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# WUC

Water Utility Council of the  
PA-Section, American Water  
Works Association (PA-AWWA)



## GOVERNMENT RELATIONS UPDATE

### From Gmerek Government Relations, Inc.

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*PA- Section, American Water Works Association  
National Association of Water Companies  
Water Works Operators' Association of Pennsylvania*

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## EPA Releases Drinking Water Mapping Application to Protect Source Waters

**E**PA released DWMAPS - the Drinking Water Mapping Application to Protect Source Waters. This robust, online mapping tool provides the public, water system operators, state programs, and federal agencies with critical information to help them safeguard the sources of America's drinking water.

DWMAPS allows users to learn about their watershed and understand more about their water supplier. DWMAPS also lets users see if sources of their drinking water are polluted and if there are possible sources of pollution that could affect their communities' water supply. DWMAPS can even guide users to ways that they can get involved in protecting drinking water sources in their community.

Learn [more](#).

**Source:** Water Headlines from EPA, 2/25/2016

## Governments of Canada and the United States Announce Phosphorus Reduction Targets of 40 percent to Improve Lake Erie Water Quality and Reduce Public Health Risk

**O**n February 22, 2016, U.S. Environmental Protection Agency Administrator Gina McCarthy and Canada's Environment and Climate Change Minister Catherine McKenna announced that Canada and the U.S. have adopted targets to reduce phosphorus entering affected areas of Lake Erie by 40 percent. The targets announced today will minimize the extent of low oxygen "dead zones" in the central basin of Lake Erie; maintain algae growth at a level consistent with healthy aquatic ecosystems; and maintain algae biomass at levels that do not produce toxins that pose a threat to human or ecosystem health.

Through the Great Lakes Water Quality Agreement, Canada and the United States committed in 2012 to combat the growing threat of

toxic and nuisance algae development in Lake Erie, and agreed to develop updated binational phosphorus reduction targets for Lake Erie by February 2016. The 40 percent reduction targets are based on 2008 loading levels. Canada and the United States have committed to develop domestic action plans, by no later than February 2018, to help meet the new targets.

"To protect public health, we must restore the Great Lakes for all those who depend on them," said Gina McCarthy, Administrator, United States Environmental Protection Agency. "The first step in our urgent work together to protect Lake Erie from toxic algae, harmful algal blooms, and other effects of nutrient runoff, is to establish these important phosphorus limits. But, establishing these targets is not the end of our work together. We are already taking action to meet them."

The Honorable Catherine McKenna, Minister of Environment and Climate Change said, "Canada recognizes the urgency and magnitude of the threat to Lake Erie water quality and ecosystem health posed by toxic and nuisance algal blooms. By establishing these targets, we strengthen our resolve to work with our American neighbors, and Canadian and U.S. stakeholders who share these waters, to protect the tremendous natural resource that is Lake Erie."

Algae occur naturally in freshwater systems. They are essential to the aquatic food web and healthy ecosystems. However, too much algae, linked to high amounts of phosphorus, can lead to conditions that can harm human health and the environment. Since the 1990s, Lake Erie has seen an increase in algal growth that has compromised water quality and threatens the Lake Erie region's recreation-intensive economy. The targets were developed after extensive public input from a diversity of sectors.

#### Quick Facts

- The 2015 harmful algal bloom in Lake Erie was recorded as the largest bloom this century.
- Modeling experts from the United States and Canada used nine different computer simulation models to correlate changes in phosphorus

levels with levels of algal growth in order to determine phosphorus load reduction targets.

- A binational public consultation process was held between June 30 and August 31, 2015. Final targets were established following widespread support for the draft targets and the target setting process.
- More than 40 Canadian and American experts formed a binational team under the leadership of Environment and Climate Change Canada and the United States Environmental Protection Agency to develop the targets.
- In Canada, more than 50 individuals, groups and agencies representing Agricultural and other non-government organizations, Conservation Authorities, municipal governments, Ontario government agencies, First Nations, and Universities commented on the draft targets through an on-line tool and face-to-face discussions.

Source: EPA Press Release, 2/22/2016

## **Volunteers Needed for Statewide Cleanup, Beautification Effort**

**T**he Pennsylvania Departments of Transportation (PennDOT) and Environmental Protection (DEP) are seeking volunteers for this year's Great American Cleanup of Pennsylvania that begins March 1 and runs through May 31.

The cleanup is sponsored each year by PennDOT, DEP, Keep Pennsylvania Beautiful and other partners. Groups participating in PennDOT's Adopt-A-Highway (AAH) program, which involves volunteers cleaning roadsides year round, are also encouraged to participate in the cleanup.

"Pennsylvania is a beautiful state, and it's imperative that we work together to keep it that way," PennDOT Secretary Leslie S. Richards said. "I urge individuals to join the thousands of volunteers in their communities to participate in the

cleanup this year to keep Pennsylvania not only esthetically beautiful, but environmentally safe."

