

# **Environmental Quality Commission Minutes for EQC Annual Work Meeting**

January 17, 2003

Vest Lindsey House, Frankfort

## **EQC Commissioners Present**

Aloma Dew, Chair

Betsy Bennett, Vice-Chair

Bob Riddle

Gary Revlett

Jean Dorton

## **EQC Staff Present**

Leslie Cole, Director

Erik Siegel, Assistant Director

Lola Lyle, Research Analyst

Frances Kirchhoff, Administrative Assistant

## **EQC Commissioners not attending**

Serena Williams

Patty Wallace

## **Speakers/Representatives Present**

Hank List, Secretary, NREPC

R. Bruce Scott, Division of Water

Carl Millanti, Division of Air Quality

## **OPEN MEETING**

Environmental Quality Commission (EQC) Director, Leslie Cole, opened the meeting at 10:15 a.m. The meeting was the annual EQC work session to review 2002 accomplishments and set 2003 priorities.

## **2002 KEY ACCOMPLISHMENTS 2002**

Ms. Cole first reviewed the 2002 key accomplishments. Among the accomplishments reviewed were:

### EQC Public Meetings

EQC held four issue meetings in Frankfort during 2002 focusing on:

- Power plants (siting, permitting, issues)
- Contaminated waste sites (HB 174, superfund sites)
- Clean water act (30 year anniversary)
- Legislative briefing (discussion of environmental issues)

### Public Forums

EQC held two public forums in 2002 including an:

- Evening Forestry Forum in Morehead
- A Pine Mountain Ecotourism Roundtable in Harlan County

### Field Trips

EQC held one field trip during 2002 which involved a:

- Tour of Maxey Flats Radioactive Waste Disposal Superfund Site in Rowan County.

### Earth Day

EQC held its annual Earth Day Award Ceremony honoring 12 Kentuckians at the Berry Hill Mansion in Frankfort.

### Attendance

365 people attended the 2002 EQC meetings and forums.

### Cabinet Meetings

EQC held two meetings with Secretary James Bickford, Secretary of NREPC to brief him on:

- EQC Budget
- EQC priorities

### Recommendations

EQC made 41 policy recommendations regarding:

- Antidegradation
- Forestry (6)
- Maxey flats (10)
- Coal mine mapping
- Daniel Boone National Forest (2)
- Power plants
- Environmental spills and incidents (20)
- Blackside dace

EQC took action on proposed environmental regulations including:

- 9 regulatory recommendations

### EQC 30<sup>th</sup> anniversary project

EQC celebrated its 30<sup>th</sup> anniversary in 2002 and undertook several projects including:

- Governor's Proclamation recognizing EQC and declaring April 2002 Environmental Awareness Month.
- EQC assembled essays from distinguished Kentuckians to review environmental achievements and issues.
- EQC prepared an environmental timeline.
- EQC conducted an on-line environmental survey, which resulted in 1600 responses.

### Web site updates

EQC undertook several improvements to its web site at [www.kyeqc.net](http://www.kyeqc.net) including:

- Addition of EQC Virtual meetings to web site – a slide show summarizing EQC meetings
- Addition of Meeting Background/Issue Papers to web site to provide information about EQC meeting topics
- Conversion of EQC Web site to ADA compliance

### Web site inquiries/contacts

EQC fielded a number of inquiries during 2002 including:

- 537 individual email messages, complaints, and inquiries.
- 32,258 unique hits on the EQC Web site since 9/9/99.

## **2002-03 ONGOING PROJECTS**

Ms. Cole next reviewed a number of ongoing EQC projects. Some of the continuing projects are:

### Pine Mountain Ecotourism Initiative

- Draft White paper to help develop recommendations has been distributed to 40 participants for comment.
- Completion – March 2003

### State of Environment 2003 Update

- EQC will only produce a Web version of the report due to budget constraints.
- Completion July 2003.

#### Lesson units for State of Environment Report

- Partnership with Kentucky Environmental Education Council and several teachers to produce teaching units for the report.
- Completion Feb. 2003.

