

February 24, 2016

Senator Patrick Browne, Majority Chair
Senator Vincent Hughes, Minority Chair
Members of the Senate Appropriations Committee

Re: Budget Hearing for the Department of Environmental Protection

Dear Members of the Senate Appropriations Committee:

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 FY2002-2003, 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:

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 of the Department's Stormwater Program](#),¹ 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](#),² 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](#)³ 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](#)⁴ on the Clean Water State Revolving Fund Program, noting similar staffing review needs as with the Drinking Water State Revolving Fund Program.

Environmental Protection Agency – Air

In a November 2015 EPA Technical System Audit on air quality monitoring (attached to 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."

¹ http://www.epa.gov/sites/production/files/2015-07/documents/pa_sw_final_report_doc.pdf

² <https://drive.google.com/file/d/0B4Y3VQLxjxOMklkTjAzeFBfRDA/view?pref=2&pli=1>

³ <https://drive.google.com/file/d/0B4Y3VQLxjxOSzNRUUNnVFBLLXc/view?pref=2&pli=1>

⁴ <https://drive.google.com/file/d/0B4Y3VQLxjxOYWRBYndKby1Uc0E/view?pref=2&pli=1>

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](#)⁵ 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 and 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.

⁵ Available via <http://odocs.osmre.gov>

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.

The process of making that commitment begins with tomorrow's hearing before the Senate Appropriations Committee. We call on you to demonstrate the courage and leadership necessary to take that first step.

Sincerely,

Davitt Woodwell, President and CEO
Pennsylvania Environmental Council

Harry Campbell, Executive Director, Pennsylvania Office
Chesapeake Bay Foundation

Cc: Senator Gene Yaw
Senator John Yudichak
Representative William Adolph
Representative John Maher
Representative Joseph Markosek
Representative Greg Vitali
Secretary John Quigley, Department of Environmental Protection

Attachments:

- Annotated Excerpts from 2015 EPA Technical System Audit on Air Quality Monitoring
- OSMRE Letter to the Department (dated August 13, 2014)

Note: Reports and correspondence hyperlinked in this letter are not attached, but are available online.

**TECHNICAL SYSTEMS AUDIT
OF THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR QUALITY
2015**

Conducted by US EPA Region 3
Air Protection Division
Office of Air Monitoring and Analysis

November 2015

1.0 EXECUTIVE SUMMARY

This document is a final report on the findings made by the United States Environmental Protection Agency (EPA), Region 3 Air Protection Division, Office of Air Monitoring and Analysis, following a Technical Systems Audit (TSA) for the Pennsylvania Department of Environmental Protection (PADEP) Bureau of Air Quality (BAC) ambient air monitoring program in accordance to 40 CFR 58 Appendix A Section 2.5:

"Technical systems audits of each ambient air monitoring organization shall be conducted at least every 3 years by the appropriate EPA Regional Office and reported to the AQS."

A TSA is an on-site review and inspection of a state or local agency's ambient air monitoring program to assess its compliance with established regulations governing the collection, analysis, validation, and reporting of ambient air quality data. It includes (but is not limited to) on-site interviews with key program personnel, evaluations of ambient air monitoring sites operated by the state or local, and a review of quality assurance and data reported to EPA's Air Quality System (AQS).

The TSA primarily focused on PA DEP's: network management, quality assurance/quality control, data management, field and laboratory operations, and facilities. Region 3 identified several major findings. Those findings are discussed in detail with recommendations and corrective actions in Section 3 of this report. The most significant findings are:

- The Field Operations & Maintenance Section (FOMS) does not have adequate personnel resources to operate PA DEP's SLAMS network.
- Missing approved QAPPs for several NAAQS pollutants. Missing approved QAPPs for several NAAQS pollutants.
- Ozone sensors are not traceable to the Regional Standard Reference Photometer (SRP).
- Backup temperature and humidity sensors used for PM_{2.5} filter weighing are not verified.
- Standard Operating Procedures for ambient air analyzers and samplers need to be updated.
- PM_{2.5} continuous FEM and PM_{2.5} FRM at the Farrell site (AQS ID: 42-085-0100) do not satisfy the siting criteria for collocation.

