Environmental Remediation

- ❖ **60CSR3 – Voluntary Remediation and Redevelopment** – The majority of proposed amendments are to the Risk Protocol and Remediation Standards sections of the rule. The amendments to Risk Protocol were made to clarify and update the requirements related to performing risk assessments to better reflect the current standard of practice. Additionally, language was added to clarify that presumptive remedies could be considered in the exposure assessment to eliminate the need to perform a site-specific risk assessment.
 - *Rob Rice, Director of DLR/OER, John Meeks, and Casey Korbini were present and answered questions of Council regarding the proposed rules.*

VI. OTHER BUSINESS

- ❖ **DEP’s Public Notice Processes and Procedure:** Mr. Maguire reported that he’s not prepared to provide a final report at this time. The agency is looking at standardizing the public meeting vs. public hearing process, including how the meetings are conducted. We are also working to develop consistency with the formal advertisement of public meetings and a better coordination between the meeting dates and associated public comment deadlines. It is anticipated that an update on all of this will be available by the next Council meeting.
- ❖ Ed Maguire provided brief updates on previous hot topics presented to the EPAC.
 - **Mountaineer Express Pipeline** (171 miles, Marshall to Wayne County): According to the docket for the Federal Energy Regulatory Commission (FERC), all construction segments are complete and the pipeline is listed as “in service”.

- **Atlantic Coast Pipeline** (99 miles, Harrison to Pocahontas County): Again, per the FERC docket for mid-May, no new trenching/installation is occurring. Instead the focus remains on site maintenance and stabilization while Dominion Energy addresses numerous legal challenges in various courts.
 - **Mountain Valley Pipeline** (196 miles, Wetzel to Monroe County): The FERC docket for early May lists all construction segments as being 50-65% complete. Numerous legal issues remain with certain stream and river crossings.
 - **Minden**: National EPA Administrator, Andrew Wheeler, attended a public meeting in Minden on May 13, along with Governor Justice, Senator Capito, Congresswoman Miller, and other local, state and federal officials to formally announce that Minden has been added to the EPA Superfund National Priorities List.
 - **Rockwool Plant** (Jefferson County): All DEP permits for the facility have been approved. The only current activity involving the agency is pending litigation before the WV Environmental Quality Board entitled David Tabb v. Director, Division of Water and Waste Management, DEP, and Mountaineer Gas Company.
- ❖ Jason Harmon, Deputy Chief of the Office of Oil and Gas presented a PowerPoint Presentation about the Office of Oil & Gas.
 - ❖ The remaining meetings of the EPAC are scheduled for September 12, 2019 and December 12, 2019. Council member Angie Rosser noted that she may have an agenda item for consideration at the September EPAC meeting concerning DEP pipeline permitting policy. Council member Rick Roberts requested that we also include on the September Agenda a discussion on how newly listed Endangered Species will impact DEP permitting.

VII. ADJOURNMENT

All business being considered and discussions concluded, Mr. Raney moved that the meeting be adjourned, Mr. Roberts seconded the motion, and it carried by acclamation of Council. The meeting was adjourned at 3:40 p.m.

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

MEETING MINUTES

December 10, 2019

I. CALL TO ORDER

Ed Maguire, Ex Officio Chair designated by Secretary Austin Caperton, called to order the regular meeting of the Environmental Protection Advisory Council at 10:33 AM on December 10, 2019 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 at meeting: Bill Raney and Angie Rosser; Larry Harris and Rebecca McPhail participated by phone. Members absent and/or not participating by phone: Ted Hapney, Travis Blosser, and Rick Roberts.

The meeting was also attended by the following DEP personnel: Cabinet Secretary Austin Caperton; Jason Wandling, General Counsel and Director of the Office of Legal Services; Scott Mandirola, Deputy Cabinet Secretary; and Harold Ward, Deputy Cabinet Secretary.

Due to the absence of Kenna DeRaimo, who recently left DEP to accept a position with PEIA, Jessica Henson with DEP's Executive Office staff recorded the meeting minutes.

III. OLD BUSINESS

Minutes of the September 17, 2019 Meeting. The minutes were provided to Council via e-mail and in hard copy for their review. Council member Angie Rosser requested an amendment to the section regarding updating civil penalty structure (add the sentence "the motion carried unanimously and was adopted" after the sentence about Dr. Harris seconding the motion). Mr. Raney asked for clarification of the word "improved" regarding the DAQ permit application for the planned Domestic Synthetic Fuels facility in Mason County. Ed clarified that the word should be "approved". Angie moved for approval of the amended minutes, Rebecca seconded the motion, and it was carried by acclamation of Council.