Interested individuals can find a listing of cleanup events, resources for organizing a cleanup, and other information about the effort online at [www.gacofpa.org](http://www.gacofpa.org). Groups interested in adopting a section of highway are encouraged to contact their local PennDOT County Maintenance office and ask for the AAH coordinator, or visit [www.penndot.gov](http://www.penndot.gov) under "About us." Groups interested in adopting a locally maintained road, contact Keep Pennsylvania Beautiful, [www.keeppabeautiful.org](http://www.keeppabeautiful.org) under "Keep It."

"In addition to litter pick-up events, volunteers also organize recycling events for hard to dispose of items, helping to reduce illegal dumping that threatens public health and damages the environment," DEP Secretary John Quigley said. "Volunteers can also take part by planting bulbs and trees that not only beautify our green spaces but helps to prevent run off pollution to our waterways."

Also as part of this year's cleanup, the PA Route 6 Alliance encourages residents near the Route 6 Heritage Corridor to register at [www.gacofpa.org](http://www.gacofpa.org) for their "Route 6 Round-up" beautification efforts.

During last year's Great American Cleanup, 6 million pounds of litter was collected from Pennsylvania's roads, trails and shorelines by more than 128,000 volunteers. PennDOT's AAH program contributed nearly 71,000 volunteers who cleaned up nearly 40 percent of the collected litter on 8,757 miles of cleaned-up roadway.

Through PennDOT's AAH program, volunteers collect litter on a two-mile section of state highway at least two times a year. The program currently has over 6,000 participating groups, more than 111,000 volunteers and 13,973 miles of adopted state-maintained roadways.

Gloves, trash bags and safety vests are provided by PennDOT, DEP, and the GLAD Products Company, a national sponsor of Keep America Beautiful's Great American Cleanup. In addition, during "Pick it Up PA Days" from April 16 to May 9, registered events have access to reduced or free

disposal at participating landfills sponsored by PA DEP and the Pennsylvania Waste Industries Association.

Source: DEP Press Release, 2/26/2016

## Sen. Yudichak Discusses Environmental Issues with DEP Secretary

During the February 25, 2016 state Senate budget hearing, Sen. John Yudichak questioned Department of Environmental Protection (DEP) Secretary John Quigley on issues ranging from extinguishing the Jeansville Mine fire in Carbon County to what the agency is doing to protect Pennsylvanians from lead in drinking water.

"I applaud DEP for keeping the public informed about the Jeansville fire, obtaining \$9 million in federal reclamation funds and working closely with the region's government officials at all levels on a plan to extinguish the fire," Yudichak said. "I'm also pleased that the department continues to utilize state dollars and press the federal government to reauthorize mine reclamation monies."

Referring to layoffs at Panther Creek in Nesquehoning, Yudichak questioned Quigley about the Wolf Administration's efforts to help the state's coal waste industry. The DEP secretary told Yudichak that the coal waste plants are an "incredibly important asset in Pennsylvania" and that they should receive retrofitting upgrades and be given relief from certain regulations.

"It is imperative that the state do what it can to help the coal waste industry rebound and thrive," Yudichak said. "Coal Waste facilities are good for our economy and good for jobs — but also good for reclaiming abandoned mine lands."

Yudichak, who sponsored the law (Act 55 of 2014) that mandated the reduction of lead content in pipes and plumbing fixtures, asked Quigley what DEP is doing to prevent a Flint, Michigan, type of health crisis from happening in Pennsylvania. Quigley said the department will remain vigilant,

but reassured that none of Pennsylvania's 159 water systems have exceeded federal lead levels.

Yudichak, who serves as Democratic chair of the Senate Environmental Resources and Energy Committee, also asked Quigley what DEP is doing to support natural gas pipeline development that "protects local property rights, ensures environmental protections and promotes economic development throughout Pennsylvania." Quigley said DEP is currently vetting 94 of the Pipeline Infrastructure Task Force's 184 recommendations. "We need to strike a balance by respecting local property rights and protecting our environment; but these pipelines are an incredible resource that can transform our economy," Yudichak said. "So we need to be responsible while we pursue a good commonsense development plan."

**Source:** Senator Yudichak Press Release, 2/25/2016

## **Budget: DEP Does Not Have Enough Staff to Meet Needs in Any of Its Programs**

**D**EP Secretary John Quigley was very direct in telling the Senate Appropriations Committee Thursday that his agency does not have enough staff to meet the needs of any of its programs because of persistent and continuous budget cuts over the last decade.

He added additional cuts would not only be "ruinous" for the agency, but also for the regulated community.