#### Environmental Youth Summit (May 13—Midway)

- EQC will Partner with Kentucky Environmental Ed. Council to assist with discussions during the summit.

#### Long Term Policy Research Board

- EQC partnered with the Research board to author their 2002-03 trends report essay on the environment.

### **EQC STRENGTHS**

Director Cole and the EQC commissioners next reviewed the strengths of the commission. The strengths identified include:

- Commitment of commissioners
- Public outreach and information
- Government accountability
- Facilitated discussions/dialogue
- Independent issue research and trend analysis
- Timely and high quality recommendations
- Qualified and dedicated staff

### **2003/04 CHALLENGES AND AGENDA**

The commissioners next reviewed the various challenges facing the commission as well as 2003 priorities.

#### Budget

- A review of the 2002-03 EQC budget indicated the budget was on target with 50% of the fiscal year lapsed and 48% of the budget expended.
- No funding to publish State of Environment report.
- No funding for Earth Day – request to use \$1,300 of unobligated carry forward monies from sales of State of Environment report.
- Request to purchase computer and monitor to replace failing equipment.

#### Cost Saving Measures

EQC undertook several cost saving measures in light of the budget crisis including:

- Conversion of 534 subscribers to the e-mail newsletter (postage and printing savings of \$184 per newsletter)
- Use of surplus paper for newsletter (savings of \$80 per newsletter)
- First class mailing reduced to 3,454
- Messenger mailing reduced to 144

#### Commissioner Attendance

- Review of EQC commissioner attendance at 2002 meetings.
- Commissioner Betsy Bennett was recognized for perfect attendance in 2002.

#### EQC Meeting and Forum Topics

Director Cole noted that EQC has funds to hold four public meetings and one public forum. A discussion of meeting topics followed. The commission selected the following for meetings:

- Environmental Health (public forum)

- pesticides (West Nile mosquito spraying)
- bacteria in waterways and hepatitis B
- air quality - asthma
- cancer
- lead / mercury /toxics
- Forestry (Public Meeting)
  - U.S. Forest Service Survey -- results sometime in the spring
  - DBNF management plan -- scheduled to be released in the spring
- Coal/Energy/Power/Alternatives/Ash/Methane Extraction/Conservation (public meeting)
- DEP Strategic Plan. Program updates from Air, Transportation, other agencies
- Water Quality
  - TMDL, antidegradation, Report to Congress, watersheds, straight pipes

### EQC Earth Day Ceremony

The commission discussed plans for the 2003 EQC Earth Day Ceremony. The ceremony is scheduled April 14 at the Governor's Mansion.

### Other Projects

Additional 2003 EQC projects were reviewed include:

- "Indicator of the Month" on the EQC Web site to keep indicators fresh and up-to-date.
- "EQC Legislative Tracking Service" will be provided on the EQC Web site.

## **REVIEW OF NREPC ISSUES**

### **Hank List, Secretary, Natural Resources and Environmental Protection Cabinet**

During the meeting Hank List, Secretary of the Natural Resources and Environmental Protection Cabinet reviewed environmental issues facing the Cabinet.

He first briefed the commission on a meeting he had just attended concerning the coal bed methane gas recovery. He said there was some interest by the Coal Council in exploring the potential of drilling for methane as an energy source. Among the issues associated with methane gas recovery are saltwater byproducts and who owns the mineral rights to methane. Convincing the coal industry that this is a viable energy source and environmentalists that this will not cause environmental degradation will also be required. Mr. List also mentioned Pet Coke Usage, which is the subject of proposed legislation. He mentioned there is concern with the ash when you have mix coal with heavy oil. NREPC agrees that the ash byproduct created by Pet Coke should go into a contained landfill. There is also a need to further review and discuss the issue of special waste. He said Kentucky has a definition of special waste but does not have a policy for beneficial reuse of it.

A general discussion of some recent federal rules followed. Mr. List mentioned that the federal government is providing information to the states about new environmental rules but much of it is vague. Each state has to sit down and try to figure out what these rules mean to their state. Confined Animal Feeding Operations (CAFOs) are a good example as well as the multi-emissions approach to SO<sub>2</sub> NO<sub>x</sub> and mercury.

