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Environmental Quality Commission

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KENTUCKY ENVIRONMENTAL QUALITY COMMISSION PUBLIC FORUM

Meeting Minutes

February 3, 2011
Kentucky State University
Frankfort, Kentucky

EQC Commissioners Present

Scott Smith, Chair
Laura Knoth
Kim McCann
Eugene Zick

EQC Staff Present

Arnita Gadson, Executive Director
LaTisha Barnett, Executive Secretary

Speakers/Representatives Present

Steve Kull, DOF Asst. Director
Sandy Gruzsky, DOW Director
Bruce Scott, DEP Commissioner
Terrell Holder, KSU
Jeff Hall, DMRE

The Environmental Quality Commission (EQC) held a public forum on February 3, 2011. The meeting was called to order at 6:00 p.m. by Commission Chair, Scott Smith.

PUBLIC SPEAKERS:

Steve Kull, provided information on the Forestry Resources Assessment. The 2008 Farm Bill requires states to develop a statewide assessment of forest resources.

The Forestry Resources Assessment must include:

- Conditions and Trends
- Threats and Resources to
 - * Conserve
 - * Enhance
 - * Protect
- Priority Areas
- Multi-State Priority Areas

Long-Term Statewide Strategy

- Strategies for addressing threats
- Description of needed resources

One document – three parts

- Assessment
- Priority Areas
- Strategy

Assessment and Strategy

- Division of Forestry developed outline and gathered data.
- National Association of State Foresters provided \$31,242 matched by state in-kind services.
- Third Rock Consultants, LLC produced the document.

The Top Five Issues Identified by Kentuckians

- Forest Health
- Water Quality and Quantity
- Forest Loss and Fragmentation
- Forest Management
- Funding

Other issues of importance:

- Public Awareness
- Urban and Community Forestry
- Unlawful Activity (i.e. timber theft and trespass)
- Wildfire
- Forest Economy
- Mountain Top Removal
- Public Access
- Prescribed Fires

Corollary Issues (i.e. renewable energy, carbon sequestration, ecosystem services, etc.)

For each of the five issues, the following parameters were defined:

- Issue Description
- Forest Resources
- Public Benefits
- Key Conditions
- Direct Threats
- Contributing Factors
- Opportunities

Trees and Water Quality and Quantity

- Forests in the Riparian Zones
- Forested Wetlands
- Large-Standing Forest Blocks

Water Quality and Quantity Public Benefits

- Recreation and Aesthetics
- Wildlife Habitat Enhancement
- Water Supply Stability
- Stormwater Runoff Reduction
- Treatment Cost Reduction

Key Conditions of Water Quality and Quantity

- Riparian Areas
- Forested Watersheds
- Urban Trees and Forests
- Key Geographic Areas

Direct Threats and Contributing Factors to Water Quality and Quantity

- Forestland Conversion or Loss
- BMP Implementation During Commercial Timber Harvesting
- Hemlock Woolly Adelgid
- Chemical Treatment in Riparian Corridor
- Woody Biomass Harvesting

Water Quality and Quantity Opportunities

- Watershed-Based Plans
- Urban Forestry Programs
- Agroforestry
- Cost-Share Programs
- Coal Mining Reclamation
- Wetland and Stream Mitigation Funds
- Water Quality Trading

Strategy - A Five-Year Plan

For each issue, we identified:

- Goals
 - Objectives with performance measures
 - Tactics
- Primary agency or program
- Partners
- Resources by type and source
- Time for completion
- National priorities (enhance, conserve, protect)

Water Quality and Quantity Goals

- Ensure timber harvest operations employ measures to maximize water quality protection.
- Improve Kentucky water quality through the protection, enhancement and restoration of forested riparian areas.
- Reduce rate of variation in stream flow and volume with forestry practices.
- Improve Kentucky water quality through the protection, enhancement and creation of forested wetlands.
- Increase the public awareness of the relationship between forestland use and water quality and quantity.

Forest Priority Areas provided the start for determining Legacy Areas based on:

- Importance on a national, regional or state level
- Threat of conversion
- Strategic location

What Now?

- Snapshot of Kentucky's Forest Resources
- Important Planning Tool for Focusing Limited Resources
- Identifies Tactics and Key Partners to Accomplish Goals and Objectives

Sandy Gruzsky, of the Division of Water, discussed recent flooding events in Kentucky.

May 2010 Flood: Summary

- A strong weather system bringing severe storms, heavy rain and damaging winds, moved across the state that day and continued throughout much of the weekend.
- Resulted in major flooding, mudslides and spawned tornadoes.
- Widespread damage and destruction
- Damage was so extent that in short notice Governor Beshear requested federal assistance, which led to President Obama awarding a federal declaration of emergency.