"DEP's ability to protect public health and the environment, and to perform basic functions like evaluating permit applications in a timely fashion, have been stressed to the limit," said Secretary Quigley. "Further cuts will jeopardize the citizens we serve and the environment that we are obligated to protect, and harm the state's economy."

In comments at the end of the 3-hour hearing, Sen. Pat Browne (R-Lehigh), Majority Chair of the Senate Appropriations Committee, said "a bunch" of DEP special funds will be "underwater" in the

near future and many of them are for very important programs. He mentioned the Clean Water and Radiation Protection funds.

Secretary Quigley said the Storage Tank Fund will be out of money in mid-2017 and the Hazardous Sites Cleanup Fund in mid-2018.

Sen. Browne said other DEP funds do have money and could be looked at to support other programs and looked forward to working with DEP on those issues.

Secretary Quigley said DEP has been in a position for the last decade to do more with less. He noted the agency lost 14 percent of its staff, while the average agency lost 6 percent of staff.

He added, in another example, DEP spent \$23 million for information technology a decade ago and just with inflation the budget should be \$29 million. However, it is now just \$16 million.

Secretary Quigley said DEP has identified 10 projects under the Governor's Go-Time initiative to make the agency more efficient including:

- Consolidating the grant application process into one platform;
- DEP received permission to download apps to agency iPhone, which it could not do before, that will make staff more effective;
- Adopted faster Internet service to its regional offices that will make work more efficient;
- Start using iPads this year in the Oil and Gas Program, rather than carrying clipboards, that will double the productivity of DEP's inspectors;
- Instituting an electronic document management solutions to eliminate the need of 10s of thousands of square feet of warehouse space now used to store paper documents;
- Replacing the eFACTS permit management and inspection reporting database, which is included in the Governor's budget; and

- Starting an electronic permit acceptance and review initiative in the mining program as a first step to making other permit processing electronic.

Here are other changes proposed for DEP in the Governor's FY 2016-17:

- \$0 funds will be transferred from the Marcellus Shale Legacy Fund to DEP in FY 2016-17, \$10.3 million was transferred in FY 2015-16; and
- 2 new positions for Covered Device (electronics waste) Recycling Act administered at DEP.

Here is a quick summary of questions raised by Senators at the hearing:

**EPA Clean Power Climate Rule:** Sen. Gene Yaw (R-Lycoming), Majority Chair of the Senate Environmental Resources and Energy Committee, asked why DEP is moving ahead with developing a plan to meet the Clean Power Climate Rule when the U.S. Supreme Court stayed the implementation of the Program.

Secretary Quigley said DEP is planning to continue working with stakeholders on the development of a Pennsylvania Plan to meet the EPA rule because one of the outcomes of the federal court challenge could be to meet the existing compliance schedule. He said it is worth a "deep-dive" on the issue, because that is the safest option.

At the same time, Secretary Quigley said it is unlikely DEP will be submitting a Plan to EPA before the legal challenges are decided. He added, alternative/renewable energy and using Pennsylvania's cleaner natural gas is the future and those trends will continue irrespective of what happens to EPA's rule.

Sen. Kim Ward (R-Westmoreland) asked what the cost is to develop Pennsylvania's plan to meet the requirement. Secretary Quigley said DEP is not hiring new staff to prepare the plan; about 6 staff use part of their time to prepare the plan. In addition, Pennsylvania is getting special modeling support from the National Governor's Association to look at policy options.

Sen. John Wozniak (D-Cambria) said coal-fired power plants are important to the economy in Western PA and everything should be done to protect them as long as possible.

**Proposed Waste Fee Increases:** Sen. Yaw asked Secretary Quigley to explain the proposed \$1.75/ton increase and broadening of the state waste disposal fee that would be deposited to DCNR's Oil and Gas Fund.

Secretary Quigley said the idea behind the fee is to even the playing field between municipal and construction and demolition and residual waste to which the fee is proposed to apply. Without the fee increase, the Environmental Stewardship (Growing Greener) Fund will be hit with a \$35 million reduction in funding for watershed restoration and recreation projects [along with a \$15 million reduction to the Hazardous Sites Cleanup fund].

**Citizens Advisory Council/Oil & Gas Technical Advisory Board:** Sen. Yaw asked about issues related to advisory committees, including DEP's Citizens Advisory Council where its Executive Director was dismissed by the agency. He also noted the Oil and Gas Technical Advisory Board and the Conventional Oil and Gas Advisory Committee both recommended DEP not go ahead with Chapter 78 drilling regulation changes and DEP did. Sen. Yaw said it seems like DEP ignores its advisory committee or the agency dismisses people it doesn't like.

Secretary Quigley said there was no policy differences with the Citizens Advisory Council, but dismissing the Executive Director is a personnel issue that he could not discuss.