### **NREPC 2003 Issues**

Budget -- Secretary List noted that the number one issue facing the cabinet at this time is the BUDGET. He noted that recent personnel cuts have greatly impacted the Division of Forestry's ability to fight fires. While the choices were difficult the decision to do away with some 79 forestry interim positions prevented the cabinet from being forced to lay off full time personnel and continue to fill critical positions. Should an additional 5.2% or 9.2% cut be required, it will result in layoffs and the shutting

down of some programs – for example, programs like the Certified Clean Counties Program and straight pipe initiative, which if eliminated will not involve sacrificing federal dollars, will likely be the losers.

Paducah Gaseous Diffusion Plant -- Mr. List noted that the NREPC and U.S. Department of Energy (DOE) were at a complete impasse in regard to cleaning up the site. He said he was frustrated with trying to get DOE to honor their agreement to clean up that site.

Antidegradation -- NREPC hopes to make some significant headway on this subject. Mr. List said he would like to see water quality programs based on watersheds. He said NREPC wants more streams to be included in the list and have been told by EPA we are deficient in this. Mr. List said they would have a better plan in mitigating water pollution effects by coming to decisions on streams that are not getting the attention they deserve. Mr. List expressed frustration regarding the Legislative Administrative Regulation Committee stopping the Cabinet from promulgating environmental regulations. He noted that the Governor has challenged KRS 13A, however this lawsuit and the CAFO lawsuit are sitting in court with no action to date.

Coal Ash -- Mr. List said that there needs to be a meaningful discussion on coal ash and what it can be beneficially used for.

Brownfield Cleanup -- Mr. List said that the cabinet withdrew its Voluntary Environmental Remediation Program (VERP) brownfield regulations due to the complaints of the Kentucky League of Cities, industry and others. These organizations support brownfield cleanup, but had problems with the regulations being more stringent than surrounding states. Most of the brownfield sites are in Jefferson County. The cabinet and industry are far from finding an agreement on how to deal with cleaning up these sites.

Solid Waste Legislation -- Mr. List said that House Bill 174 (the solid waste cleanup bill), which was passed in 2002, has not moved forward due to a lack of budget and the fact that the state cannot issue bonds due to a lack of a budget. He said there was some money in place to start cleaning up roads and highways. The cabinet was authorized to hire 20 more people to implement the act, however the current budget makes it impossible to do that.

Valley Fills -- One of the other big issues in the federal courts now is valley or “hollow fills.” A court has ruled that these fills violate the Clean Water Act. This ruling affects the ability to mine coal or any activity that involves placing spoil in low-lying areas known as “hollowfills.” This decision is being challenged by the U.S. Department of Justice. Mr. List noted that in February the nationwide water permits regarding this issue will be renewed.

Legislation -- NREPC will not propose any legislation in 2003. Industry may introduce a bill to amend the brownfield’s legislation. Legislation may also be introduced to amend HB 174. Some county/city officials believe that HB 174 requires the state to take over the care of all old landfills, which is not the case. There is no funding for NREPC to take over these landfills. Another bill introduced involves small business enforcement (HB 108). The bill specifies that when businesses with 100 employees are in violation of laws and regulations they are to receive a warning first. Mr. List noted that this would include many chemical companies as well as power plants and could compromise the state’s authority to carry out federal environmental programs.

Water Systems -- Mr. List noted that the Cabinet is spending more time and attention on problem municipal water systems. Mr. List is now the Chair of Kentucky Infrastructure Authority Board. He said state intervention needs to take place when a facility fails to properly operate and provide clean water. The Martin County water district is an example. Kentucky American Water is on site providing management/direction/training to try to get this system turned around. Kentucky will need legislation eventually that will give state agencies more ability to go into situations like these and help get a safe product produced and the customers the confidence to use it.