May 2010 Flood: Disaster Declaration

- Federal Disaster Declaration Date: May 11, 2010 (FEMA-1912-DR)
- **83** counties declared major disaster areas
 - **55** declared **Public Assistance and Individual Assistance**
 - **21** declared **Public Assistance only**
 - **7** declared **Individual Assistance only**

FEMA Assistance Types

- **Public Assistance** – provides supplemental financial assistance to state, local governments and certain private non-profit organizations for response and recovery activities required as a result of a disaster (debris removal, emergency protective measures, and permanent restoration of infrastructure)
- **Individual Assistance** – may provide money and services to eligible individuals in the declared disaster area when losses are not covered by insurance and property has been damaged or destroyed
- **Hazard Mitigation Programs** – provide funding the local communities for projects and plans to reduce damages, losses and suffering in future disasters such as:
 - Moving, elevating or demolishing buildings with repetitive flood damage
 - Drainage projects
 - Warning sirens
 - Generators

FEMA-1912-DR

- As of 7/22/2010
 - FEMA allocated ~**\$30 million for disaster-related assistance**
 - Over **7000 individuals** registered for FEMA individual assistance
 - **N.B. Tele-registration data collected to reflect damages to structures**
 - Approved more than **\$10 million in disaster assistance loans** to homeowners, renters and business
 - Of the \$30 million allocated for assistance, approximately **\$6 million is available for hazard mitigation programs**
- 3615 reports of flood damages to structures (as of 6/14/1020)
- Damage reported in 61 counties
- Counties with most damages:
 - Madison
 - Carter
 - Rowan
 - Greenup
 - Lewis

May Event: Drinking Water System Impacts

- **3** water treatment plants flooded or partially flooded:
 - 2 of the plants experienced significant flooding but were back on-line in 5 days
 - The 3rd was off-line for just over a week; this was the small WTP in a 2-plant system
- **2** water treatment plants with intakes affected
 - 1 used an secondary raw water source
 - one used trash pumps to supply water to the treatment plant

- Numerous incidents of distribution mains washed out or distribution pump station flooding; recovery was quick
- 39 BWAs issued
 - ~133,000 people were affected
 - BWAs in place from May 2 to May 12
 - Central and south-central areas of Kentucky most affected

May Event: WWTP Impacts

- Numerous Sewer Plants (WWTPs) were underwater as the result of high water
 - 19 systems total reported being flooded
 - **Five (5)** Sewer Plants were offline
 - Morehead WWTP
 - Columbia WWTP
 - Munfordville WWTP
 - Hidden Valley WWTP
 - Camp Nelson RV Camp WWTP
- Some sewer plants are bypassing
 - **86** systems reporting bypasses and overflows

July 2010 Flood

- Severe storms with intense rainfall in a very small area caused flooding, and mudslides on July 17, 2010 in several eastern Kentucky counties, especially in Pike County
 - Most damage in the Raccoon Creek and Harless Creek watersheds in Pike County

July 2010 Flood: Disaster Declaration

- Federal Disaster Declaration Date: July 23, 2010 (FEMA-1925-DR)
- **8** counties declared major disaster areas
 - **4** counties declared Public Assistance *and* Individual Assistance

2 declared Public Assistance only

FEMA-1925-DR

- As of 9/17/2010:
 - FEMA allocated **\$15 million for disaster-related assistance**
 - Over 2500 individuals registered for FEMA individual assistance
 - Tele-registration data not available
 - Approved more than \$4 million in disaster assistance loans to homeowners, renters and business
 - Of the \$15 million allocated for assistance, **approximately \$3 million is available for hazard mitigation programs**

July Event: Drinking Water System Impacts

- Flooding was mainly in Pike County and other counties in the Morehead Region
- Mountain Water District (Pike County) most affected
- MWD had the intake line and numerous distribution mains wash out

- Initially 12,000 out of water
- >25,000 customers were on a BWA with.
- Repairs, flushing and sampling to restore water to all areas occurred from July 19 to August 15
- **6** public water systems in the Morehead Region issued BWAs due to distribution line washouts
 - Approximately **2,200 people** were under the BWAs
 - Approximately **750 people were without water** on July 23
 - Service restored by July 26

July Event: WWTP Impacts

- Pike County the hardest hit with flood related problems.
- Five (5) WWTPs underwater at Mobile Home Parks
 - One plant will need to be replaced due to damage
 - Approximately 95 customers effected
- Carter, Lewis, and Rowan counties had power loss to plants and bypassing/overflows reported.
 - Olive Hill
 - Grayson
 - Lewis County SD #1
 - Vanceburg
 - Morehead
 - Maysville

DOW / KyEM Relationship

- The Division of Water collaborates with Kentucky Emergency Management (KyEM) during and after disasters regarding:
 - Regulatory requirements
 - Data sharing
 - Recommendations regarding hazard mitigation grant proposals
 - State Hazard Mitigation Team
 - Follow-up meetings with communities

DOW Participation in Emergency Response

- DOW has staff as part of the DART, assessing debris in stream channels. DOW is performing this action with Natural Resources and Conservation Service (NRCS) and FEMA.
- DOW participated with Department of Public Health and Federal Public Health on individual wastewater treatment systems impacted from the July event in Pike County.

