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Kimberly Holmes, *Lexington*
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**KENTUCKY ENVIRONMENTAL QUALITY COMMISSION
PUBLIC FORUM
February 23, 2012**

Meeting Minutes

Kentucky State University
Aquaculture Research Center
Multipurpose Bldg. Room 101
Frankfort, Kentucky

Video hook-ups:

Pikeville College
Pikeville, Kentucky

University of Louisville
Louisville, Kentucky

EQC Commissioners Present

Scott Smith, Chair
Jason DeLambre, Co-Chair
Tom Herman
Laura Knoth
Dr. Kimberly Holmes

EQC Staff Present

Arnita Gadson, Executive Director
Janet Pinkston, Temp

Speakers

Bruce Scott, Commissioner, Department of Environmental Protection, EEC
Steve Hohmann, Commissioner, Department of Natural Resources, EEC
Nina Cornett, citizen, Blackey, Ky.
Teena Halbig, Floyds Fork Environmental Association, Louisville, Ky.

The Environmental Quality Commission (EQC) held a public forum Feb. 23, 2012. The meeting was called to order at 6 p.m. by Chairman Scott R. Smith.

Presentations:



Bruce Scott, Commissioner, Department of Environmental Protection, EEC:

Since the U.S. recession began in 2008, DEP has lost 32 percent of its funding in budget cuts cumulatively, and currently has only 23 attorneys on staff to enforce state's environmental regulations. This figure is 30 percent of past staffing levels. "At one time, we were the biggest law firm in the state," Scott said.

We received some financial relief from ARRA stimulus funds via the federal government, but that source of funding is coming to an end. Staffers with jobs funded with ARRA money are seeking and securing other jobs. Primarily, the ARRA funds were rooted in energy grants, other than that the budget has essentially flat lined. Because of pass-through dollars, this plays an integral role when examining budgets. There's been a decline since fiscal year 2009. When Cost of Living Adjustments are included, there is a negative trend.

We've worked on Maxey Flats, a storage site for nuclear waste in Fleming County, KY, for seven years. There are only a handful of nuclear waste sites in the nation and we have one of them. The site is safe and secure and the controls in place are working. State government's long-range plans are to close the site for good with 30 feet of soil, a composite liner, plus a "final closure cap" to shield against waters. This will replace the temporary one, to ensure permanent protection.

The temporary cap (a liner) now in place gets punctured by deer and no longer holds well. It is the largest state-funded cleanup project in the history of Kentucky as far as Superfund sites go, he said. Our budget there is \$450,000. It is concave right now and we want to make it a mound. It's very complex, and something of which we take pride. All parties agree that this is the right thing to do and the right time to do it. The measure was described as safe and controlled, and is expected to be a 100 year-solution. It will be financed by \$17 million in general fund money from a bond, and an \$18 million trust fund from the responsible party at the time that the site was closed. It is no longer considered active.

Another storage site for toxins is the Bluegrass Army Depot in Madison County's Richmond, Ky. For many decades, the army base stored chemical weapons such as nerve gas leftover from World War II. The U.S. Department of Defense is close to beginning the process of turning the long-stored chemical weapons there into brine, which is a year-long procedure. They are building the plant that will destroy the chemical weapons that are there. It's an incredibly slow process.

The footer alone on the laboratory being built there to accomplish the task took two years to build. It must be built to certain specifications. At this point they are close to completion. All pass-through funds for the Bluegrass Chemical Agent-Destruction Pilot Plant support 4 positions and associated operating costs, used to boost state government's presence there. There is a need for more inspectors to oversee the project.

Through investigations, we confirmed that some wastewater labs are not fulfilling their requirements. A memo was sent in 1982 recommending the establishment of a wastewater certification program to ensure that the wastewater labs provide a quality product. This helps not only the agency, and the public, but people who are liable for those doing work on their behalf.

Another item is petroleum Storage Tank Environmental Assurance Fund. Over the last few years legislature has wanted a bond.

For the DOW, the dollars will be near the same over the next 2 years, as the 90's. The dynamics of how we function has changed; we must be creative in maintaining our core services. We have focused heavily on enforcement, permitting, and compliance and monitoring. Anything ancillary was sacrificed. Turnover among DEP personnel is 10 percent; it is difficult to maintain technical-level positions in state government. "Today, I had 2 resignations. People come and they go. The top echelon of our staff will get cherry-picked," Scott said. Because of receipts, state government feels the impact 1.5 years later than in the general economy. Another challenge, recent graduates from college have a different view. They are more portable, they move on.