### Status of Power Plants

Mr. List reported on the status of some power plants including:

- Kentucky Mountain Power has been bought – by another company – that project is still out there – Knott County
- Global Energy – filed to the siting board for a garbage derived fuel plant in Clark County -- March 4 – hearing in front of siting board for this project
- Peabody Plant – applied for waste permit – not sure if they have both air and water permits or not – only thing holding up is landfill permit
- LG&E – not a merchant plant – 750 megawatt plant at Trimble County site – already permitted when permitted original plant on the site – coal plant –

Mr. List said he was not aware of any movement on other plants and applications

Mine Mapping Initiative -- This project is an initiative of the Governor's Office. The Division of Surface Mining has some Office of Surface Mining money that would allow them to physically do the mapping and all of the overlays that can be produced from the data we have already.

### Questions

Commissioner Revlett asked who was generating the idea of coal methane gas production. Mr. List said he thought most of the interest was in West Kentucky. There is almost no mining in West Kentucky anymore, and there is interest in capturing more energy fuel off of existing coal seams or in some cases try to extract from some seams that are unfeasible to mine. There is an estimated 750 trillion cubic feet of coal bed methane in Kentucky. Mr. List said he did not know how this gas would be transported and said a pipeline isn't being discussed.

Commissioner Dew asked if the Cabinet is focusing attention on renewable fuel uses. Secretary List noted that the Division of Energy and its director, John Davies, do a great job. They are looking at biomass grants and conservation measures. Mr. List mentioned that alternative renewable energy is limited in Kentucky. He noted that technology on windmills has improved, but few places have the sustainable winds to justify the costs. Solar power hasn't advanced enough to justify the costs. Some utilities are offering geothermal. Hydroelectric is not acceptable to most – although there is some interest in putting some hydro plants on the Ohio River in the existing locks.

Commissioner Dew asked what the Cabinet's views were on the proposed U.S. EPA antidegradation rules for the state. Mr. List noted that his duty as secretary is to administer the programs to the satisfaction of EPA and the citizens of Commonwealth. He noted that the triennial review of water quality standards in Kentucky is behind (at least 2 years behind). Mr. List said the wording of the EPA antidegradation rule was very vague and the cabinet will need to try to figure out what we need to do to satisfy programmatic responsibilities and EPA. Commissioner Dew said it would be so nice to see Kentucky take the initiative and lead rather than always following the EPA.

Mr. List emphasized that he wanted to address pollution on a watershed basis. He said that some of the state's biggest issues are water related. Mr. List noted that in the remaining time he had left, the cabinet would focus on watersheds to try to get a better picture of the status of our waterways.

Commissioner Dew mentioned EQC's request for the use of its \$1,300 in unobligated monies to fund its Earth Day Award Ceremony. Earth Day is one of THE major outreach programs of this commission that gets a great deal of attention and gets young people involved in cleaning up the environment. Ms. Dew also requested support for the purchase of a computer and monitor for EQC staff, to replace those that are failing.

Ms. Bennett and Ms. Dew mentioned water sampling by volunteers as an opportunity for NREPC to better use resources. Mr. List noted that the Division of Water is warming up to Watershed Watch's sampling.

Commissioner Dew noted that the Cabinet should consider air quality regulations for CAFO's, noting that that is often where the complaints come.

#### James Bickford Memorial Fund

Aloma Dew presented Hank List with a \$400 check for the James Bickford Memorial Fund at the Pine Mountain Settlement School. The money was raised through commission and staff donations.

### **OTHER BUSINESS**

#### Approval of Minutes

Jean Dorton moved to approve the August 22, 2002 EQC meeting minutes. Gary Revlett seconded the motion and it passed unanimously on a voice vote.

#### Waste Regulations

EQC took action on proposed waste regulation that involved the \$1.75 Remediation Fee on waste received at landfills.

- 401 KAR 47:095

Betsy Bennett moved to approve 47:095 and Bob Riddle seconded the motion. It passed unanimously on a voice vote.