3.0 TSA FINDINGS

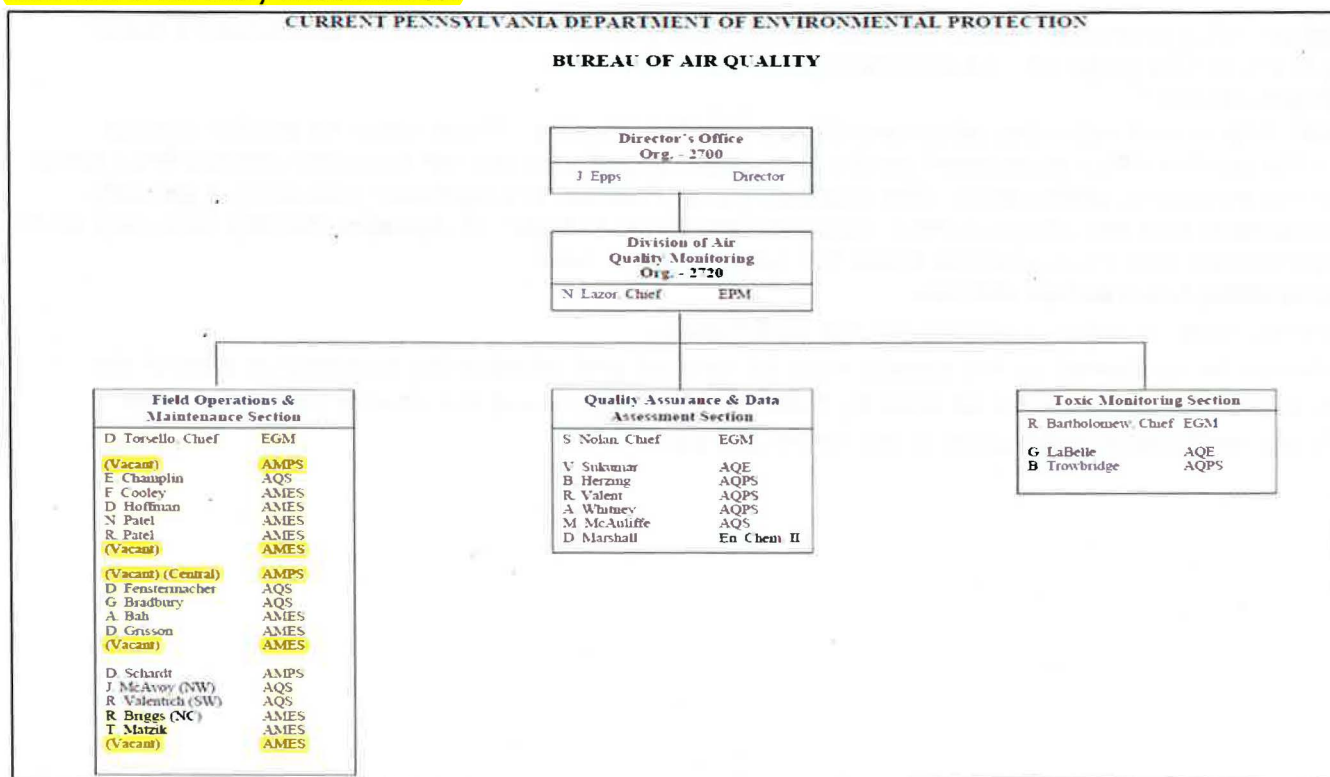
This section lists audit findings made by the EPA Region 3 audit team. In September 2015, Region 3 sent an initial audit findings summary (Appendix A) to PADEP for their review. Subsequent calls and emails between Region 3 and PADEP to discuss the findings. PADEP responded to the findings summary; those comments are in Appendix B of this report. Region 3 found issues in the areas of network management, quality assurance/quality control, and laboratory and field operations.

TSA findings are categorized and defined as:

Major	Nonconformance of high importance which is unacceptable and must be remedied. Such nonconformances impact data quality, indicate unacceptable procedures are in use (per guidance documents), endanger staff members, and/or obscure the traceability of data.
Minor	Nonconformance of somewhat lesser importance as compared to a major finding, but one that should be remedied. Such nonconformances have marginal impact on data quality. Action taken to address such nonconformances will yield improvements in data quality and/or bring procedures into full compliance with guidance documents and/or quality system standards.
Observation	Either a nonconformance with no impact to data quality or a recommendation for an improved or best practice

MONITORING NETWORK (MN)

Finding MN1: The Field Operation & Maintenance Section (FOMS) responsible for maintaining the SLAMS Network is severely understaffed.