Some of our core functions such as Authorization Requests are up; this reflects a slight upsurge in the economy. Some self-initiated processes reflect a change in the speed of how we process them. This helps economic activity. Permit issuances track economy perfectly.

Inspections - because of the budget, the number of investigations are down but we're meeting our core commitments. We've assessed \$2.5 million in civil penalties in the last year in coal mining issues alone, it is a big part of our workload.

In spite of the 32 percent reduction, inspection, monitoring, enforcement functions have been maintained. What suffers is training, travel, education, equipment purchases and outreach. Morale is a problem. "I give my staff credit for maintaining workflow despite cuts."

Smith: How can we help you in the legislature to make sure you receive funding in certain areas?

Scott: I want to see Maxey Flats project happen without much coercion. The backlog charts were not shown. I have one program area in water that is more challenging than others. There are ways money can be drawn from restricted dollars being carried forward, that are not obligated to be spent in FY12 or FY13 to serve other purposes. I don't have the authority to take restricted fund dollars, and turn them into general fund dollars, the legislature does. Targeted funds from limited recourses could be used without hurting any area, not by generating new revenue, but using existing revenue creatively and legally.

Knoth: Do some changes to your budget affect federal matching dollars?

Scott: We are currently over-matched. Our federal dollars have been on the decline. We don't receive nearly what we need to run the federal programs, in fact a couple of them I've considered giving back. We must use general fund dollars to keep them afloat. What was omitted was, no one knows what the federal budget reductions will be for the next year or two, so those aren't factored in at all. If those are recessive—dollars previously incorporated may be taken back. If that happens, it will cause mass chaos at state level in all states.

Steve Hohmann, Commissioner, Department of Natural Resources, EEC:

The proposed budget is in flux, and the legislature can make changes. Background on DNR - it's one of 3 departments in the Energy and Environment Cabinet. There are 760 positions in the DNR department statewide, with field offices coast to coast. Of DNR's 8 divisions, it's fair to say that 4 are coal mining related divisions, and coal mining consumes the bulk of the activity in the department.

“Most of our work in DNR is about mine permits and mine safety and licenses,” Hohmann said. These matters affect the quality of life for all Kentuckians. Our mission is to protect air, land and water resources. Non-mining divisions are oil and gas, forestry and conservation.

Proposed reductions at a glance:

1. Abandoned Mine Lands' responsibility is reclamation. They could face cuts up to 8.4 percent. One division is 100 percent federally funded through fees on coal production, with a 25 percent increase of up to \$47 million. All their money goes to reclaim abandoned mines statewide.
2. DNR has experienced a 25 percent cumulative reduction in their budget over the past four years. All growth has been denied; therefore we must go back to baseline services. That could be problematic in the future.
3. Mine permit fees - funds dropped drastically, but the General Assembly made up the difference with increased permit fees. Permits could function on restricted funds as Bruce mentioned earlier. That's one way restricted funds can take the place of general funds, but it takes statutory approval in most cases. That happened a few years ago in mine permits.
4. Mine safety inspection and licensing—their general fund dollars have risen due to the General Assembly.

Knoth: asked if the chart included cost-share dollars, and commented that the agricultural community is very disappointed that the conservation budget was “cut to the bone.”

Hohmann: Often times, if there is a general fund cut, there is also a federal cut.

Permits and reclamation operate on a 50/50 state and federal match. We have had to turn back federal money, as much as \$800,000 due to lack of administrative staff. In DMRE, there may be some difficulty with inspection frequency, a federal mandate.

In Forestry, it has become difficult to respond effectively to wildfires. Mild winter means no snow or ice to compact leaves, therefore they are “fluffy,” which supports a higher risk of fire. Better efficiency in the field is how we have coped and the use of more technology.

Positive reports include: OMSL reinstated \$952,000 that had been removed from its budget in fiscal year 2010, in an effort to create a GIS system. A 2 percent reduction is proposed for fiscal year 2014 from 2013.

Our GIS mine mapping is now online and accessible to the public. A history of all coal fields are on line, all 73,000. GIS is also useful to city governments in land use and planning. It is useful to developers when looking at possible undermining of land parcels.

AML installed 155 miles of waterline to 1674 households in the eastern coal fields.

Fly rock incidents at coal mine sites have decreased dramatically from 17 in 2009, 8 in 2010 and 2 in 2011.

DMP has significantly reduced its backlog of permits to less than 1%

Division of Forestry acquired two new state forests adding 43,000 acres, to the state forest system for public use. DOF sold 1,335,950 tree seedlings with 164 orders shipped in the first two weeks of February ‘12. There are 553 orders pending. This reduced operational cost at nurseries by 20%.

