



west virginia department of environmental protection

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Austin Caperton, Cabinet Secretary
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Environmental Protection Advisory Council 2018 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, 2018 through December 31, 2018. 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 has been a request made to the Governor’s Office for a new appointment to the Council during 2018. On February 28, 2018, Dr. Van Gundy resigned from the Council. A recommendation was made to the Governor’s Office to appoint Angie Rosser as a representative of environmental organizations to replace Dr. Van Gundy, but that recommendation has yet to be approved. In addition, the remaining members of the Council are also awaiting formal reappointment by the Governor’s office.

MEMBER	APPOINTMENT	REPRESENTS	TERM EXPIRES
Lisa K. Dooley Madison, West Virginia	10/01/1999 2002, 2005, 2015	Local Governments	June 30, 2017
Charles “Larry” Harris, Ph.D. Morgantown, West Virginia	10/12/1995 1997, 2002, 2005, 2015	Environmental Organizations	June 30, 2017
Rebecca M. McPhail Huntington, West Virginia	01/22/2015	Industry	June 30, 2018
William Raney Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015	Industry	June 30, 2016
Charles “Rick” Roberts, Jr. Charleston, West Virginia	10/12/1995 1996, 2000, 2004, 2015	Public Service Districts	June 30, 2016
Ted Hapney Roane County, West Virginia	10/29/2010 2015	UMWA	June 30, 2018
Vacant		Environmental Organizations	

III. SUMMARY OF ACTIVITIES DURING 2018

The Council met four times during 2018. The first meeting on April 19, 2018 was *ex officio* chaired at Cabinet Secretary Caperton’s designation by DEP’s General Counsel, Kristin A. Boggs, with a discussion of the 2018 Regular Session of the Legislature as it pertained to environmental laws. At the June 14, 2018 meeting, Cabinet Secretary Caperton introduced Ed Maguire, DEP’s Environmental Advocate, as his new designated *ex officio* chair for the Environmental Protection Advisory Council meetings due to the agency’s General Counsel, Kristin Bogg’s departure from DEP. The June meeting was a presentation by DEP employees of the entire slate of agency rules proposed for the 2019 Legislative Session for the Council’s review and comments. At the September 13, 2018 meeting, Ed Maguire presented information regarding Minden, West Virginia PCB issues, The Rockwool/Roxul Insulation Manufacturing Facility located in Ranson, West Virginia and information regarding pipelines in West Virginia. The Council’s final meeting for the year, on

December 13, 2018, was a briefing by Deputy Cabinet Secretary Scott Mandirola about the agency's Water Quality Standards Rule and DEP's appearance before the Legislative Rulemaking Review Committee. In addition, Ed Maguire conducted a briefing with status updates and information about current issues the agency has been involved in this past year. These activities are summarized in the Council's official minutes, which are attached to this Report.

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 10th day of January, 2019.

/s/Ed Maguire

Edward F. Maguire, Environmental Advocate

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
April 19, 2018**

I. CALL TO ORDER

Kristin A. Boggs, 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 April 19, 2018 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: Rebecca McPhail, Rick Roberts, Jr., Lisa Dooley, and Ted Hapney. Bill Raney and Larry Harris participated by phone.

The meeting was also attended by the following DEP personnel: Austin Caperton, Cabinet Secretary and Harold Ward, Deputy Cabinet Secretary and Director of the Division of Mining and Reclamation.

III. OLD BUSINESS

Minutes of the December 14, 2017 Meeting. The minutes were provided to Council via email and in hard copy for their review. Mr. Hapney moved for approval of the minutes, Mrs. McPhail seconded the motion, and it was carried by acclamation of Council.

IV. DEP LEGISLATIVE INITIATIVES FOR THE 2018 SESSION

Ms. Boggs summarized the 2018 Legislative Session and answered questions of Council. No bills were run by the agency except for the rules bundle.

V. OTHER BUSINESS

- ❖ **Vacant Council Position.** Dr. Van Gundy retired from the Council leaving the position vacant for an Advocate for the Environment. Recommendations can be made to the DEP Cabinet Secretary.
- ❖ **Questions/Discussion.** Cabinet Secretary Caperton answered questions of Council related to the Manufacturer's Association and the Mountain Valley Pipeline.
- ❖ **Cabinet Secretary Caperton Comments**
 - DEP will continue to work with EPA to protect the environment in West Virginia.
 - DEP will continue permitting and regulating shale gas activity in the state.