Risk Mapping and Assessment Project (Risk MAP)

- Builds on Flood Map Modernization
- LIDAR (Light Detection and Response)
 - All analyses conducted on new topography
 - Accuracy to 2 ft vertically
- Enhanced analyses for flood hazards
 - Watershed based engineering analyses
 - Depth of flooding
- Flood risk assessments conducted
 - Potential flood damages to structures, debris removal requirements, etc.
- Direct tie to Hazard Mitigation Programs

Risk MAP

- Better data and mapping information
- Communities utilize Risk MAP products to apply for Hazard Mitigation Program grants to reduce identified risks
- Allows communities to plan for future flooding events
- Communicates flood risk to communities and property owners

Bruce Scott, DEP Commissioner, discussed current Federal EPA regulatory issues.

Regulation update and revision

- Regulation development (update and revise):
 - The Department has approximately 460 regulations that it administers.
 - The Department initiative over the previous 2-4 years was/is to update all agency regulations consistent with existing federal regulations and statutes and streamline where appropriate.
 - Most of those regulations have been revised within that past 3 years. There are some pending regulation revisions currently in the pre-KRS 13A process stage of revision.
 - The agency does not have any additional fee revision regulations planned at this time.
 - Most of the **regulatory and policy activity is occurring at the Federal EPA level** where significant activity is occurring.

U.S. EPA: Regulation of all things coal

- **CAA** - Revision of NAAQS for Ozone, Lead, NO₂, SO₂, NO₂/SO₂ Secondary, CO, PM. New regulation of GHG's. PM_{2.5} surrogacy policy. Redefining the sources issues. Replacement CAIR regulations.
- **CWA** – Revision of Effluent Guidelines for Stream Electric. Revision of 316(b). Significant new requirements for Appalachian coal mining for 402, 404 and SMCRA. Planned revision to federal antidegradation requirements.
- **RCRA** – Evaluation of and development of new requirements for ash ponds and ash landfills – coal combustion wastes (CCW) waste classification and structural integrity requirements.

Federal EPA CAA: NAAQS

- CAA – NAAQS: (DAQ has or will comment on each of these EPA rules)
 - **Ozone**. Final rule expected December 31, 2010
 - **Lead**. Final rule January 12, 2009
 - **NO2 primary**. Final rule April 12, 2010
 - **SO2 primary**. Final rule September 23, 2010
 - **NO2/SO2 secondary**. Final rule expected March 2012
 - **CO**. Final rule expected May 2011
 - **PM 2.5**. Final expected rule October 2011
 - Redefining the source debate
 - **Transport rule** was proposed on August 2, 2010, to replace Clean Air Interstate Rule, projected to be final June 2011

Federal EPA CAA: NAAQS

- NAAQS development are just the beginning for DAQ

Federal EPA CAA: GHG's

- CAA – Greenhouse Gas Emissions (GHG's):
- **Mandatory reporting rule**. Requires facilities emitting more than 25,000 tons per year or greater submit annual reports to US EPA
- **Light duty vehicle rule**. Causes GHG's to become a “regulated NSR pollutant” and trigger PSD reviews for GHG's
- **Tailoring rule**. GHG permitting for any facility emitting more than 75,000 tons per year. DAQ regulations amendments were filed with LRC in July 2010, will go into effect January 2, 2011
- EPA's actions on GHG regulation are all currently the subject of pending litigation in the D.C. Circuit. KY filed an amicus on the Tailoring Rule on September 27, 2010

Federal EPA CWA

- **CWA:**
 - Proposed revision to **Steam Electric Effluent Guidelines**, March 9, 2010 federal register request for information.
 - Proposed revision to **316(b) cooling water intake** requirements.
 - **Antidegradation**. KY with new requirements that went into effect July 2009.
 - Regulation being revised again by KY in response to EPA deficiency letter on November 9, 2010.
 - It is to be determined whether further litigation (15+ years) on this matter will occur.
 - EPA is also considering national policy/guidance on antidegradation.
 - **Appalachian coal mining**. New “final interim guidance” issued April 1, 2010. Seeks to establish new CWA 401, 402, 404, and SMCRA requirements. Comments were due December 1, 2010.
- **CWA: Coal Mining continued....**

- The immediate impact of the April 1, 2010 final interim guidance has been a slowdown, and stoppage in some cases, in the processing of coal mining permits in KY. DOW and DNR are both affected.
- Comments were due by August 13, 2010 on two EPA proposed technical conductivity documents. EPA has indicated intentions to finalize these documents in early CY2011.
- Litigation was initiated by the National Mining Association as it relates to the April 1, 2010 EPA guidance on July 10, 2010 in D.C. Circuit. West Virginia filed lawsuit on October 18, 2010. Kentucky intervened on the KCA lawsuit on October 18, 2010. The City of Pikeville intervened on the KCA lawsuit on October 26, 2010.

