

Comments

Submitted by: Arthur Stewart

Submitted to: Pennsylvania DEP with copies to all CDAC members

Regarding: TGD 012-1920-002 (Advisory Committee Guidelines)

Date: November 27, 2017

Introduction

The undersigned serves as the chairman of the Pennsylvania Grade Crude Development Advisory Council (CDAC). The undersigned recently received notice that the Pennsylvania DEP published a draft Technical Guidance Documents (TGD) concerning the Policy for the Development of Regulations and a TGD concerning Advisory Committee Guidelines. While reading those TGD's over the 2017 Thanksgiving weekend, the undersigned recognized that both have significant bearing on the operations of CDAC. Comment by CDAC is appropriate.

However, the CDAC chairman is not authorized to submit comments on behalf of CDAC without having been given such authority at a duly convened CDAC meeting. With the DEP's establishment of a December 13, 2017 deadline for comment upon the TGD's, and with the Department of Community and Economic Development's request that it be provided at least three weeks' notice of any special meeting of CDAC, there is not time for CDAC to convene a special meeting to formulate written comments. That being the case, the undersigned has prepared these comments and will submit them to the DEP with copies distributed to all CDAC members. Individual CDAC members are free to join in, modify or disagree with these comments, but absent the benefit of public comment and deliberation at a meeting duly convened under the Sunshine Law, those individual comments, no matter how they tally, will not rise to the level of the written comments by CDAC authorized under the CDAC Act. Accordingly, among other things this comment requests an extension of the comment period.

Substantive Comments

Purpose. The proposed Guideline describes the purpose of advisory committees as assisting DEP in effectively implementing Pennsylvania's environmental laws. That is true, but significantly incomplete. CDAC is guided by Pennsylvania's environmental laws but also, in significant part, by other laws including Act 52 of 2016 (the CDAC Act) and the Regulatory Review Act.

The CDAC Act speaks specifically to the Regulatory Review Act and its regulatory analysis form when the Act addresses future rulemaking. The CDAC Act followed a many-year dialogue between members of the conventional oil and gas industry and the DEP concerning the alleged failure to properly engage in the steps necessary to an adequate and thorough regulatory analysis, and the CDAC Act expects of the relevant parties the following:

Policy	
	(CDAC) Examine and make recommendations regarding existing policies (a)(1).
	(CDAC) Assist DEP Secretary with new DEP policy (a)(4).
	(CDAC) Provide written comments on new DEP policy (a)(4).

	(DEP) Consult with CDAC on all policy (1).
Regulations	
	(CDAC) Examine and make recommendations regarding existing technical regulations (a)(1).
	(CDAC) Explore development of a regulatory scheme specifically applicable to conventional o & g (a)(2).
	(CDAC) Review and comment on the formulation and drafting of all technical regulations (a)(5).
	(DEP) Consult with CDAC on all technical regulations (1).
	(DEP) Include comments of CDAC to the EQB (2).
Duties other than policy or regulation	
	(CDAC) Promote the long-term viability of conventional o & g (a)(3).
	(CDAC) Provide institutional support for the industry by ensuring cooperation/communication among government agencies and the academic/research community (a)(6).
	(CDAC) Recommend measures related to the promotion/development of the conventional o & g industry (a)(7).
	(CDAC) Develop a plan to increase PA crude oil production in an environmentally responsible way (a)(8).
	(CDAC) Develop a joint working group with the DEP to develop water management options (a)(9).
	(CDAC) Issue an annual report (b).
Tech support	
	(DEP) Provide technical assistance to CDAC (3).
	(DCED) Provide admin support.
	(DCED) Provide office space.
	(DCED) Provide technical assistance.