- Optimistic for more job opportunities in the state.
- ❖ The remaining meetings of the Council are scheduled for **June 14, September 20, and December 13, beginning at 1:30 p.m.**

VI. ADJOURNMENT

All business being considered and discussions concluded, the meeting was adjourned at 2:07 p.m. by Motion made by Ms. Dooley and seconded by Mr. Hapney.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
June 14, 2018**

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 14, 2018 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

Secretary Caperton addressed the Council and briefly explained the Vision, Mission and Core Values of the agency. The attached handout was given to the Council members.

II. ROLL CALL

Members present: Larry Harris, Rebecca McPhail, Bill Raney, and Rick Roberts. Lisa Dooley and Ted Hapney were absent.

The meeting was also attended by Cabinet Secretary Caperton, as well as the following DEP personnel: Scott Mandirola, Deputy Cabinet Secretary and Director of the Division of Water & Waste Management (DWWM); Harold Ward, Deputy Cabinet Secretary and Director of the Division of Mining and Reclamation (DMR); Fred Durham, Director of the Division of Air Quality (DAQ); Jason Wandling, Acting General Counsel and Director of the Office of Legal Services; Laura Jennings and Laura Crowder from DAQ; Laura Cooper from the DWWM.

Also present was Angie Rosser of the West Virginia Rivers Coalition.

III. OLD BUSINESS

Minutes of the April 19, 2018 Meeting. The minutes were provided to Council via email and in hard copy for their review. Mr. Roberts moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

IV. NEW BUSINESS

COUNCIL MEMBERS TERMS OF OFFICE:

Mr. Maguire noted Dr. Van Gundy's resignation from Council and informed the Council that Secretary Caperton has recommended that Governor Justice appoint Ms. Angie Rosser in the vacant position representing Environmental Organizations. As of the day of

the meeting, Ms. Rosser had not yet been officially appointed to Council. It was noted that the appointments of several members have expired or will expire at the end of June. Council members were asked if they would like to be reappointed. All Council members present affirmed that they are willing to serve another term. A request will be made to Governor Justice's office to renew the terms of the Council members with the suggested staggered term expiration dates as listed in the table below:

MEMBER	APPOINTMENT	REPRESENTS	CURRENT EXPIRATION	NEW EXPIRATION
Lisa Dooley	1999, 2002, 2005, 2015	Local Governments	June 30, 2017	June 30, 2021
Larry Harris	1995, 1997, 2002, 2005, 2015	Environmental Organizations	June 30, 2017	June 30, 2021
Rebecca McPhail	2015	Industry	June 30, 2018	June 30, 2022
Bill Raney	1995, 1996, 2000, 2004, 2015	Industry	June 30, 2016	June 30, 2020
"Rick" Roberts	1995, 1996, 2000, 2004, 2015	Public Service Districts	June 30, 2016	June 30, 2020
Ted Hapney	2010, 2015	UMWA	June 30, 2018	June 30, 2022
Vacant (Van Gundy)		Environmental Organizations		June 30, 2022

PROPOSED 2019 LEGISLATIVE RULES:

Division of Air Quality

- ❖ **45CSR8 - Ambient Air Quality Standards** – Promulgated last in the 2018 session. Revisions to the rule include the annual incorporation by reference of 40 CFR Parts 50 and 53 promulgated by EPA as of June 1, 2018. The EPA reviewed the primary national ambient air quality standards (NAAQS) for oxides of nitrogen (NOx) and is retaining the current standards without revision. 45CSR8 incorporates by reference the NAAQS promulgated by the EPA under 40 CFR Part 50, and the ambient air monitoring reference methods and equivalent methods under 40 CFR Part 53.

- ❖ **45CSR16 - Standards of Performance for New Stationary Sources** – Promulgated last in the 2018 session. Revisions to the rule include the annual incorporation by reference of the amendments to the New Source Performance Standards (NSPS) promulgated by the EPA under 40 CFR Part 60 as of June 1, 2018. Amendments include: the Oil and Natural Gas Sector, quality assurance requirements for particulate matter (PM) continuous emissions monitoring systems (CEMS), the incorporations by reference section, and amendments to Procedure 6. 45CSR16 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 (CAA). 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.

