



west virginia department of environmental protection

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Environmental Protection Advisory Council 2023 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, 2023 through December 31, 2023. 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 MEMBERSHIP

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, 2026*
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 Kanawha, West Virginia	10/29/2010 2015, 2019	UMWA	June 30, 2026
Angie Rosser Charleston, West Virginia	2019	Environmental Organizations	June 30, 2026

*At the December meeting of EPAC it was announced that Rebecca McPhail was resigning from the Council due to her acceptance of a position with a new employer. At the request of the WV Manufacturers Association, the name of new WVMA Executive Director Bill Bissett was recommended to the Governor's Office to fill Rebecca's tenure. That recommendation was approved by the Governor's Office later in December.

III. MAJOR DEP ISSUES REVIEWED AT 2023 EPAC MEETINGS:

- DEP management of American Rescue Plan funding opportunities
- PFAS Protection Plan and Study with EPA funded Community Engagement Component
- Dilapidated Structures Program \$10 million Pilot Phase launch for 26 towns/counties
- Transfer of Drinking Water State Revolving Fund from DHHR to DEP
- Mountain Valley Pipeline court cases and congressional action
- AML and Office Oil Gas program benefits to come from Federal Bipartisan Infrastructure Law
- Legislative action led to restoration of some Office of Oil and Gas inspection staff
- Review of significant Division of Air Quality Permits for economic development projects
- Review of EPA-Directed Environmental Justice and “Justice 40” Initiatives
- Significant increase in number of Public Meetings around state, both virtual and in-person
- Dilapidated Structures Program provided additional \$20 Million for Expansion
- Development and launch of formal Community Engagement Guidelines for DEP

IV. QUARTERLY MEETING REVIEW:

Half of the EPAC quarterly meetings were held virtually during the year, half were “blended”, meaning that they were held in-person at DEP offices in Kanawha City with an option to participate virtually or by phone. In the post-Covid era where virtual meetings have become part of the “norm”, this split of EPAC quarterly meetings between in-person and virtual will likely continue indefinitely. The December and March sessions will likely be virtual to allow for weather, holiday, and legislature related issues while the June and September sessions will be held at DEP headquarters with a virtual participation option.

The first meeting of the year was conducted virtually on March 30. Unfortunately only three of seven members were able to participate. 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 2023 regular legislative session. All of the bills that the agency had supported were approved during the session, an unusually high success rate. Issues targeted by the legislation included \$20 million of additional funding for DEP to expand its new statewide program to address abandoned properties and dilapidated structures, enhanced funding for the Office of Oil and Gas that would among other things allow for the restoration of some of the inspector positions that had been lost over the past few years, and a PFAS Protection Act. Legislation providing for the transfer of the Drinking Water State Revolving Fund from DHHR to DEP’s Division of Water and Waste Management was passed as was a bill allowing DEP to utilize design/build contracting in programs with the Special Reclamation Program, the Abandoned Mine Land Program, and the Office of Oil and Gas. This legislation was necessary to expedite the use of substantial new federal funding programs developed for those needs.

In addition to the legislative session review, the topic of Environmental Justice was discussed in detail at this meeting. It was announced that a formal Community Engagement Guidelines document and effort was being coordinated by the Advocate's Office and Public Communications Office, with direct input from senior staff from all departments. This effort will result in awareness training sessions for all DEP staff concurrently with a roll-out of the guidelines to the public statewide.

Not surprisingly, given the absence of a quorum, there was also discussion concerning attendance at EPAC meetings with some talk about the potential need for a modest expansion of the Council.

The second meeting of EPAC was held at DEP headquarters in Kanawha City on June 29, 2023. The discussion about attendance at the March meeting had an impact as three members attended in person for this session while the remaining four members participated virtually via Google Meets. Acting Chair Ed Maguire thanked all for attending as it marked the first EPAC meeting with 100% in a couple of years.