It was decided that a formal meeting to discuss the civil penalty structure would take place in Spring 2020. However, Angie recently met with Scott Mandirola, Jason

Wandling, and Delegate Evan Hansen regarding the best way to craft legislation for the upcoming session. Jason will follow up with Delegate Hansen.

IV. NEW BUSINESS

2020 LEGISLATURE PREVIEW

General Counsel Jason Wandling updated the members on a few points of interest for the upcoming Legislative session.

*DEP personnel have been working with Senator Swope to create a statewide program to identify derelict properties and demolish structures to put the properties back into reuse. Angie asked about funding for this program and Scott and Jason explained the money will come from the Landfill Closure Assistance Program (LCAP); as LCAP sites are capped, the current \$3 fee won't be needed for ongoing maintenance, but will be moved over to fund this new program. The money will be handed out as a grant to municipalities and economic development authorities; no new tax will be created. The WVU Law Clinic will assist with property deeds, etc.

*Bill to allow the Voluntary Remediation Program (VRP) to align definition of "brownfields" with the EPA's definition; this change will allow the program to have current EPA protections

*Hazardous Waste/RCRA (bill extending or eliminating time limit)

*Remove or adjust statutory cap for lab certification fund

*Bill to allow Division of Air Quality to invest some of their money; with emission rates decreasing, the money collected is also decreasing.

*Change minimum limit of litter violation. The current minimum of \$2000 is not being enforced as it is an amount that the majority of violators can afford to pay.

COAL INDUSTRY BANKRUPTCIES

In light of several recent bankruptcy filings by coal companies (Black Hawk, Murray Energy, Revelation, etc.). Deputy Cabinet Secretary Harold Ward explained that there have been no impacts on enforcement activities at sites owned by bankrupt coal companies. Fortunately, it has been business as usual on the ground when it comes to monitoring and addressing permit responsibilities. Long-term water treatment at these sites is of some concern as it has the potential of becoming the burden of the State. Mr. Raney praised Harold and his staff for the tremendous job they've done in handling these cases and keeping them out of the Special Reclamation program thus far.

Angie had a concern with the Special Reclamation Fund running out of money. Harold acknowledged this is a possible worst-case scenario but doesn't see it as a big problem for the foreseeable future. Bill Raney is a Special Reclamation Fund Advisory Council

member and said they conduct an actuarial study every two years. The most recent report was completed last month which forecasted a fiscally stable status through 2035.

Harold also explained that there are several program amendments pending Office of Surface Mining (OSM) approval which will allow more proactive financial assurance, especially with water treatment.

Dr. Harris asked if the Muddy Creek reclamation project on the Cheat River was paid for by the mining industry. Scott and Harold explained that it was an effort between private industry (Southeast Energy) and state government (AML/Special Reclamation monies).

EPAC MEMBERSHIP EXPANSION CONSIDERATION

Ed asked the Council to consider increasing membership to 9 from its current number of 7. This will allow for the protection of a quorum and hopefully more active participants. Ed will further explore the options available and report his findings at the next meeting.

V. OTHER BUSINESS

GOVERNOR'S DOWNSTREAM JOBS TASK FORCE

Cabinet Secretary Austin Caperton provided an update on the Downstream Jobs Task Force. He reported that they are currently interviewing site consultants to assist with attracting companies to the state. They are not focusing on any certain part of the state but are looking at it with fresh eyes.

Angie asked about the oft rumored underground storage project and asked how that will be handled. Secretary Caperton provided some background comments about storage hubs and details about existing storage facilities elsewhere, including one in Texas that is 5 miles wide and 25,000 feet deep. Secretary Caperton added that there is nothing imminent as relates to storage hubs in West Virginia.

Dr. Harris expressed concern about efforts to attract new plastics facilities due to the ongoing concerns about ocean pollution and there being too much plastic for recycling. Rebecca responded that companies in WV have an innovative role in recycling or reusing products and doesn't expect this to be an issue. Scott added that there are already mitigation procedures in place to protect the environment through the 401 and 404 permits.

Angie asked about the EPAC annual report due to the Legislature by January 1st. Ed has reviewed past reports and found them to be boilerplate. He will work up a draft report and send out to the Council members for review.

All other agenda items will be deferred to the next meeting.

V. ADJOURNMENT

The next EPAC meeting will be held on March 19, 2020 at 1:30 PM . All business having been considered, and discussions concluded, the meeting was adjourned at 12:13 PM.