Oil and Natural Gas Sector (Subpart OOOOa)- The EPA amended two fugitive emission requirements: The first removed the requirement for completion of delayed repair during unscheduled or emergency vent blowdowns. Owners/operators are still required to complete repairs during their next scheduled compressor station shutdown, well shutdown, well shut-in, after a planned vent blowdown, or within two years, whichever is earlier. The second provided separate monitoring requirements for well sites located on the Alaskan North Slope.

Quality Assurance Requirements for particulate matter (PM) Continuous Emission Monitoring Systems (CEMS) at Stationary Sources (Procedure 2) - Procedure 2 includes quality assurance (QA) and quality control (QC) procedures for PM CEMS used for compliance determination at stationary sources and specifies the minimum requirements necessary for the control and assessment of the quality of PM CEMS data submitted to the EPA and other regulatory authorities. The EPA revised Procedure 2 by establishing consistent requirements for ensuring and assessing the quality of PM data measured by CEMS that meet initial acceptance requirements in Performance Specification (PS) 11 of appendix B to part 60.

Incorporations by Reference (IBR) Section - Correction to the paragraph numbering in the IBR section relating to materials that can be purchased from the American Society for Testing and Materials (ASTM). This action assigned the appropriate IBR paragraph numbers by correcting paragraph ordering errors.

Procedure 6 - Minor technical amendments. Procedure 6 includes QA procedures for hydrogen chloride (HCl) CEMS used for determining compliance at stationary sources. The QA procedures specify the minimum requirements necessary for the control and assessment of the quality of CEMS data submitted to the EPA. The amendments establish consistent requirements for ensuring and assessing the quality of HCl data

measured by CEMS that meet initial acceptance requirements in PS 18 of appendix B to part 60.

- ❖ **45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities** - Promulgated last in the 2018 session. Revisions to this rule include the annual incorporation by reference updates with 33CSR20 and the provisions of 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 promulgated by EPA and listed in Table 45-25 of this rule. IBR amendments include a technical correction to § 261.6; revisions to the air emission standards for containers under Subpart CC to Parts 264 and 265; and amendments to § 261.4 regarding general exclusions.

Additional changes to this rule include: (1) inserted “sunset provision - does not apply” as 1.5; (2) deleted the definition of “facility mailing list” in §2.8; (3) clarified §3.1 and excluded the Division of Water and Waste Management (DWWM) permit fees and permit requirements from the IBR of 33CSR20; (4) updated §3.2 to add incorporation of related test methods and specifications; (5) clarified the use of e-mail is allowed during the permit process under section 5 and made minor revisions for consistency with 33CSR20; (6) reorganized Table 45-25; and (7) made corrections as needed to Table 45-25, including: (a) Removal of Part 261, Subpart E (vacated in 2014); (b) Part 262, Subpart C - Changed reference from 262.34 to 262.17 (Generator Improvement Rule); (c) Part 264, Subpart B - added 264.16; and (d) Corrected typos.

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.

Requirements for recyclable materials (§261.6) - paragraph (a)(2)(iv) is reinstated to read as follows: Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G).

40 CFR Parts 264 / 265, Subpart CC - The amendments remove the reference to the appendix to 40 CFR part 262 within the container level 1 and 2 standards involving inspection of the containers and their covers and closure devices.

Exclusions (§ 261.4) - The EPA revisions to regulations associated with the definition of solid waste implemented vacatur ordered by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on July 7, 2017, as modified on March 6, 2018. The amendments apply to facilities that generate or recycle hazardous secondary materials (HSM).

- ❖ **45CSR34 - Emission Standards for Hazardous Air Pollutants** - Promulgated last in the 2018 session. Revisions to the rule include the annual incorporation by reference amendments of the NESHAPs promulgated by the EPA under 40 CFR Part 63 as of June 1, 2018, including: Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Pulp Mills; Method 301; Nutritional Yeast Manufacturing Residual; Off-Site Waste and Recovery Operations; Phosphoric Acid Manufacturing and Phosphate Fertilizer Production; Portland Cement Manufacturing Industry; Publicly Owned Treatment Works; and Wool Fiberglass Manufacturing / Rotary Spin Lines / Flame Attenuation Lines Standards. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 61 and 63 and 40 CFR Part 65, to the extent referenced in 40 CFR Parts 61 and 63, promulgated as of June 1, 2018. 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).

Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Subpart MM) - Amended to revise opacity monitoring provisions and add requirements to maintain proper operation of the electrostatic precipitator (ESP) automatic voltage control (AVC) and to conduct 5-year periodic emissions testing and electronic reporting. Additional revisions include provisions to address periods of startup, shutdown, and malfunction (SSM) and other technical and editorial changes.