Secretary Quigley said he thought it was healthy to occasionally have disagreements with its advisory committees as part of the discussion of regulatory requirements and policy. He noted the Oil and Gas Technical Advisory Board which advises DEP on issues related to Marcellus Shale drilling did not recommend delaying the regulations.

He said DEP appointed individuals to the two oil and gas advisory committees from several sources, including Sen. Scott Hutchinson (R-Venango). He

explained DEP added the Conventional Oil and Gas Advisory Committee because there was only one advisory group previously advising DEP on both the conventional and Marcellus drilling industries and they thought separate groups would be helpful.

**Chesapeake Bay Program:** Sen. Yaw said he was aware of a proposed Growing Greener III Program for a suggested \$900 million with many, many items that were “nice to have.” He said some of those may have to be redirected to support the Chesapeake Bay Program and other programs the Commonwealth must do.

Secretary Quigley said there have been discussions with a variety of groups on a proposal and Gov. Wolf is anxious to have a conversation with members of the General Assembly about what should be in any new Growing Greener Program.

Sen. Scott Wagner (R-York) asked later for more information on the Chesapeake Bay Program on whether putting some of the required nutrient reductions out for bid would be a good idea. [The reference is to [Senate Bill 724](#) that would be an ineffective way to address nutrient reductions that would not count toward the state’s Chesapeake Bay cleanup commitments.]

Secretary Quigley said there are opportunities for market-based approaches to nutrient reductions, like the Nutrient Credit Trading Program, and DEP is now proposing changes to the program to make it more effective.

Secretary Quigley said there is an “incredible sense of urgency” in making the changes needed to make the Trading Program more efficient and effective and to address Pennsylvania’s Chesapeake Bay cleanup commitments.

Sen. Elder Vogel (R-Beaver) asked if the Penn State survey of farmers on conservation practices mentioned in the Chesapeake Bay Reboot will actually be used in the Chesapeake Bay Program. Secretary Quigley said the survey is part of an effort to get Pennsylvania farmers the maximum credit possible for conservation practices on the ground, but which have not be credited within the Bay Program.

Sen. Lloyd Smucker (R-Lancaster) said Lancaster County is at “ground zero” on Chesapeake Bay Program and there are concerns about the Bay Reboot proposed by DEP. He asked about the confidentiality of the farmer survey results. Secretary Quigley said Penn State is handling the survey and no data from individual farmers will be made available to DEP. It will be aggregated for DEP’s use.

Sen. John Eichelberger (R-Blair) asked what role county conservation districts will have in implementing the Chesapeake Bay Reboot and expressed concerns about district involvement. Sen. Lloyd Smucker (R-Lancaster) had similar concerns.

Secretary Quigley said DEP had paid for 100 educational visits to farmers, but now DEP is proposing, instead, to pay for 50 enforcement visits to farmers. However, DEP is not asking districts to take enforcement actions. He emphasized the new program would be voluntary on the part of districts. Secretary Quigley said Pennsylvania has been trying to educating farmers for 30 years; now is the time to go to the next step.

He acknowledged there has not be enough outreach to districts about the reboot, noting DEP is meeting with districts next week to discuss Reboot in detail. Sen. Eichelberger said he is concerned about conservation districts being viewed as an “enforcer,” rather than being an entity that helps farmers.

**Susquehanna River Impairment:** Sen. Rob Teplitz (D-Dauphin) asked what the next step is in making a decision on listing the Lower Susquehanna River as impaired. Secretary Quigley said DEP does not yet have a specific source for the endocrine disruptors and herbicides that are the likely the causes for the smallmouth bass in the river. He said DEP will be doing a herbicide use survey and an extended water sampling program that will go up the river’s tributaries to try to identify sources.

**Federal Mine Reclamation Fee:** Sen. John Yudichak (D-Luzerne), Minority Chair of the Senate Environmental Resources and Energy Committee, said the federal Abandoned Mine

Reclamation Fund fee is set to expire in 2021 and wanted to know what DEP is doing to ensure it continues. Secretary Quigley said they are deeply engaged with the state's Congressional Delegation to do everything we can to make sure the fee continues.

**Coal Waste Power Plants:** Sen. Yudichak (D-Luzerne) said he learned this week the Panther Creek waste coal power plant is cutting back its operations which provide not only energy, but mine reclamation benefits. He asked what DEP is doing to make sure these plants and their benefits continue.

Secretary Quigley said the waste coal power plants are an "incredible" resource for Pennsylvania because of their multiple benefits. He said has been in discussions with White House officials on how the coal waste plants can continue to be viable. He added they also recognized their importance as they had the opportunity to comment on federal air quality regulations.

Sen. Randy Vulakovich (R-Allegheny) also expressed support for coal waste power plants and their multiple benefits.