The first topic discussed at this meeting was recent developments with the Mountain Valley Pipeline. Congress had just passed legislation that overrode various lawsuits and appeals that had practically halted completion of the massive project in previous months. DEP General Council Jason Wandling reported that the Corps of Engineers had issued that morning authorization for MVP to renew its construction activities for the entire project. That led to discussion among EPAC members about how DEP would handle the suddenly renewed staff, regulatory, and oversight needs of the project.

Also at the meeting there was discussion, led by Division of Water and Waste Management Director Kathy Emery, concerning the actual mechanics – staffing wise and otherwise – that would be needed to facilitate the upcoming transfer of the drinking water infrastructure program from DHHR to DEP. And Deputy Cabinet Secretary Scott Mandirola provided an update on the PFAS Working Group and some of the studies that it will be coordinating as a result of the PFAS Protection legislation.

Reports were given on the additional Oil and Gas Division inspectors that were being brought on board as a result of recent legislation as well as updates on the Dilapidated Structures Program and Environmental Justice Community Engagement Guidelines.

Lastly, there was a detailed presentation by various DEP staff members about upcoming legislation of importance to the agency that will be presented to the 2024 legislature.

The third quarterly EPAC meeting of 2023 was held on September 19, again at DEP headquarters with a virtual option. Once again there was 100% attendance with three members attending in person while the other four participated virtually.

Topics of review and discussion included staffing plans for the new Class VI Underground Injection Wells program in the Division of Water and Waste Management, an update on state legislation involving the regulation of nuclear powered electrical generation units, and an update on the Trout Stream Workgroup. A report was presented on the roll out – within the agency and to the public -- of the Environmental Justice Community Engagement Guidelines. And there was discussion about yet another large federal funding program providing our Oil and Gas Office with up to \$28 million via the Inflation Reduction Act for plugging low-producing conventional gas wells on non-federal lands.

The final quarterly EPAC meeting took place on December 5, 2023, with six of seven members participating virtually. The abbreviated agenda included some announcements concerning senior agency staff, the replacement of Rebecca McPhail on Council with WV Manufacturers Association new Executive Director, Bill Bissett, a report on recent permits of significance that had been approved, the results of several recent public meetings, ways to make EPAC more proactive, and a preview of the upcoming 2024 legislative session.

V. 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.

VI. CONCLUSION

The Advisory Council finds that -- especially during 2023 -- the performance of the Department of Environmental Protection successfully addressed these performance standards. Specifically, Section #5 which directs the agency to "...maximize federal funds that may be available to accomplish the purposes of State and federal environmental programs". As has been noted, the agency was able to obtain and implement an unprecedented amount of federal grant funding for several of its major programs for 2023 and beyond. And Sections 6, 7, and 8 challenge DEP to improve the effectiveness of its programs via the sharing of information AND "to encourage increased involvement of all citizens in the development and execution of State environmental programs". DEP's Community Engagement Guidelines that were developed over two years and released in the fall of 2023, are based precisely on those goals. Those guidelines and the principles embodied in them will serve as a focus for the agency's work and interaction with the public going forward.

One final observation. During 2023, WV DEP was able to maintain the momentum that was initiated in 2022 in the successful implementation of unprecedented federal funding for a number of its major programs. It did this with a minimal addition of staff or overhead, which is an outstanding testament to the quality of work that is being done by the agency. In fact, DEP continues to be rewarded for its high standards and accomplishments by often being called upon to add even more programs and responsibilities.

While it is admirable that the agency has earned that reputation for dependability and delivery, a concern about basic support resources, particularly in the area of staffing, was often raised at EPAC meetings during 2023. There is a perception, at least among some EPAC members, that DEP is near or at capacity in several areas when it comes to staffing. As a result, there is hope that accommodation on this issue will be given consideration in the future so that the agency can continue its outstanding record of accomplishment.

Submitted this 31st day of December, 2023.

Edward F. Maguire II, EPAC Ex Officio Chair designate