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west virginia department of environmental protection

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Harold D. Ward, Cabinet Secretary  
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## Environmental Protection Advisory Council 2022 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, 2022 through December 31, 2022. The Council was created in 1994 by an Act of the West Virginia Legislature and 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.

The current Council membership consists of the following:

MEMBER	APPOINTMENT	REPRESENTS	TERM EXPIRES
Travis Blosser Weirton, West Virginia	2019	Local Governments	June 30, 2025
Charles "Larry" Harris, Ph.D. Morgantown, West Virginia	10/12/1995 1997, 2002, 2005, 2015, 2019	Environmental Organizations	June 30, 2025
Rebecca M. McPhail Huntington, West Virginia	01/22/2015, 2019	Industry	June 30, 2023
Jason Bostic Charleston, West Virginia	2021	Industry	June 30, 2024
Charles "Rick" Roberts, Jr. Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015, 2019	Public Service Districts	June 30, 2024
Ted Hapney Roane County, West Virginia	10/29/2010 2015, 2019	UMWA	June 30, 2023
Angie Rosser Charleston, West Virginia	2019	Environmental Organizations	June 30, 2023

### **III. SUMMARY OF ACTIVITIES DURING 2022**

Due largely to continuing concerns related to the Covid Pandemic, all of the quarterly EPAC meetings were again held virtually in 2022. It was noted that eventually there will be a return to in-person meetings as the norm with perhaps an occasional virtual session if inclement weather is a factor.

The first meeting of the year was conducted on 03/31/22 with only 3 of seven members participating. As a result, a quorum was not present and no business requiring formal votes was conducted.

Informational reports provided at this meeting included a review of the DEP legislative package for the just completed 2022 regular legislative session. 11 of the 13 bills that the agency supported were approved during the session, an unusually high success rate. Topics addressed by the legislation included \$10 million in funding for DEP's new statewide program to address abandoned properties and dilapidated structures, a bill to establish a permitting program for carbon sequestration and another to craft a program for geothermal exploration in WV, a bill establishing ownership of rare earth minerals derived from treating acid mine waters, another that changes fees for NPDES permitting in the mining program, a bill to allow investment of certain fees collected by the Division of Air Quality, and a bill to create a mining mutual insurance company.

A major topic of discussion at this meeting involved the continued financial uncertainty facing the Agency's Office of Oil and Gas. Secretary Ward noted that the Bipartisan Infrastructure Law (BIL) that had just been passed by Congress would result in an infusion to DEP of more than \$20 million for plugging abandoned gas wells during 2022. Considerable additional funding for gas well capping over the succeeding five years will also be provided as long as DEP can meet strict performance benchmarks. Secretary Ward also pointed out that our Abandoned Mine Lands program is scheduled to receive \$140 million per year for the next 15 years for remediating AML sites. Along with the other major federal grants coming to DEP under BIL, 2022 will be an unprecedented year of new opportunity and challenges for the agency.

EPAC's second quarterly meeting was held on 6/9/22 with five of seven members present. A major topic of discussion was the 2023 legislative rules package that was in development. Included were several proposals related to the Division of Air Quality, involving both permitting procedures and fees. The bulk of the meeting otherwise involved receiving reports about the impressive effort being conducted by senior DEP staff to "ramp up" for the infusion of BIL funding. By modifying procurement protocols under both the gas well plugging and AML contracting program, WV succeeded in putting itself near the top of the national qualifying list for the funds. As a result, those funds will become available as soon as the third quarter.

The Council's third quarterly meeting was held 09/27/22 with four of seven members present. The new federal emphasis on health concerns related to PFAS chemicals was addressed through discussion. Deputy Secretary Scott Mandirola explained that DEP is working closely with EPA,

DHHR, and U.S. Geological Survey on the issue. USGS conducted a statewide survey of 279 public water systems. Considering the updated interim health advisories that EPA released in mid-June, nearly half of the sample sites detected PFAS levels that would be considered a health concern. A final report on those additional studies is still being developed. Meanwhile EPA has invited states to apply for \$1 billion in grant money from the BIL for dealing with PFAS issues.

At this same meeting Deputy Cabinet Secretary Mandirola announced that a work group of EPAC was being formed to address how DEP formally defines “Trout Waters” in its water quality programs. This work group model will be established similarly to how we addressed the Human Health Criteria issue in 2021.

Deputy Cabinet Secretary Rob Rice provided another update on DEP’s progress towards use of BIL funding grants. Over the summer, the Office of Oil and Gas developed a program to allow for the accelerated onboarding of contractors and consultants. This included dividing the state into six regional well plugging contracts. By taking this step in advance of actually receiving funding, WV was able to “hit the ground running” once the initial round of \$25 million was made available, putting it ahead of all other states receiving funding. Somewhat similarly, the AML program developed twelve design contracts to work on thirty-some different high priority “problem areas” as soon as funding is received. All twelve of the firms are either WV based or national firms with established in-state offices and previous work history.

Also reviewed at the meeting was the Governor’s official launch of DEP’s new dilapidated and abandoned properties program. Final approval had been given to approve \$9.4 million for reimbursement of expenses for demolishing dilapidated structures in 21 towns and counties around the state. A formal event for the first actual demolition with Governor Justice and Baby Dog in attendance was scheduled for September 30 in Matoaka in Mercer County.

EPAC’s final quarterly meeting was held virtually on December 8, 2022. Only three of seven Council members participated which meant that for the second time this year a quorum was not present. The meeting began with comments from DEP Secretary Harold Ward. He thanked the members for their dedication and quality dialogue with the DEP, although he expressed regret that the Council has again failed to reach a quorum.

Secretary Ward commented that he looks forward to continued and improved dialogue with EPAC next year, especially regarding Environmental Justice issues as well as opportunities and challenges that will be presented by the American Rescue Plan funding infusion.

Deputy Secretary Mandirola reported that EPA has asked to be the lead enforcement agency in the Chemours PFAS matter and also gave an update on the growing concern about PFAS contamination both in the upper Ohio Valley and far eastern panhandle. He also noted that National EPA Administrator Michael Regan recently visited communities in the southern coal fields that have been historically underserved from an Environmental Justice perspective. The primary issue of

concern in that area involves poor access to drinking water and proper wastewater treatment. Regional EPA Administrator made similar visits earlier in the fall to parts of Huntington that are still dealing with lingering environmental concerns resulting from former industrial facilities in the area.

#### **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.

#### **IV. CONCLUSION**

In addition to shifting back to more normal business practices in a post-pandemic world, 2022 saw WVDEP adjusting to an unprecedented infusion of federal dollars directed to infrastructure projects, the plugging of abandoned gas wells, and a major expansion for treating Abandoned Mine Lands. Access to many of these funds will be spread over a number of years. But it was DEP's timely yet detailed preparation for the opportunity when it was first announced that resulted in West Virginia being at the head of the list of states to receive the funding beginning in the third quarter. In addition, the agency maintained its high standards of traditional service on all fronts and saw marked improvement in efficiency in many program areas including permitting reviews, mining bond releases, and permit enforcement oversight.

As has especially been the case during 2022, the challenges and opportunities facing the agency in fulfilling its mission are not static, but instead demand constant adaptation. The Council finds that DEP has engaged in outstanding efforts throughout the year 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.

On a related issue, the Environmental Protection Advisory Council failed to have a quorum at half of its meetings in 2022. Although the reasons for the attendance shortfall were valid, EPAC will need to formally review its membership structure in 2023 so as to assure that inadequate membership attendance is a rare exception in the future.

Submitted this 25th day of January, 2023.

Edward F. Maguire II, EPAC Ex Officio Chair designate