**Lead in Drinking Water:** Sen. Yudichak (D-Luzerne) asked about what DEP is doing to prevent lead in drinking water problems. [Sen. Yudichak sponsored [Act 55 of 2014](#) that lowered the lead content of pipes and other plumbing products as part of a program that has been in place in Pennsylvania since 1989.]

Sen. Vincent Hughes (D-Philadelphia), Minority Chair of the Senate Appropriations Committee, also expressed concerns about lead levels in children in Pennsylvania. He said he understands part of the problem is due to Pennsylvania's older housing stock.

Secretary Quigley said DEP has a water sampling program for the 159 public water systems in the state and noted that none of Pennsylvania's public water supplies exceed EPA lead standards. Secretary Quigley agreed with Sen. Hughes the problem is caused in large part by the older housing stock in Pennsylvania.

He said one problem DEP has is the Safe Drinking Water Program is down 25 percent in its staff due to the relentless cuts in DEP's budget. The major impacts of all the budget cuts has disproportionately fallen on water protection programs because they are supported by the General Fund. If we continue on this path, Secretary Quigley said, he is not confident their success with these programs can continue. DEP was asked to provide its recommendations on what it needed to properly support this program.

**Pipeline Infrastructure Task Force:** Sen. Yudichak (D-Luzerne) asked what parts of the Pipeline Infrastructure Task Force recommendations will require legislation to implement.

Secretary Quigley said Gov. Wolf wants to use as much natural gas as possible for energy generation and to make things and pipelines are a key part of doing that. He said DEP is responsible for implementing 94 of the 184 recommendations and an internal task force has been formed to see how each of those recommendations will be implemented, including by legislation. DEP, he said, will also continue to reach out to stakeholders as this process goes forward. He noted the first recommendation was that DEP needed more staff.

**Speed of Oil & Gas/Other Permit Programs:** Sen. James Brewster (D-Allegheny) asked what steps DEP is taking to speed up the permitting of oil and wells and related permitted processes and whether DEP had the staff needed for the program.

Secretary Quigley said, "No," DEP does not have enough staff to meet the needs of any of the regulatory programs or for the regulatory community, not just in the Oil and Gas Program. He said DEP is going to electronic permitting process and other changes that will help speed up the process and provide more transparency for the public.

Secretary Quigley said at the same time there is a responsibility on the part of the applicants to submit good applications. He noted last fall his staff did an analysis of 2,600 randomly selected applications from DEP's biggest programs-- the Chapter 102

erosion control and Chapter 105 stream encroachment programs.

He said 30 percent of the applications had technical deficiencies that slowed down DEPs review process. Only a handful of the 47 firms preparing those applications got passing grades in application preparation-- 1 consultant got an A, 5 consultants got a B, 7 got a C, 8 a D and 26 an F.

Sen. Scott Wagner (R-York) asked later if the list of substandard consultants is publicly available. Secretary Quigley said DEP has not gotten in the business of shaming companies, but wanted to work individually with consultants.

Secretary Quigley noted DEP's Southeast Regional Office has four permit writers with over 200 permit applications on their desk [in the Chapter 102-105 programs]. He said additional cuts would not only be "ruinous" for the agency, but also for the regulated community. He said he would not come to the Governor or the General Assembly for more staff unless he first did as much as possible to reduce costs.

**Extending Existing Permits:** Sen. Mario Scavello (R-Monroe) suggested extending existing environmental permits rather than having companies re-apply for new permits as a way to save money and support businesses.

Secretary Quigley said it would not be an appropriate solution to this issue, in particular where there are updated environmental protection standards that apply to issuing new permits. Investments in electronic permitting and other initiatives will help speed the permit process, he said.

**Natural Gas Severance Tax:** Sen. Kim Ward (R-Westmoreland) asked if the proposed 6.5 percent natural gas severance tax would allow for deductions for production costs. She noted the existing drilling impact fee, which would be retained under the Governor's proposal, has a 5.5 percent effective rate.

Secretary Quigley said the proposal does have credits for payments under the drilling impact fee. He also noted Pennsylvania drillers/producers have

low production costs, and producers have been bragging about how low they are in announcements of recent business results.

**Keystone Landfill/Act 101 Update:** Sen. John Blake (D-Lackawanna) asked about the status of the Keystone Landfill expansion application.

Secretary Quigley said DEP expects a response to the technical deficiency letter sent to Keystone in late spring or early summer. DEP has already started the air monitoring that local residents had requested with the federal Agency for Toxic Substances and Disease Registry. The results will be released to the public when they become available.

Sen. Blake followed up by saying he was working on an update to the 1988 Act 101 Municipal Waste Planning, Recycling and Waste Reduction Act saying there should be a review of state waste disposal fee and where it is directed and the materials included in the mandatory recycling program. Secretary Quigley said he would be happy to work with the Senator on an update. He also said other acts are due for a review as well, including the Act 537 Sewage Facilities Act.