Division of Oil and Gas (DOG) plugged 121 abandoned wells, completed the primacy application for Class II Underground Injection Control wells (wells that re-inject fluid into the earth).

DOC (Division of Conservation) provided Best Management Practices implementation assistance to over 1000 farmers with \$9 million in available funding.

Smith: Will office surface mining make up the difference?

Hohmann: No, we are expected to do it with budget as is.

Scott Smith: Do legislators understand?

Hohmann: Yes, they do the best they can with what they have, everybody understands the issues, but we’re just in tough times on mine permits and mine reclamation enforcements. Most people in the field are inspectors.

Challenges:

- Reclamation performance bonding program overhaul
- Maintaining inspection frequency on mine permits
- Implementation of the AML emergency reclamation program
- Maintaining adequate DOF staffing levels to respond to wildfires
- Difficulty maintaining financial support for conservation districts
- Restricted training and travel

EQC business discussion

Scott Smith, elected as chair, and Jason Delambre as vice chair. Laura Knoth moved and Tom Herman seconded. It was voted unanimously.

Minutes of September 2011 were approved with the following changes:

Commissioner Kimberly Holmes stated that Gwen Keyes Fleming, director of EPA's Region 4, is "tentatively scheduled to return" to Kentucky State University for another event.

"Cores" of Engineers misspelled in September document, changed to "Corps"

Jason Delambre does not wish to amend comments from the annual meeting.

EQC publications - DNR division will collaborate with University of Louisville and EQC to update EQC's State of the Environment publication. Collaborator is Professor Tony Arnold of U of L and his students, a land use professor, in the Brandeis School of Law, located on the Belknap Campus.

Gadson: Re: Lee's Land landfill in Louisville - on Oct. 25, 2011, a meeting was held at the MSD (Metropolitan Sewer District) building, 700 W. Liberty Street, Louisville, Kentucky, that included representatives from the EPA Superfund, Kentucky Division of Waste Management, ATSDR, which is part of the Centers for Disease Control, West Jefferson County Community Task Force, the Metro Louisville Health Department, the Kentucky Resource Council and the Kentucky Environmental Quality Commission, at the request of the House family of Louisville. The family wants the landfill re-listed as a Superfund site. EPA will re-inspect and a health survey will be developed.

A conference call is to be set up for March, 2012 for an update Tom FitzGerald, director of the Kentucky Resource Council, volunteered his organization to be the catalyst to push the health survey with University of Louisville's School of Public Health and the Metro Louisville's Health Department.

Public relations efforts: The EQC is in a partnership with WBKI to promote a show called "Guardians of the Environment" to recognize persons who have done great things towards a more healthy environment, a 60-second blurb. More details later.

Public Speakers:

Nina Cornett
Teena Halbig
State Representative Leslie Combs
Hugh Archer

Nina Cornett of Blackey, Kentucky testified that timber theft is a big problem in the Commonwealth. Timber theft nationwide is a \$1 billion property crime. This compares with auto theft, at \$8 billion per year. Kentucky doesn't keep records, so only data I can give is personal. Husband and I, and 2 cousins, adjacent landowners, in the summer 2003, lost \$90,000-\$100,000 worth of trees in a single loss on 4 properties. In Breathitt County, 200 acres were nearly clear cut for an estimated \$400,000 loss.

The Justice system has yet to come to grips with it. Sheriffs and prosecutors are challenged because a case is rarely won.

Victims are often old, poor and ill. Over the years, the system has come to incentivize victimization because timber theft laws lack teeth in Kentucky. Victims are left with a civil suit as their only option which is unaffordable for most.

The Cornetts are working with the legislature and Rep. Leslie Combs to bring attention to this. Victims are not the only losers, the environment is a big loser. There are rules and standards for logging. Under the Clean Water Act, all are charged to keep silt out of rivers.

Illegal logging roads leave behind piles of debris. Fuel is left behind from large bonfires, as victims try to deal with debris left after a theft. It endangers victims and neighbors.

Those signs just mentioned are visible damages, there are also invisible ones. Fewer trees mean less clean air. Fewer trees mean less carbon credits. There are landowners in Chicago who have actually sold their carbon credits. If someone cuts your trees, your carbon credits end. Lost trees mean lost carbon credits to landowners and to the state. Also lost is money coming into Kentucky for carbon credits that could have been taxed.

Landscape after a timber theft looks like Hiroshima, the root systems of stolen trees die, therefore there is no take-up of run-off water in a hard rain. The air is worse. Animal habitat is also lost.

State Representative Leslie Combs has introduced HCR 64 to develop a study group on the matter.

