



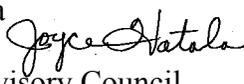
Citizens Advisory Council

to the Department of Environmental Protection

P.O. Box 8459 ■ Rachel Carson State Office Building

Harrisburg, PA 17105-8459 ■ 717-787-4527 ■ Fax 787-772-2878

To Members of the House of Representatives

From Joyce Hatala
Chair 
Citizens Advisory Council

Date June 23, 2011

Re Statement of Opposition regarding SB 263 (PN 240)

Allegheny County

Cynthia Carrow
John J. Walliser, Esquire

Bucks County

Richard J. Manfredi

Carbon County

James J. Clauser

Crawford County

Burt A. Waite

Cumberland County

Eric R. Conrad, P.G.
Walter N. Heine

Delaware County

Gail M. Conner, Esquire

Erie County

Pat Lupo, O.S.B.

Greene County

Terry L. Dayton

Jefferson County

David L. Strong

Lackawanna County

Joyce A. Hatala

Lancaster County

Jolene E. Chinchilli

Lehigh County

Janet B. Keim

Tioga County

Thaddeus K. Stevens

Union County

Peter R. Wilshusen, Ph.D.

As per our legislative charge, the Citizens Advisory Council (CAC)¹ to the Department of Environmental Protection (DEP) has reviewed SB 263 (PN 240), which attempts to promote fact-based regulatory decision-making. While we fully support science-based decision-making, and the intent of the bill's sponsor, we oppose the bill in its current form as it raises a number of red flags as outlined below. Our comments below are specific to the DEP, as that agency is the focus of our mandate. CAC is charged with providing advice on legislation that affects environmental and public health.

Among other things, the Regulatory Review Act created the Independent Regulatory Review Commission (IRRC) to provide independent oversight and review of agency regulations with regard to cost, benefits, duplication, and conformity to legislative intent. DEP staff, with specialized expertise in fields relevant to the mandate of their programs, research and propose a draft regulation to address identified needs within that program. The public and staff in various federal agencies, private industry, academia, and advocacy groups participate in the regulatory development process through advisory committees and the public comment process before a regulation proceeds to legislative committees and the IRRC for review.

Essentially, our primary concerns are as follows:

- SB 263 places the burden of proof upon the agency to make a scientific demonstration to IRRC that is well beyond current requirements under the Regulatory Review Act. It requires agencies to prove to IRRC's satisfaction that data is "acceptable" as defined in the legislation. The criteria in the bill are vague at best and could be

¹ The Council is a legislatively created advisory committee charged with reviewing all environmental issues, legislation, regulations, policies and programs relating to Pennsylvania.



subject to misinterpretation and potential abuse by those who may oppose a regulation for **any** reason. DEP staff's specialized expertise in various scientific and technical fields is essential to formulating the regulations prepared by DEP and issued by the Environmental Quality Board (EQB). IRRC does not have the same type of expertise and experience in the complex matters that arise in DEP's administration of environmental, health and safety laws, and are extremely unlikely to be qualified to evaluate the scientific validity of information provided by DEP as part of that demonstration.

- With regard to federally delegated programs, the delegating federal agency must approve state implementing regulations, which could then be denied or changed by IRRC, placing DEP in an untenable position.

While the CAC supports transparent and fact-based decision-making, we do not believe that this bill, as currently written, is in the best interest of DEP accomplishing its mission or in the best interest of protecting the public's health and safety. We therefore oppose SB 263 (PN 240).

As we recommended in our transition statement to the Corbett Administration, transparent and fact-based decision-making can best be fostered by institutionalizing decision documents for major agency decisions. Decision documents would lay out the decision trail, science and information used in developing proposed regulations and initiatives. The document should include such information as the legal and regulatory history and rationale for the proposal; a compilation and summary of the scientific and economic data, models, studies, and evidence used to support the decision-making as well as those which were dismissed (and why); and an explanation of the decision trail and intent, validating that the approach was well considered, evidence based and not arbitrary. Such a document would be issued along with the proposed regulation and be subject to public review and comment and would accompany the proposed regulation through the review process.

During the divisive and rancorous debate over regulating mercury emissions from power plants, Council worked through the EQB to require DEP to prepare a decision document that laid out, in one easily accessible place, DEP's assumptions, rationale, and supporting information and analyses used to reach its final decision. We continue to encourage DEP to prepare a decision document at the proposed rulemaking stage, to provide the information in one place, and reduce the confusion and rhetoric that swirl around controversial issues and regulations.

Please contact Sue Wilson, Council's Executive Director, at 717-787-4527 if you have any questions.

cc: Secretary Krancer
Senate sponsors

bcc: File

JH:SW:tas