

Minutes of the October 17, 2018 meeting of the Council on Environmental Quality held in the Holcombe Room on the fifth floor of 79 Elm Street in Hartford.

MEMBERS PRESENT: Susan Mellow (Chair), Janet Brooks, Alicea Charamut, Karyl Lee Hall, Lee Dunbar, Alison Hilding, Kip Kolesinskas, Matt Reiser, Charles Vidich

ALSO IN ATTENDANCE: Peter Hearn (Executive Director)

At 9:32 AM, Chair Mellow convened the meeting, noting a quorum.

Approval of Agenda

Chair Mellow said that under "other business" there will be two items: approval of the Council's meeting dates for 2019 and approval of comments regarding the proposed sale of the Connecticut Water Company. She asked if there were any other additions to the agenda. There were none. Dunbar made a motion to approve the agenda as presented by Chair Mellow. Brooks seconded and it was approved by all present.

Approval of Minutes of September 19, 2018

Chair Mellow asked if there are any changes to the minutes of the September 19, 2018 meeting. None were offered. Dunbar motioned to approve the minutes as written. This was seconded by Kolesinskas with Hall abstaining, having been absent at that meeting.

Chair's Report

Chair Mellow reported that Rafal Szacilowski, the Council's intern from Trinity College, has been working on some projects and she expects that he will be able to present results at the Council's next meeting.

She said she has been in email contact with Karl Wagener and hopes he will soon be able to join his former associates for a social gathering.

Citizen Comment Period

No citizens had come to present issues to the Council.

Staff Report

a. Status of UConn "Chem Pit" monitoring request

Hearn said that, as he reported at a previous meeting, Mr. Warzecha of the Department of Energy and Environmental Protection (DEEP) preferred to respond to the Town of Mansfield's official request for the continuation of bi-annual sampling at the University of Connecticut (UConn) Chemical Pit prior to answering the Council's questions about monitoring frequency and protocols. Hearn said that Mr. Warzecha told him he had added the Council to the parties who will be copied on the decision as soon as it is sent to the Town.

b. FOI precedents for contractor-held public records

Hearn said that at the September Council meeting, he was asked to inquire of the Freedom of Information Commission (FOIC) as to whether it had issued prior decisions addressing the question of whether a public agency must provide a location where the public can inspect public documents in the possession of a contractor to the agency.

Hearn said a search of the FOIC website revealed two prior cases, which he displayed using PowerPoint. Hall expressed concern about the precedent value of the cases due to their age (1995) and to the fact that the contractors were not being employed as an "arm of the state", as was the case in the complaint which brought this question to the Council. Discussion followed. Both Dunbar and Hall said the relevance of the precedents to the specific inquiry brought to the Council by the Friends of Pachaug Forest is moot since the "Friends" never made a request of the Department of Administrative Services (DAS) for documents. Discussion continued on the larger issues contained in the complaint from the "Friends". Hall said that the Council did what it could by changing the requirements of Scoping Notices to indicate to whom FOI inquiries should be addressed. Kolesinskas expressed a concern that the shifting of traditional governmental functions to the private sector will increase the frequency of such incidents. Brooks said the role of the Council at this point might be to monitor future submissions and make recommendations if it appears that the FOI statute needs clarification. Vidich said the test will come when a request is made of a public agency. Hilding arrived during this discussion.

c. Status of Executive Director and Environmental Analyst positions.

Hearn reported that it is his understanding that, as of October 1, all the paperwork needed to announce the Environmental Analyst II vacancy had been submitted. He reported he reached an agreement on a salary for the Executive Director position, in which he has been working since Karl Wagener's retirement.

d. Relocation of CEQ office space within DEEP

Hearn said that a Deputy Commissioner wishes to expand into the Council's existing space. An offer of an unacceptable substitute space for the Council was made. He met with Commissioner Klee to discuss what the Council needs as suitable space to conduct business and was assured a suitable space would be found.

Citizen Complaints

Hearn reported that the Council receives many inquiries about environmental problems. Many are regarding issues for which the solutions lie at the municipal level of government. He said that he directs those to the correct municipal authority. He provides the same service when state government is involved and provides the caller with the correct contacts to address the inquiry.