Sen. Blake asked whether there was a way to set different requirements for imported waste. Secretary Quigley said court decisions have held waste imports are part of a "protected class" of interstate commerce.

**Recycling Fund:** Sen. Scott Wagner (R-York) asked for more details on revenues and expenditures from the Recycling Fund and noted the number of grants available to buy recycling containers and support local programs seems to be declining. [Sen. Wagner is the owner of PennWaste which provides waste and recycling services in Central Pennsylvania.] He said money should never have been transferred out of the Recycling Fund to balance the state's budget. The Senator said "I'm more on (DEP's) side than you think" on this issue.

Secretary Quigley said \$15 million was transferred out of the Recycling Fund to balance the budget several years ago. He also noted the amount of waste being disposed in Pennsylvania is declining.

**Electronics Waste:** Sen. Elder Vogel (R-Beaver) expressed concerns about shrinking options for electronics waste.

Secretary Quigley said the problem needs a legislative fix that Rep. Chris Ross (R-Chester), but it is a real problem. He specifically expressed concerns about the illegal dumping of TVs, if local recycling programs started charging for recycling services instead of having electronics manufactures pay for recycling like they do now.

**Hazardous Sites Cleanup Fund:** Sen. Stewart Greenleaf (R-Montgomery) asked for the status of the Hazardous Sites Cleanup Fund and its funding.

Secretary Quigley said there has been a 55 percent reduction in funding to the Hazardous Sites Cleanup Program with the end of the Capital Stock and Franchise Tax and said it will run out of money by mid-2018. [Note: If the increase and broadening of the state's waste tipping fee is not adopted and deposited to the Oil and Gas Lease Fund, a \$15 million transfer to the Hazardous Sites Cleanup Fund could not be made.]

**Third Party Permit Reviews:** Sen. Gene Yaw (R-Lycoming) asked, given DEP's concerns about staffing, whether it would be possible to have third-party review of permits by consultants.

Secretary Quigley said for the sake of public integrity he believes permit reviews and decisions should remain at a public agency. He said as an option might be what PennDOT has done. That agency pays for additional DEP staff to work on its permits.

**Permit Fee Increases:** Sen. Lloyd Smucker (R-Lancaster) asked about the status of permit fee increases.

Secretary Quigley he would get the detailed information to the Committee, but noted 22 percent of DEP's budget is General Fund, 28 percent is federal funds and the remainder is permit review or administrative fees. He said generally the agency review permit fees every three years and they are in that review cycle now.

The Governor's Regulatory Agenda published on February 27 shows DEP proposing permit fee increases for the coal and noncoal mining, Safe Drinking Water, Environmental Laboratories, Radiation Protection and Air Quality programs in the coming year. (PA Bulletin, page 1127) <http://www.pabulletin.com/secure/data/vol46/46-9/46-9.pdf>

**Black Fly Control Program:** Sen. Rob Teplitz (D-Dauphin) asked about the status of the Black Fly Control Program and whether it will be expanded.

Secretary Quigley said the program would need more funding to be expanded beyond the cost-to-carry budget appropriation of \$3.3 million included in the budget request.

**Travel Ban:** Sen. Bob Mensch (R-Lehigh) said he has had problems arranging a meeting with his local constituents and DEP on water pollution issues in Montgomery County because of the Governor's travel ban that prevents certain travel by DEP employees. DEP offered to meet at the Norristown Regional Office, but that was not an acceptable solution. He said they did finally arrange for a meeting, but it wasn't a good situation.

Secretary Quigley said the travel ban has been lifted with the signing of the budget in December. He said DEP has a cost of doing business and that bill has to get paid, particularly during a budget impasse. He said DEP has tried to accommodate the public within its restrictions. Sen. Mensch said that is not a good way of doing business. He noted the Governor spent over \$30 billion during the impasse, and said there is a lesson here to be learned.

Click [Here](#) for a copy of Secretary Quigley's written testimony. Click [Here](#) for a video of the DEP budget hearing [to be posted].

### Budget Background

DEP received about \$164.4 million in 1994-95 from the General Fund which increased to a high of \$245.6 million in 2002-03. In the 2014-15 budget, DEP's General Fund total was \$141.4 million, after bottoming out in 2012-13 at \$126.8 million, about half the high-water mark in 2002-03.

DEP's authorized complement has shrunk from 3,200 in 2002-03 to its current 2,495, about 705 positions-- 22 percent-- as DEP Secretary John Quigley mentioned in a video report to DEP employees in a way that he considered them lost.

Two additional developments will cause a decrease in watershed restoration and other funding available to DEP in the coming year.

The Independent Fiscal Office released a new report last week saying the drop in natural gas prices means the state will collect \$38 million less in Act 13 impact fees this year than it did last year.