Rep. Leslie Combs of Harlan introduced and testified: The more you fight, the more you educate people. There are many legislators affected personally by timber theft. More people suffer from it than we thought. We wish to develop a study group to pursue a meaningful criminal legal side. Our push-back would be to penalize people who commit the crime of timber theft.

Knoth: Thieves are stealing a legacy--I don't think it is right.

Hugh Archer of Kentucky Woodland Owners Association, testified that thieves target old-growth trees. Even trees in the State Nature Preserve system, such as Blanton Forest, are not safe. A 70-year-old crop of trees was stolen for the purposes of wood trim and veneer. The number of state foresters is at a 100-year low. Enforcement must be at a local level. Stolen trees can be worth thousands of dollars each.

In Madison County, Kentucky, at Silver Creek around Christmas 2007, a landowner wished to sell 20 acres of oak in order not to be forced to sell his cattle. He planned to use the money from the sale of his trees to send his children to college, but a thief cut the trees down and stole them, his investment was lost.

Cornett: The matter is not usually a boundary dispute. Thieves will take the stolen trees over the mountains and out of the back of a given forest, in a drainage area, in order to avoid detection. In Perry County, 2 people have been murdered over this issue.

Archer: Kentucky's Blanton Forest, the 13th largest old-growth forest in the United States, experienced timber theft when 44 acres of 300-year-old trees were stolen.

Cornett: The Kentucky Division of Forestry has no jurisdiction in these matters. Kentucky has no office for timber theft; therefore the matter is left in the hands of local sheriffs. The state of Tennessee, by contrast, has a timber theft unit in its Department of Agriculture. Is there a way to recover funds? The commitment proposed by Representative Combs will be tasked with figuring this out.

Cornett introduced a resolution asking EQC to support Rep. Leslie Combs's effort to introduce a task force in state government to study the issue. The item passed unanimously with Jason Delambre proposing the motion and Tom Herman as second.

Teen Halbig, Floyds Fork Environmental Association, on safe disposal of medication:

Halbig has credentials in microbiology, medicine and business were given. She is a volunteer with Floyds Fork Environmental Association.

Her involvement on this topic started when an excavator planned to remove a 52-acre island. Floyds Fork flows through 5 counties and has several tributaries. It affects the whole east end of Jefferson County, Kentucky, about one third of it. Seeing horrible pollution in 1991, with dead fish floating, leeches, green and brown goop, she decided to address it, knowing wildlife and human health would be affected.

In 2005, Halbig read an article that mentioned hormones and antibiotics in water were found in two states. The story mentioned numerous contaminants and thought probably no testing was being performed in Kentucky. She worked with Christian Academy of Louisville students to test water and found the drug Estradiol, positive in every sample in

the first round of tests. The data is posted on Floyds Fork Environmental Association website.

EPA does not mandate testing water for hormone content. An Emerging Contaminants of Concern report looked at several large cities. An Associated Press story mentioned numerous contaminants in municipal drinking water sources. EPA studies in 2005 found there are more female fish, less male fish, and strange inter-sex fish, due to exposure to compounds.

On TV, people were shown flushing 2 gallon buckets of pills, thousands of pills per bucket. Many of these pills come from nursing homes. These medicines are found in our streams and even municipal drinking water sources. Herbicides and pesticides are not removed, except as on as needed basis.

Our Stolen Future, a 1996 book, suggests links between endocrine disruptors and childhood obesity, early puberty, ADHD and infertility. A CJ editorial says that childhood obesity has tripled in the last 5 years. When taking a shower, humans are in contact with medicines in water. It affects you because your skin is like a sponge. Flushed pills cause water pollution. Pills taken by mouth are partially absorbed in the body and the rest is excreted going into the wastewater treatment plant. People are taking medicine at record high levels and an aging population will only increase this trend.

Therefore, Kentucky must act to keep as much medication as possible from getting into our water. Safe disposal of drugs will also help to prevent drug abuse. Less drugs to get into the hands of teenagers

Our Floyds Fork resolution, and House Bill 238, U.S. Rep. Louise Slaughter of New York has proposed a Medicine Stewardship Act at the federal level in Congress; she wants pharmacies to take drugs back, using the same data we are using.

I ask for letters of support, and for EQC to speak on behalf of the pill disposal bill when it is in committee. There is a big cost not to implement. State Representative Joni Jenkins is a sponsor. It's about safe disposal of medication.

Delambre: It's sobering. What do the drug companies stand on this?

Halbig: They chose not to fight it in the last session. It should have been a no-brainer, but there is a cost to implement.

Smith: How would it work with waste coordinators?