A recent complaint about an issue under State jurisdiction concerned the smoke produced by the antique steamboat at the Mystic Seaport. He showed photos that had been sent with the complaint. After checking with DEEP, he informed the complainant that antique boat engines are exempt from the visible emissions restriction of the State's air pollution regulations.

State Agency Actions

Hearn reported on a meeting he attended at the Department of Transportation (DOT). Its purpose was to describe the process that had been agreed upon by DOT, DEEP and DAS to improve communication among agencies, reduce the frequency of having to re-do environmental assessments and save time and money in the process. He said it is rooted in Section 16-31a of the Connecticut General Statutes that directs State agencies to consult with the Office of Policy and Management (OPM) regarding consistency with the State's Plan of Conservation and Development (POCD) for large projects. The agencies at the meeting had agreed to early consultations with OPM on project consistency with the POCD prior to initiating the Scoping process of the Connecticut Environmental Policy Act (CEPA).

Concerns were expressed by Council members that an early sign-off by OPM would preclude a later evaluation, that OPM would not have the benefit at this stage of public input, and that knowledge of the pre-scoping meeting would have a "chilling effect" on public objections. It was suggested that a description of the nature of the pre-scoping consultation should be made public prior to future solicitation of public comments.

Matt Pafford of OPM, who was in the audience, said that the addition of this step will alert OPM to the project's existence. He said that, as it is now, OPM often is unaware of projects until they go to Scoping. At that point a lot of work has been done by the sponsoring agency that might be wasted if OPM has objections that could have been addressed if OPM had been informed before scoping.

Mr. Pafford said that requests for advisory opinions are not occurring now. This new protocol is an attempt to make the process more efficient. He said that STEAP Grants and Urban Grants also must go through a consistency review and the new step will move the review earlier in the process, before much time and money is expended on the work. Hall said these consistency reviews should focus on the completeness of the materials at the time of the review so as not be mistaken, in reality or by impression, that it amounts to an OPM sign-off on the project, or on its compliance with CEPA. Mr. Pafford agreed saying that the public needs to be informed of the nature of any prior meetings. He added that the process is voluntary, though OPM would like it to apply to all projects that will require scoping. Dunbar likened the meeting to a pre-permit meeting at DEEP. Kolesinskis remarked that US Army Corps of Engineers has a similar process.

Hearn said a second step also was proposed. Submission of a draft Record of Decision (ROD) to OPM before the submission of an agency's final ROD is an additional, recommended, step. Hall asked Pafford to distinguish that step from coaxing the agency on how to submit a ROD that will meet with OPM's approval. Pafford said it will deal only with the process not the conclusions. Hall said that if this step is to be adopted, she would like to see a description of the process that shows the "technical" nature of the review. Hilding asked if there is sufficient staff to perform these steps. Pafford answered that these steps, early on, should save staff time later on. He said there has been inconsistency among agencies in how they approach the POCD and the CEPA process. He said OPM hopes to create training materials for the agencies. Dunbar said its efficacy will be apparent only after it has been tried.

Workload Management

Hearn showed some of the work that Rafal Szacilowski had done. One conclusion, with only some of the 2018 data available, is that the number of days with ozone exceedances is higher than in 2017. He said that Rafal is working on an analysis of what fraction of scopings go on to become Environmental Impact Evaluations. He said the workload has

been manageable and thanked Reiser and Chair Merrow for their assistance on specific tasks. He remains concerned about the ability to produce an annual report without a second staff member.

Other Business

Prior to the meeting, a schedule of possible dates for 2019 Council meetings had been sent to the members. This was reviewed and agreed upon. Vidich made a motion to approve the meeting schedule that was seconded by Kolesinskis and approved by all.

A draft of comments to the Public Utilities Regulatory Authority (PURA) regarding the proposed sale of the Connecticut Water Company by SJW Group had been sent prior to the meeting. Many wording revisions were suggested until consensus was achieved. Chair Merrow asked Charamut and Hilding to stay with her after the meeting to revise the comments to include the revisions and additions.

There being no further business, Merrow asked for a motion to adjourn, which was made by Dunbar and seconded by Vidich. The meeting adjourned at 12:05 PM