A portion of those fees go to support the Environmental Stewardship (Growing Greener) Fund to support local watershed projects. As noted above, the Governor's budget does not transfer money to DEP to support its Oil and Gas Regulatory Program for the coming year.

The Independent Fiscal Office issued another report saying royalty income from natural gas wells on DCNR State Forest land would decline by 40 percent in the current fiscal year going to the Oil and Gas Lease Fund.

Gov. Wolf's budget includes a proposal to increase and expand the state waste disposal fee by \$1.75/ton with the resulting \$35 million in revenue to be deposited in the Oil and Gas Lease Fund.

The fee increase was necessary, according to the proposal, to allow the continued transfers out of the Oil and Gas Lease Fund to the Environmental Stewardship (Growing Greener) Fund (\$35 million) and the Hazardous Sites Cleanup Fund (\$15 million) required by Act 13. If the waste fee increase doesn't go through (it has to be done legislatively), these two programs would take a hit financially.

### House Budget Hearing

DEP's House Appropriations Committee budget hearing is March 1 at 9:30. Click Here <http://www.pahousegop.com/> to watch House hearings live.

**Source:** PA Environmental Digest, 2/25/2016

## Ag, Environmental Resources Committees to Discuss Clean Up of Chesapeake Bay Watershed

**WHAT:** The House Agriculture and Rural Affairs Committee, chaired by Rep. Martin Causer (R-Cameron/McKean/Potter), and the House Environmental Resources and Energy Committee, chaired by Rep. John Maher (R-Allegheny), will hold a joint informational meeting to discuss the Wolf Administration's strategy to reduce pollutants entering the Chesapeake Bay, as required by the federal Environmental Protection Agency (EPA). The administration recently announced its strategy in anticipation of the state missing its 2017 reduction targets for nitrogen and sediment.

**WHO:** Causer, Maher, members of both committees, and the following speakers: Environmental Protection Secretary John Quigley; Agriculture Secretary Russell Redding; Richard Roush, Dean of Penn State's College of Agricultural Sciences; Chris Thompson of the Lancaster County Conservation District, on behalf of the Pennsylvania Association of County Conservation Districts; and Denise Coleman, state conservationist, USDA Natural Resources Conservation Service.

**WHEN:** Monday, Feb. 29, at noon

**WHERE:** Room 60 East Wing at the State Capitol

**WEBSTREAMING:** Will be available beginning at noon at [RepCauser.com](http://RepCauser.com) (barring technical difficulties).

**Source:** House Republican Caucus, 2/26/2016

## PA Faces Losing Control of Environmental Programs Due To DEP Funding, Staff Cuts

The PA Environmental Council and Chesapeake Bay Foundation-PA wrote to members of the Senate Appropriations Committee Wednesday to raise concerns about the risk of losing control of key environmental regulatory programs to the federal government and courts because of the cuts in funding and staff at the Department of Environmental Protection over the past decade.

**The following is the text of the letter:**

Tomorrow the Senate Appropriations Committee will hold a hearing on budgeting for the Department of Environmental Protection (Department). Against the backdrop of the ongoing budget stalemate, it could be easy to lose sight of the very real and precarious situation facing the Department with respect to capacity issues.

We are writing to underscore some of those issues, which, if not addressed by the Governor and General Assembly, may result in a series of unintended and damaging consequences including federal management of permitting programs.

Budget Impacts to Department Operations

Since FY 2002-2003, there has been more than a 40 percent cut in General Fund support for the Department – going from \$245.6 million in 2002-2003 to \$142.6 million in 2015-2016. As a result, the Department has lost 22 percent of its staff. That’s more than 700 positions. These cuts have occurred across the board, crippling the Department’s ability to meet its mission of protecting the health and safety of Pennsylvania’s citizens. It has also cost the Commonwealth millions of dollars in federal funding for staff and program support.

These cuts have been made without regard for their impact on reviewing and issuing permits, conducting compliance inspections, and taking enforcement actions. They are cuts the Department has simply been expected to live with, regardless of the consequences.

At the same time, there has been no corresponding decrease in the laws the Department has to enforce, the projects it is told to undertake,

the mandates it must meet, and the emergencies to which it must respond in order to protect public health and the environment.

Those responsibilities have only increased in the last decade.