Finding Type: MAJOR

Discussion: *"The monitoring organization's quality system must have adequate resources both in personnel and funding to plan, implement, assess and report on the achievement of the requirements of this appendix and its approved QAPP".40 CFR Part 58 Appendix A 2.1.3*

At the time of the audit, there were five (5) vacant staff positions in FOMS. PADEP stated in the TSA Appendix H Questionnaire that: *"Staffing levels have been a major issue. Critical work is being completed, however the program has had to operate in a reactive mode instead of proactive. Hiring has begun again in mid-2015 with a full complement expected by mid-2016."* EPA auditors found significant concerns with PADEP's field staff shortage. Critical tasks/operations are being performed, however the work is done by personnel who have to shoulder their workload with that of the vacant positions. In some cases, field supervisors are operating field sites in addition to their own responsibilities.

Recommendation/Corrective Action: Vacant positions need to be filled in order to continue operating air monitoring program pursuant to 40 CFR 58 Appendix A.

QUALITY ASSURANCE (QA)

Finding QA1: It's not clear if PADEP receives PM_{2.5} & PM₁₀ weighing room conditions (temperature and humidity) from BOL.

Finding Type: MAJOR

Discussion: Weighing room environmental conditions for PM_{2.5} & PM₁₀ are critical criteria that must be met for sample validation. As part of their QA/QC validation procedures PADEP should periodically review BOL's 24 hour average temperature and humidity data to ensure that these criteria are met.

Recommendation/Corrective Action: PADEP should request and review weighing room conditions periodically for PM_{2.5} and PM₁₀.

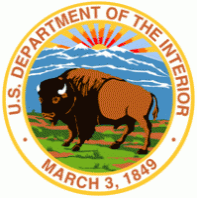
Finding QA2: PM_{2.5} instrument serial number on QC data sheets does not match instrument's serial number at the Erie site (AQS ID: 42-049-0003).

Finding Type: MAJOR

Discussion: Inaccurate reporting adversely affects the data quality. There were no quality control records for the current PM_{2.5} instrument at the site. The site operator did not have the correct PM_{2.5} serial number on the electronic worksheets. EPA auditors found that the site operator was using a partially prefilled worksheet with the previous PM_{2.5} instrument's serial number. It appears that the incorrect serial number was carried over from sheet to sheet for long period of time.

Recommendation/Corrective Action:

1. Field sheets must be filled in accurately and completely.
2. The information contained on the sheets must be verified and checked for accuracy as part of the validation process. This should be done by field staff, managers and the quality assurance staff.
3. Specify the verification procedures in the QAPP and SOP.



United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Appalachian Region
Three Parkway Center
Pittsburgh, Pennsylvania 15220



August 13, 2014

John J. Stefanko, Deputy Secretary
Department of Environmental Protection
Office of Active and Abandoned Mine Operations
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, Pa 17105-2063

Mr. Stefanko:

I have been asked to respond on behalf of Office of Surface Mining Reclamation and Enforcement (OSMRE) Director Joseph Pizarchik to your two letters of June 25, 2014, dealing with Pennsylvania's surface coal mining regulatory program. Specifically, one letter concerned identified weaknesses associated with the Pennsylvania Department of Environmental Protection's (PADEP) bonding program for surface coal mining sites in Pennsylvania and the other concerned PADEP's inability to meet the required inspection frequency at coal mine sites in Pennsylvania. I want to thank you for your letters. I appreciate the detailed, open communications which the PADEP and the OSMRE have had, and the efforts of your staff in resolving the programmatic weaknesses. Based on your letters, and the supporting documentation, it appears that PADEP is committed to address these issues.

To ensure that the identified weaknesses are addressed in a timely manner, attached to this letter you will find two Action Plans. These action plans are designed to assist PADEP in resolving the remaining issues identified by OSMRE's 2010 National Priority Review - Adequacy of Bonding in the Approved Pennsylvania Program and within the 2012 report entitled Compliance with Required Inspection Frequencies. While I am confident that PADEP will successfully fulfill the requirements of these two Action Plans, I must emphasize that failure to do so will jeopardize Pennsylvania's primacy under the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) for regulating coal surface coal mining operations.