Field Validation of Pollutant Measurement Methods from Various Waste Media (Method 301) - Editorial and technical revisions to correct and update this method. Clarified the regulatory applicability of Method 301. Revisions include ruggedness testing for validation of test methods intended for application at multiple sources, determination of the detection limit for all method validations, detection limit determination procedures, sampling requirements for the method comparison procedure, sorbent sampling systems procedures, and acceptable statistical results for candidate test methods clarification.

Nutritional Yeast Manufacturing Residual (Subpart CCCC) - Amendments include: revision of the form of the volatile organic compound (VOC) standards for fermenters; removal of the option to monitor brew ethanol; addition of requirements for ongoing relative accuracy test audits (RATAs); use of Procedure 1 of Appendix F to part 60 for VOC CEMS; removal of gas chromatograph CEMS as an option to monitor VOC concentration; collection of CEMS data at all times during the batch monitoring period; requirement for electronic reporting; and revision of SSM provisions.

Off-Site Waste and Recovery Operations (Subpart DD) - The amendments address continuous monitoring for pressure relief devices (PRDs) on containers. Removed the additional monitoring requirements for PRDs on containers that were required in addition to the inspection and monitoring requirements for containers and their closure devices.

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production (Subparts AA & BB) - The amendments revised the compliance date for affected sources to include emissions from oxidation reactors when determining compliance with the total fluoride emission limits for superphosphoric acid process lines and the compliance date for the monitoring requirements for low-energy absorbers. A new monitoring option for low-energy absorbers was added and another option was clarified.

Portland Cement Manufacturing Industry (Subpart LLL) - The first amendment added a compliance alternative for sources that would otherwise be required to use a HCl CEMS to demonstrate compliance with the HCl emissions limit due to the unavailability of the HCl calibration gases used for CEMS quality assurance purposes. The second amendment withdrew the first amendment and restored the original provisions of this regulations.

Publicly Owned Treatment Works (POTW) (Subpart VVV) - The amendment revised: names and definitions of subcategories; applicability criteria; provisions pertaining to emissions during periods of SSM; initial notification requirements for existing Group 1 and Group 2 POTW; new Group 1 POTW requirements; electronic reporting requirements; and other miscellaneous edits and technical corrections.

Wool Fiberglass Manufacturing. Rotary Spin Lines. Flame Attenuation (FA) Lines Standards - Existing emission limits for formaldehyde were readopted, emission limits for methanol were established, and a work practice standard for phenol emissions from bonded rotary spin lines at wool fiberglass manufacturing facilities were established. Three subcategories of FA lines were created; emission limits for formaldehyde and methanol emissions were established; and either phenol emission limits or work practice standards were established for each subcategory of FA lines.

- ❖ **45CSR36** – *Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)* - This rule is proposed for repeal in its entirety because it is no longer required for WV to remain in compliance with its Transportation Conformity obligations under the CAA. Three specific requirements of SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) replaced the requirements incorporated by reference in this rule. This rule was last promulgated in 2004 and incorporated by reference the requirements of 40 CFR Part 93, Subpart A

promulgated by the EPA to implement § 176(c) of the CAA. The rule also incorporated by reference the related requirements of 23 U.S.C. § 109(j) with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the U.S. Department of Transportation, and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule codified general policy, criteria, and procedures for demonstrating and assuring conformity of such activities to applicable air quality implementation plans developed pursuant to Section 110 and Part D of the CAA.

- ❖ **45CSR38** – *Provisions for Determination of Compliance with Air Quality Management Rules* - This rule is proposed for repeal in its entirety because the circumstances that initially required promulgation of this rule no longer exist. This rule was last promulgated in 1995 and clarified the types of data that may be used by an owner of a facility or by the agency to determine compliance with, or violation of, emission standards and was developed in response to the Enhanced Monitoring State Implementation Plan (SIP) Call by the EPA. The EPA subsequently included the SIP Call requirements under other federal programs for which West Virginia has corresponding rules.