Consequences of Budget Cuts

We have reached the tipping point. Failure to change course will lead to the courts and federal government making our decisions for us. Over the past several years, the Department has been engaged in a series of remedial reports and action plans with the U.S. Environmental Protection Agency (EPA) and Office of Surface Mining Reclamation and Enforcement (OSMRE), among others, to address ongoing capacity and staffing issues. Some examples include:

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U.S. Environmental Protection Agency - Water

There are a number of programs where EPA review has found **deficiencies** in staffing and resources:

- A [2012 Summary Field Report on the Department’s Stormwater Program](#), that contained several observations regarding lack of capacity including: insufficient Regional Office reviews of post construction stormwater management plans (Observation 5); overall ability to undertake compliance and enforcement activities (Observation 10); lack of Central Office oversight (Observations 14 and 23); and insufficient staffing to implement the Municipal Separate Storm Sewer System (MS4) Total Maximum Daily Load (TMDL) and Chesapeake Bay Pollution Reduction Plans.
- A [May 2015 letter](#), noting that EPA may need to condition or redirect federal funding for Chesapeake Bay pollution reduction efforts. This funding was indeed withheld, though it was recently released upon announcement of the Department’s Reboot Plan for the Chesapeake Bay. However, ongoing funding will be contingent on demonstration of sufficient funding and outcomes for that effort.

- A [June 2015 EPA Program Evaluation Report on the Drinking Water State Revolving Fund Program](#), which is administered by both the Department and the Pennsylvania Infrastructure Investment Authority. Specific action items from the Report included Department evaluation of staff resources to address failures in inspections and the finalization of projects.
- A [June 2015 EPA Program Evaluation Report on the Clean Water State Revolving Fund Program](#), noting similar staffing review needs as with the Drinking Water State Revolving Fund Program.

#### U.S. Environmental Protection Agency - Air

In a November 2015 EPA Technical System Audit on air quality monitoring (attached with this correspondence), EPA determined that the Department’s Air Quality Monitoring Division is “severely understaffed,” constituting a Major Finding which equates to “nonconformance of high importance which is unacceptable and must be remedied.”

Report discussion notes that the Department lacks adequate resources both in personnel and funding, and that EPA auditors found “significant concerns with [the Department’s] field staff shortage.”

The corrective recommendation offered in the report is that vacant positions “need to be filled in order to continue operating (the) air monitoring program pursuant to 40 CFR 58 Appendix A.”

#### Office of Surface Mining and Reclamation Enforcement

Since 2011, the Department has been required to submit a series of Action Plans for regulatory compliance to OSMRE. In the 2016 Oversight Performance Agreement and Action Plan signed by both the Department and OSMRE, there are two specific areas of particular note with respect to budget issues:

- Due to staffing reductions, the Department has not been able to meet required inspection compliance rates. In 2012, the compliance rate

was 71% on active mine permits; 38% on inactive mine permits; and 20% on bond forfeited permits.

- OSMRE has also taken issue with adequacy of bonding for mining permits, citing the inability of the Department to conduct full volume bonding with proper site analysis due to staffing shortfalls. This matter is doubly important because any bonding shortfalls could (and likely will) ultimately become a liability for the Commonwealth.

In correspondence between OSMRE and the Department (attached to this correspondence), OSMRE states: “failure [to comply with the Oversight Performance Agreement and Action Plan] will jeopardize Pennsylvania’s primacy under the Federal Surface Mining Control and Reclamation Act ... for regulating coal surface mining operations.”

#### Pennsylvania’s Budget & Environmental Responsibility

These examples, which are likely a few of many areas of concern, demonstrate a pervasive inability of the Department to perform its mandated responsibilities. These deficiencies are not the result of Department neglect – they stem directly from long-term staffing and funding shortfalls.

In other words, there are deficiencies that we have the means to remedy. These are deficiencies that we are legally obligated, through state and federal law, to address.

The obligations of the Department are only going to increase. One of Pennsylvania’s most immediate and challenging obligations – cleaning of roughly 19,000 miles of polluted streams in Pennsylvania, including the Chesapeake Bay Watershed – is now squarely in the crosshairs.

The Commonwealth is projecting a significant shortfall for 2017 pollution reduction targets. These are not aspirational standards; they are legally-mandated requirements that Pennsylvania is not going to meet.

The Department has been extraordinarily candid about this reality, even while undertaking a new multi-agency strategy, using all available resources, to reduce water pollution.

If the Governor and General Assembly fail to fully act, they knowingly risk the very real possibility that Pennsylvania will lose control of air, water, and mining programs, among others, to the federal government.

This is not an outcome that anyone, regardless of party affiliation or fiscal viewpoint, should want.

We suspect the regulated community would strongly agree.

Lack of adequate funding for the Department will, and should, result in dramatic permit fee increases in an effort to at least partially bridge the shortfall.

By our very own state constitution, there is a definitive obligation on elected members of government to protect public health and the environment.

This starts with ensuring that our resource protection agencies have the tools and capacity needed to fulfill their mission.

Sincerely,

Davitt Woodwell, President and CEO, PA  
Environmental Council

Harry Campbell, PA Executive Director,  
Chesapeake Bay Foundation

A copy of the [letter and attachments](#) is available online.

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***This newsletter provides general information, not legal advice as to any specific matter. It should not be used as a substitute for appropriate legal advice.***