With respect to the Action Plan on inspection frequency, we note the complexity of identifying and balancing work force needs into the future in a dynamic economic environment with limited State resources. Nevertheless, the requirements of the Federal and State regulations must be followed. While OSMRE understands and supports PADEP's methodology, estimates and the target of inspection productivity equivalent to 57 full time inspectors (FTE) to accomplish the various mine inspection tasks, 57 net equivalent FTEs should not be deemed as the ultimate corrective action. Rather, PADEP is tasked with meeting the number of inspections required by

Federal and State regulations. The true validation of this target number will come once PADEP obtains, trains and maintains a net equivalent of FTEs which achieves the appropriate number of quality inspections.

In your letter and associated guidance regarding correction of bonding deficiencies, you make reference to “full-volume backfilling calculations” which will be required for all new and existing mine sites. What may be deemed as implicit in your proposal needs to be explicitly acknowledged; that full-volume backfilling calculations must account for the handling and distribution of any and all material necessary to achieve approximate original contour. In addition, in your proposal, you refer to Act 157 of 2012 which amended the Pennsylvania Surface Mining Conservation and Reclamation Act (Pa SMCRA) by establishing a Land Reclamation Financial Guarantee (LRFG) program. You state that funds made available through this program may be used by eligible mine operators to satisfy bonding obligations. You also state that implementing regulations are currently being proposed and could be finalized in six to nine months. You further state that an interim program is in place to provide assistance until the regulations become final.

We are advising PADEP that, in accordance with 30 CFR § 732.17(b)(3), any changes in State law and regulations from those contained in the approved State program, must be submitted for review and adoption as part of the approved Pennsylvania Regulatory Program. If it is PADEP’s intention to utilize these provisions, please provide us with a proposed written amendment, or a description of an amendment and a timetable for enactment which is consistent with established administrative or legislative procedures in Pennsylvania. We further advise that compliance with the deadlines for full volume bonding set out in your June 25, 2014, letter, as captured in the attached Action Plan, is expected regardless of the availability of financial assistance to mine operators through the LRFG program.

In the draft document titled *Full-Cost Bonding for Backfilling at Surface Mines, Transitioning from “Footprint of the Coal” to Full Volume*, attached to your June 25, 2014, letter, you also discuss the concept of “Blanket Bonds,” i.e., the aggregating of individual permit bonds into a single bond posted for a surface coal mine operator. You propose that Blanket Bonds may be an option for operators to partially or fully address the full-volume bond reassessment. We understand that Blanket Bonds are discussed in the Department’s Technical Guidance 563-2504-201.

Federal regulations at 30 CFR § 732.17(b)(1) require that notification be given to OSMRE by the regulatory authority when there are changes in the provisions, scope or objectives of the State program which affect its implementation, administration or enforcement. I must remind you that the current inadequate bonding situation was created, in part, by bond calculation procedures which did not meet the requirements of Pennsylvania’s approved program. It would not be prudent for either PADEP or OSMRE to attempt to fix these programmatic issues via methods that have not been found to be in accordance with 30 CFR § 732.17. Please provide us with your analysis of whether blanket bonds and the guidance conform to the approved program or should be submitted for approval as a program amendment. Also, it is our expectation that, if an operator is provided with a blanket bond, every permit’s bond under the blanket will be calculated using the full volume approach and will meet the requirements of the action plan. We

further advise that compliance with the deadlines for full volume bonding set out in your June 25, 2014, letter, as captured in the attached action plan, is expected regardless of the availability of blanket bonds for mine operators.

Your letter on inspection frequency refers to the challenges of maintaining adequate staff during periods when state's matching funds are threatened by constrained state appropriations. As both states and Federal appropriated funds decrease, OSMRE would like to partner with PADEP and other interested states to explore supplementary sources of funding. We look forward to discussing ideas and concepts related to funding sustainability with you.

I am forwarding this matter to the Pittsburgh Field Division for further action. Field Division Chief, Ben Owens will be your point of contact for additional discussions and action. He can be reached at 412-937-2827, or by email at bowens@osmre.gov. As always, I also remain available to discuss any particular concerns you may have. I again want to emphasize my appreciation for the communications and effort put forth by you and your staff to bring Pennsylvania into compliance with its approved program.

Sincerely,

A handwritten signature in black ink that reads "Thomas D. Shope". The signature is written in a cursive style with a large, stylized 'S' at the end.

Thomas D. Shope
Regional Director

Attachments