Federal EPA RCRA

- **RCRA:**

- **Coal Combustion Wastes (CCW) waste classification.** Federal register notice June 2010, EPA proposed three approaches from which one will be selected in the final rule (1) establish new regulatory requirements under Subtitle D (non-hazardous), (2) Subtitle D-Prime (use existing state approaches), or (3) establish new regulatory requirements under Subtitle C (hazardous)
 - KY DEP submitted extensive comments to EPA on this proposed CCW rule prior to the comment deadline of 11/19/2010. KY is opposed to the Subtitle C approach, and recommended that EPA re-propose a detailed revised Subtitle D approach for public comment.
- **CCW Dam safety.** EPA proposed to address structural stability issues in the proposed CCW rule (in light of the TVA-Kingston ash pond structural failure), which RCRA was not designed to address. KY and other states have recommended that EPA defer to existing state rules for Dam safety rather than try to use RCRA for this purpose.

Impact of all of these new Federal rules?

- **Basic questions for planning ahead:**

- When must the federal rules be implemented by EEC? How long do facilities have to comply? What technologies are needed to comply?
- What additional resources will EEC need to implement these rules (permitting, inspection, enforcement, monitoring, etc)?
- What legislative and regulatory changes will be needed to implement the new federal requirements?
- What impact does litigation by the state and various interests have?
- What impact does state legislation have, if any, on these federal rules?
- What outreach will be needed to regulated entities, communities, citizens?
- How will the new federal requirements on the mining and use of coal affect development, quality of life, etc.?

DEP Strategic Operational Plan & Annual Reports

- Final SFY2011 DEP strategic operational plan is available on the Departments website (<http://dep.ky.gov/Documents/strategicplanFY11.pdf>).
- Final SFY2010 Division Annual Reports are available on the Department's website (<http://dep.ky.gov/Pages/AnnualReports.aspx>)
- Contacts: R. Bruce Scott, P.E., Commissioner, email: Bruce.Scott@ky.gov, phone: 502-564-2150

Terrell Holder, KSU, provided an update on the AOC/Fill Minimization Protocol.

Contributing Factors:

- Stream Buffer Zone
- COE 404 Permits
- New DNR Policy – Backfill & Excess Spoil
- Minimize fill disturbance
- Approximate Original Contour (KY DNR requirement)
- Minimizing stream length under excess spoil disposal fills (COE 404)
- Regulatory/Industry/Environmental team approach results in a better policy.

Scott Smith, EQC Chair, discussed parts of House Bill 3. There was mention of opening up Kentucky for Clean Coal Advancement, also a Senate Bill which gives funds to school construction for green building. The EQC may want to look into the Clean Coal Advancement efforts and the green building construction for schools.

EQC BUSINESS:

MOTIONS:

A motion was made by Commissioner Zick to accept the minutes from the previous meeting. Commissioner Knoth seconded the motion. The motion was passed unanimously.

Upcoming Projects:

Voting for officers still needs to be done. Options of calling a special meeting, conference call, or voting at the Annual Meeting were discussed. Electing officers at the Earth Day meeting was moved to the Annual meeting in June.

Earth Day: EQC Director, Arnita Gadson, informed the Commission that the EQC Earth Day events will be in collaboration with the Cabinet's Earth Day photo contest winners program at Berry Hill Mansion on April 16, 2010. EPA Region 4 Administrator Stan Meiburg will be the speaker.



Annual Meeting topics discussed were:

Green buildings/schools

GIS

Energy

Speakers: Carl Campbell, Lona Brewer, and Talina Matthews. One of the main areas of interest was how green buildings/schools impact a community. A panel was suggested to include representatives from areas that directly affect the Green Construction and its impacts.

It was suggested that a representative from the utilities industry be invited to talk about the status of power generation in KY, their plans to integrate green power and the potential rate impact (industrial, commercial, and residential) of green power and new EPA requirements. Also, how they are being affected by new EPA initiatives in the environmental capacity.

Scott will forward a list of potential speakers for the panel.

We have to finalize the recommendation letter to the Secretary regarding GIS implementation.

With no further business, the meeting ended at 8:21 p.m.

Signed,

Scott Smith, EQC Chair
March 24, 2011