- ❖ **45CSR43** – *Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulphur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions* - This is a new rule that incorporates by reference the federal Cross-State Air Pollution Rule (CSAPR), limiting emissions of nitrogen oxides (NOX) and sulfur dioxide (SO₂), through three emissions trading programs. CSAPR was promulgated by the EPA under § 110 of the CAA, as amended and under 40 CFR §§52.38 and 52.39 as a means of mitigating interstate transport of fine particulates (PM_{2.5}), NOX, ozone and SO₂. The trading programs include: the CSAPR NOX Annual Trading Program set forth under 40 CFR part 97, subpart AAAAA; the CSAPR NOX Ozone Season Group 2 Trading Program set forth under 40 CFR part 97, subpart EEEEE; and the CSAPR SO₂ Group 1 Trading Program set forth under 40 CFR part 97, subpart CCCCC. This rule codifies general procedures and criteria to implement these trading programs and adopts and incorporates by reference these standards, along with the associated reference methods, performance specifications and other test methods referenced by these standards.

- *Fred Durham, Director of DAQ, Laura Crowder, Deputy Director, and Laura Jennings, Technical Analyst, answered questions of Council regarding the proposed rules.*

Division of Water and Waste Management

- ❖ **47CSR2** – *Requirements Governing Water Quality Standards* – Amendments to this rule are being made in order to adhere to the federal requirement for Triennial Review of Water Quality Standards. Revisions herein relating to overlapping mixing zones and harmonic mean flow are being made to comply with changes made by the Legislature to 22-11-7b. Revisions to human health criteria are being made to bring WV standards in line with nationally-recommended water quality criteria. Revisions to the site-specific

criterion process are being made to allow a streamlined process for developing site-specific revisions for copper. Additional administrative revisions are being made to make the rule more clear and concise.

- ❖ **47CSR – Assessments Methodology for the Biological Component or the Narrative Criteria in Wadeable Streams** – Council was informed that this rule was proposed but then withdrawn by DEP.

- *Scott Mandirola, Deputy Cabinet Secretary and Director of DWWM, and Laura Cooper, Assistant Director of DWWM for Water Quality Standards, answered questions of Council regarding the proposed rules.*

VI. OTHER BUSINESS

- ❖ Mr. Maguire proposed that any ideas or suggestions of new topics that might warrant review by the Council be brought to the next meeting for discussion.
- ❖ The remaining meetings of the EPAC are scheduled for September 13, 2018 and December 13, 2018.

VII. ADJOURNMENT

All business being considered and discussions concluded, Mr. Raney moved that the meeting be adjourned, Mrs. McPhail seconded the motion, and it carried by acclamation of Council. The meeting was adjourned at 3:00 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
September 13, 2018**

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 September 13, 2018 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

Secretary Caperton addressed the Council to explain the recent restructuring and reorganization of the agency.

II. ROLL CALL

Members present: Rebecca McPhail, Bill Raney, and Rick Roberts. Larry Harris attended via phone. Angie Rosser, who is awaiting her appointment to the Council by Governor Justice was also present. Lisa Dooley and Ted Hapney were absent.

The initial portion of the meeting was also attended by Cabinet Secretary Caperton; Scott Mandirola, Deputy Cabinet Secretary; and Jason Wandling, General Counsel and Director of the Office of Legal Services.

III. OLD BUSINESS

Minutes of the June 14, 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, Mr. Roberts seconded the motion, and it was carried by acclamation of Council.

Status of Council Members Terms of Office. Mr. Maguire advised Council that requests have been sent to Governor Justice to appoint and/or reappoint Council members and we are still awaiting confirmation of those appointments.

Status of 2019 Legislative Rules. The public comment period for the Division of Air Quality (DAQ) rules and Division of Water and Waste Management (DWWM) rule concluded on July 10, 2018. DAQ's rules were submitted to the Secretary of State's Office on July 24, 2018 and the DWWM rule was submitted to the Secretary of State's Office on July 27, 2018.

IV. NEW BUSINESS

Suggestions from Council for upcoming meeting topics:

- ❖ Pipelines
 - Construction
 - Citizen Monitoring of Pipelines
- ❖ DEP Finances
 - DEP's budget
 - How is DEP funded?
- ❖ DEP Cliff Notes for DEP Divisions
 - Division of Air Quality
 - Division of Mining & Reclamation
 - Division of Water & Waste Management
 - Office of Oil & Gas
- ❖ DEP Fees & Potential Fee Increases
- ❖ DEP Permit Requirements vs. EPA Permit Requirements
- ❖ DEP Current "Hot Topic" Activities/Incidents

Ed Maguire presented information regarding the following DEP Hot Topics:

- ❖ Minden, West Virginia (Fayette County)
 - PCB Contamination from 1970s
 - Some remediation done by EPA in 1980s
 - Recommended to go on National Priority List for Superfund Designation
 - DEP's coordinator is Rob Rice, Director of Division of Land Restoration, but the site will indefinitely remain under the primary jurisdiction of EPA
- ❖ Rockwool / Roxul
 - Stone Wool Insulation Manufacturing Facility
 - Located in Ranson, West Virginia (Jefferson County)
 - Plant has quickly become a major controversy in that region of the state with more than 9,000 registered on an anti-Rockwool site on Facebook
 - DEP's role thus far has been largely limited to granting an air permit from the facility. That permit was approved several months ago without any formal objections from the public
 - DEP's link to information about Rockwool:
<https://dep.wv.gov/news/Pages/RockwoolInformation.aspx>

❖ Pipelines

- Mountain Valley Pipeline (MVP)
- Atlantic Coast Pipeline (ACP)
- Mountaineer Xpress Pipeline (MXP)
- MVP and ACP projects had recently been under a stay order due to court challenges, but both are now back in full operation. Issues remain, including clearance for some major river crossings, but the companies are still claiming that they will complete installation by the end of 2019.
- DEP's Environmental Advocate's Office and Environmental Enforcement staff are coordinating almost daily with citizens and citizen groups on complaints and concerns about sediment control structures being overrun by runoff from localized storms throughout the pipeline counties.
- DEP's link to information about pipelines under construction in WV:
<https://dep.wv.gov/pio/Pages/Major-Pipelines-In-West-Virginia.aspx>

VI. OTHER BUSINESS

- ❖ The last meeting of the EPAC this year is scheduled for December 13, 2018.

VII. ADJOURNMENT

All business being considered, and discussions concluded, the meeting was adjourned at 3:30 p.m.

**ENVIRONMENTAL PROTECTION ADVISORY COUNCIL
MEETING MINUTES
December 13, 2018**

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 2:00 p.m. on December 13, 2018 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: Rebecca McPhail, Dr. Larry Harris, and Bill Raney. Angie Rosser, who is awaiting her appointment to the Council by Governor Justice, and Lisa Dooley participated via phone conference. Rick Roberts and Ted Hapney were absent.

The meeting was also attended by Deputy Cabinet Secretary Scott Mandirola.

III. OLD BUSINESS

- ❖ **Minutes of the September 13, 2018 Meeting.** The minutes were provided to Council via email and in hard copy for their review. Mrs. McPhail moved for approval of the minutes, Dr. Harris seconded the motion, and it was carried by acclamation of Council.
- ❖ **Status of Council Members Terms of Office.** Council was advised that the appointment of Ms. Rosser and reappoints of the remaining Council members are still awaiting action by Governor Justice.

IV. OTHER BUSINESS & GENERAL DISCUSSION

- ❖ **Review and Approve 2018 Annual Report.** The draft of the annual report was provided to Council via email. In response to a question raised by Ms. Rosser as to how the agency might better handle public notices for applications, comment periods, permit renewals, and public meetings, Ms. Dooley suggested that the topic be added as an agenda item for the next meeting. Mr. Maguire concurred with that suggestion and the topic will be added as an agenda item to be discussed at the first meeting of 2019. There being no additional comments, the final version 2018 Annual Report will be emailed to Council for approval via email response by each voting Council member.
- ❖ **Schedule 2019 EPAC Meetings.** The meetings for 2019 have been set for March 14, June 6, September 12 and December 12.

- ❖ **Confirm Council Members Current Contact Information.** The attending Council members were given a printout of their contact information to review and update. The remaining members will be emailed the contact information to be updated.