The "Purpose" section of the Guideline should be revised (at least to the effect it pertains to CDAC) to account for these items:

- 1) That the advisory committee is beholden to a group of laws broader than merely environmental laws;
- 2) That the subject matter to be addressed by the advisory committee is broader than "technical advice";
- 3) That the interaction includes assistance from the state agencies (in the case of CDAC the DEP and DCED) to achieve the purposes of the advisory committee (which purposes include technical advice but go beyond, such as [in the case of CDAC] the recommendation of measures to promote the conventional oil and gas industry, developing a plan to increase crude oil production in an environmentally responsible way, etc.)

Membership. At least in the case of CDAC, the membership functions described in the proposed Guideline are being carried out by the Department of Community and Economic Development (DCED), and the Guideline should be expanded to account for another agency's participation.

Bylaws/Rules of Procedure. At least in the case of CDAC, the bylaws functions described in the proposed Guideline are being carried out by the DCED, and the Guideline should be expanded to account for another agency's participation.

Meeting Notices and Schedules. At least in the case of CDAC, several of the described functions are being carried out by the DCED, and the Guideline should be expanded to account for another agency's participation. Additionally, the DCED has adopted an interpretation of the Sunshine Law relative to committee meetings that results in a different practice than set forth in the Guideline. That difference in agency views should be resolved.

Meetings, Meeting Agendas, and Meeting Materials. In the case of CDAC, the preliminary agenda is developed by the chairman in consultation with the DCED and DEP. That procedure is similar to the existing Guideline which provides the agenda will be "developed by the committee chair and the Department liaison." The proposed Guideline states it in the reverse and, at least in the case of CDAC, the proposed Guideline language should be removed in favor of the existing Guideline language.

In the case of CDAC, as to meeting materials, minutes, etc. several of the described functions are being carried out by the DCED, and the Guideline should be expanded to account for another agency's participation.

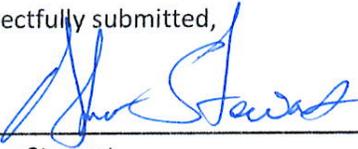
Roles and Responsibilities.

- 1) In the case of CDAC, several of the described functions are being carried out by the DCED, and the Guideline should be expanded to account for another agency's participation.
- 2) In the **Committee Members** section, the duty of the committee members is described as being "responsible for actively participating on the committee to provide DEP with advice on how to effectively administer Pennsylvania's environmental laws." Consistent with earlier comments, this description is too narrow to describe or give appropriate attention to other functions such as those described under the CDAC Act and cited above. The goal of achieving consensus should be expanded beyond "changes to a proposed DEP document" so that the goal includes all the functions of the advisory committee.
- 3) Concerning **Members of the Public**, the current Guideline states: "public comment from attendees is encouraged." The proposed Guideline replaces this statement with detailed provisions reminding the public that they are there to "learn about DEP's development of environmental policies, guidance, regulations, and other technical documents..." While this description of learning opportunity is in part accurate, the duties of CDAC go beyond those listed matters and include opportunities for the public to learn about economic and other challenges facing the production of conventional oil and gas, interaction with academia on a host of topics, methods to improve conventional oil and gas production, and the like. CDAC members volunteer a great many hours to these multiple endeavors and it would be a disservice to that volunteerism to limit the description of the opportunity to learn as set forth in the proposed Guideline. A simple resolution to this oversight is to return to the existing Guideline; if the learning opportunity language is to be retained, the Guideline should allow for a more expansive understanding of that learning opportunity that respects the scope of advisory committee duties and the volunteerism committed to same.

The undersigned also requests that the deadline for comment be extended beyond December 13, 2017. CDAC next meets January 25, 2018, and to accommodate that timeframe the comment deadline should be extended to at least February 15, 2018. However, the proposed Guideline would be best served if all advisory boards had adequate time to comment so that good practices enjoyed by one or more of those other boards are adequately addressed in the proposed Guideline. The undersigned is unfamiliar with the schedules of those other advisory boards and consequently the undersigned makes

the general comment that the comment period should be extended to at least February 15, 2018, and so long thereafter as is necessary to meaningfully solicit comment from the other Pennsylvania advisory boards.

Respectfully submitted,



Arthur Stewart