Halbig: It's up to cities to decide to work with the police stations, sheriff's office or waste coordinators. There is a cost to having locked boxes, disposal and drug recycling programming. Slaughter wants pharmacies to take medicines back. As a society we are running out of medications, because of so much use, the needy cannot get them. Our

purpose is to reduce the burden on wastewater plants, we cannot afford to test for everything.

Smith: What are the mechanics? Philosophically, I agree, but details of legislation concern me.

Knoth: I can envision serious pushback at the county level.

Delambre: Any true recycling program takes something back to the source so they can break it down and reuse, similar to the battery recycling program.

Halbig: It would be a starting point and an educational campaign. Some pharmacies now will take medicines back. Kentucky could be a leader and on the cutting edge.

Smith: When we prioritize in June at annual EQC meeting, we will work through it, getting Division of Water involved. We will study it at that time, and maybe help bolster your position. We can help you by involving more stakeholders.

Halbig: Answer I received from Division of Water was “someday, somewhere in the state of Kentucky, we will do some testing, but it is not a priority for DOW due to money.”

Knoth: We could help build the coalition, because that’s what it would take. Important bills take years to get traction in the legislature.

Herman: Endocrine disruptors have been reviewed by EPA and ORSANCO. There are voluntary efforts in Jefferson County to collect drugs with some success. Have other states gone beyond?

Halbig: This bill makes it easy because police stations are open 24 hours and people could drop them there.

Archer: You are describing a cradle-to-grave program, that’s complicated. Seems like one approach would be to adopt RCRA approach and make prescription drugs a hazardous waste and then it’s a waste management issue. No state has made it regulatory. United States Geological Survey started much of this research, and scared everyone about what’s in the water. The Division of Water won’t regulate it, they can only point out problems, but it will have to be a waste management effort. Lots of materials aren’t hazardous until you try to dispose of them. Seems like that’s kind of a formula.

Smith: On Total Maximum Daily Load* (TMDL hereafter) at Floyds Fork watershed: EPA held a public hearing on the topic of poor water quality in that body of water on Feb. 21, 2012 at a high school in Louisville. Documents and language that the EPA presented at the meeting were indecipherable to the general public, he said. He suggests a meeting between state Division of Water and EQC so that EQC can get a grip on what the EPA has found in the Floyds Fork watershed. “Jefferson County will invest hundreds of millions in this exercise and we must understand it,” Smith said.

Motion to adjourn – Tom Herman. Jason DeLambre – second.

THESE ACTIONS, ALONG WITH THE AGENDA ITEMS, MAKE UP THE OFFICIAL MINUTES.

Respectively Submitted

Scott Smith, Chairman

Date

EQC RESOLUTION ON TIMBER THEFT

RESOLUTION: Passed unanimously by the Kentucky Environmental Quality Commission February 23, 2012, at its quarterly meeting in Frankfort, KY regarding HCR64 – L. Combs. A CONCURRENT RESOLUTION establishing a Timber Theft and Trespass Reduction Task Force.

WHEREAS, roughly 30 percent of the United States of America is covered in woodlands and roughly 47 percent of Kentucky is covered in woodlands; and

WHEREAS, government is to protect our natural resources; and

WHEREAS, HCR64, The Timber Theft and Trespass Reduction Task Force can help protect said asset, which is priceless to human beings and their earth, land, sky and water courses; and

WHEREAS, timber thieves steal trees worth \$1 billion nationwide per year in a big business and calculated fashion; and

WHEREAS, both individual citizens with privately owned woodlands and taxpayers in collective form who own public forests via the United States Forest Service and forests owned by state governments are victimized; and

WHEREAS, thieves are focused on private financial gain and nothing else, leaving broad swaths of environmental damage in their wake; and

WHEREAS, environmental damage includes huge slash piles that pose a danger of out-of-control wildfires across large parcels, and loss of live root systems that prevent flooding; and

WHEREAS, environmental damage includes bulldozing very steep slopes leading to major soil erosion and no effort to keep silt out of streams per rules promulgated by the Commonwealth of Kentucky; and

WHEREAS, HCR64 may someday lead to improved laws and law enforcement techniques to mitigate the economic and environmental losses associated with timber theft;

NOW, THEREFORE, BE IT RESOLVED: that the Kentucky Environmental Quality Commission supports the House of Representatives of the General Assembly of the Commonwealth of Kentucky in its quest to implore the Governor, legislatures and other appropriate agencies to support and assist the Timber Theft and Trespass Reduction Task Force in studying and developing consensus recommendations toward the possible strengthening of criminal and civil laws, improved coordination among other agencies having oversight over timber harvesting, and other measures that the task force believes would result in reduction of timber theft and timber trespass.