IV. DEP HOT TOPICS & GENERAL DISCUSSION

- ❖ **Ed Maguire provided update on Pipelines.**
 - ACP (Dominion) is currently shut down in Virginia and West Virginia due to lawsuit challenges.
 - MVP is shut down in WV as it relates to stream crossings.
 - MXP is operating under a green light as of noon today, December 13, 2018.
 - Overall pipeline activity has significantly diminished either because of court cases causing shut downs or upcoming winter weather. Companies are focusing on stabilization of their construction areas.
 - The State of Virginia has filed suit against MVP based on the 401 Certification due to an abundance of violations over a period of months.
 - Angie Rosser had a question concerning the calculation of penalties in the Rover Pipeline and MXP Consent Orders that appears to disregard an allowance for DEP staff investigative time and costs in assessing penalties for repeated offenses. Scott Mandirola offered to consult with Jeremy Bandy, EE's Chief Inspector on this question, and will follow-up with Council at the next meeting.
 - Ed Maguire advised Council about compensation being paid to the State of Virginia under the National Migratory Bird Act (NMBA) that requires for payment to the State for the loss of habitat for the clearing of the pipelines. Virginia's total compensation is estimated to be around \$60 million. Thus far, few details have been released concerning any similar payments being made to West Virginia.
 - Ed Maguire advised Council that Dominion purchased a 1,200 acre tract of property that was part of the state Boy Scout camp at Dilley's Mill in Pocahontas County. Reportedly the property was acquired by an intermediary and has been transferred to DNR as an addition to the adjoining Seneca State Forest, although this transfer has yet to be announced publicly.
- ❖ **2019 Legislative Session.**
 - The Session begins on January 9, 2019.

- Water Quality Standard (WQS) Rule.
 - DEP filed the rule with updates to Human Health Criteria requirements.
 - DEP attended the Rule Making Review Committee Meeting and addressed a number of questions asked by Committee members concerning changes in the rule related to Human Health Criteria. The LRMC requested that DEP pull the rule back to the previously adopted language so as to take additional comments from citizens, industry and other interested parties. Scott Mandirola responded that the agency was open to such a request from the Committee.
 - The next step is that DEP will schedule a public meeting(s) in the next month or so to receive any additional comments. DEP will then evaluate the information received.
- Additional Legislative Discussions. There was additional brief discussions regarding other potential topics of interest that may be addressed during the 2019 Legislative Session as follows:
 - Solar Power
 - Public Water System Supply Study Commission (PWSSSC) was established after SB 373. PWSSSC report was filed Friday, December 7, 2018 with recommendations.
 - One recommendation of PWSSSC of interest to DEP regards the Homeland Security and Emergency Management (SSEM) Spill Hotline and potential deficiencies.

❖ **General Discussion by Council:**

- Sale of Freedom Industry Site on Elk River in Charleston
- Solar Power
- Wind Farms / Windmills
- Proposed New Pump Storage Facility in Tucker County (Freedom Works) with a Public Informational Meeting for January 9 in Parsons. No formal proposal requiring DEP action has yet been presented.

❖ **Rockwool / Roxul Update (Jefferson County).**

- Hearing was held on Monday, December 10, 2018 for a water permit which is a condition for the air permit which they already have.

- Approximately 100 people in attendance.
- DEP Website: <https://dep.wv.gov/news/Pages/RockwoolInformation.aspx>
- A public meeting to review a proposal natural gas service pipeline to the site will be held in late January.

❖ **Corridor H**

- DEP has currently shut down construction between Parsons and Prudence due to a number of permit violations involving sediment erosion controls.

❖ **Marcellus**

- Brief discussion concerning Antero Resources new wastewater treatment facility on the Doddridge/Ritchie county line that is yet to operate at full capacity. Antero has offered to participate in a meeting with a local watershed group to share details on the status of the plant as well as other current concerns. DEP will attend.

❖ **Sale of package of 17,000 aging oil and gas wells by EQT to Diversified.**

- The Natural Gas Surface Owners group has met with DEP to express their concerns that the new owner will “bleed more oil” out of those wells and then merely sell to another company. That group is concerned that this will become a practice and they want DEP to stop this. Response is that this is a business transaction between two companies and DEP does not have the authority to do what the surface owners demand. However, DEP did negotiate a Consent Order that obligates Diversified to do some enhanced reclamation of those wells going forward and to post a three hundred million dollar bond that had not been in existence beforehand.

❖ **New Endangered Species in West Virginia**

➤ **Candy Darter Fish**

- **Critical Habitat Designation**
 - Upper Gauley River upstream of Summersville Lake, the Greenbrier River upstream of Marlinton, including Knapp Creek, and all the tributaries of East Fork and West Fork., one short segment on the Gauley River near the mouth of the Meadow River, and a couple of small segments of the New River in Virginia.
 - Too early to tell what impact this new designation will have on permits and new permit applications in those streams

VI. OTHER BUSINESS

- ❖ The last meeting of the EPAC this year is scheduled for December 13, 2018.

VII. ADJOURNMENT

All business being considered, and discussions concluded, the meeting was adjourned at 3:30 p.m.