#### Water Regulations

Bruce Scott with the Division of Water reviewed proposed KPDES regulations:

- 401 KAR 5:070            401 KAR 5:060
- 401 KAR 5:075            401 KAR 5:065
- 401 KAR 5:002            401 KAR 5:070
- 401 KAR 5:055            401 KAR 5:075
- 401 KAR 5:057

The regulations were amended to reflect federal regulations update and phase II water requirements. Mr. Scott mentioned the regulations were filed this past summer but had to be refilled after they were late to LRC by 30 minutes after the deadline. Jean Dorton motioned to approve the KPDES regulations and Bob Riddle seconded the motion. The regulations passed unanimously on a voice vote.

#### Water Issue Update

Mr. Bruce Scott then briefed the commission on the U.S. EPA's CAFO regulations. The federal regulations were issued on Dec. 15. Mr. Scott said the rule doesn't change the way Kentucky deals with CAFOs. He said the federal regulations do not include integrator liability or require liners in waste lagoons as the Kentucky rules did. He said it does require nitrogen and phosphorus to be evaluated with a nutrient management plan. He said that poultry exemptions in the Kentucky regulations for dry waste were removed. The federal rule increases the number of broilers considered CAFOs to 125,000 compared to the 100,000 in the Kentucky rules. That leaves around 75 CAFOs in Kentucky as defined by the U.S. EPA. State programs must conform to the federal rule starting 60 days after effective date of rule.

As a part of the CAFO permitting process, the Division of Water will allow water quality plans to supplement nutrient management plans. Kentucky state law now makes water quality plans confidential but Mr. Scott thinks federal law overrides state law on that issue and it will probably be debated in the future.

Director Cole asked if the state was still seeing an influx of CAFOs in Kentucky. Mr. Scott replied no, that it has stabilized at this time. There has been a modest interest in swine industry.

Ms. Bennett asked how many CAFO's are permitted. Mr. Scott noted that 25 or 30 are actually permitted right now, but 175 total will need to be permitted under the federal CAFO rules including wet and dry operations.

Ms. Cole asked how many CAFOs fall under the state's rule of 100,000 compared to the U.S. EPA CAFO definition of 125,000 or more. Mr. Scott said there were about 75 operations between 100,000-125,000.

Ms. Cole asked how the Division of Water located CAFOs. Mr. Scott said that inspectors identify them as they drive down the road. He noted that Alabama has them voluntarily register. Mr. Scott said the best way to identify them is through Kentucky Department of Agriculture data.

Mr. Scott next reviewed water issues facing the state. He said clearly a heavy focus would be in trying to address the impaired water issue in Kentucky. It is a big emphasis of the Kentucky Department of Environmental Protection strategic plan and big priority for the Division of Water. The Division wants to better coordinate its program efforts to make a difference but it won't happen overnight. The fear is that agencies will head off in different directions and won't have as much of an impact as if they all focused in the same direction.

Antidegradation and the federal U.S. EPA proposed rule is a huge issue in how it might effect how the Division of Water operates its permitting program. Mr. Scott mentioned that there is a public hearing at the end of January and the final rule may be out by the end of the year.

Mr. Scott said that eventually the state is going to have to deal with nutrient criteria. Many streams are impaired by nutrients. This is a very science-oriented and a very complicated issue. This will be an issue three years down the road or so in the next triennial review of water quality standards.

#### Air Quality Regulations

Mr. Carl Malanti with the Division for Air Quality next reviewed proposed regulations:

- KAR 51:001
- KAR 51:160

Betsy Bennett moved to approve the regulations and Gary Revlett seconded the motion. The motion passed unanimously on a voice vote.

Mr. Carl Malanti with the Division for Air Quality next reviewed proposed regulations:

- KAR 63:105

Gary Revlett moved to approve the regulations and Jean Dorton seconded the motion. The motion passed unanimously on a voice vote.

#### Presentation to Bob Riddle

The commission next presented a Kentucky Colonel and a book entitled "Kentucky's Last Great Places" to outgoing commissioner Bob Riddle. Mr. Riddle expressed how much he has learned as a commissioner and how effective the commission was in addressing public concerns.

#### Adjourn

With no further business the Commission adjourned at 3:30 p.m.

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Signed

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Date