

Minutes of the Natural Resources and Environmental Protection Advisory Committee

June 8, 2011

Chair Edwinna Baker convened the bi-monthly meeting of the ADD's Natural Resources and Environmental Protection Advisory Committee at 3:19 p.m. on Wednesday, June 8, 2011, in the ADD's Conference Room. Chair Baker introduced new Fayette County committee member Bobby Clue. Newly elected Boyle County member Lynne Coleman was unable to attend the meeting. Presently, there is only a single vacancy within the committee membership, and that vacancy involves a Madison County slot.

Committee Secretary Tony White called the roll and the following 22 members were recorded as being present:

Anderson	Larry Hazlett	Madison	Jim Marcum
Boyle	Sarah Vahlkamp	Mercer	Tony White
Clark	Shanda Cecil (pxy)	Nicholas	Kristi Morris
Fayette	Jim Rebmann	Scott	Billy Jenkins
Fayette	Bobby Clue	Woodford	Libby Jones
Franklin	Rebecca Hall	EE Cabinet	Larry Taylor
Garrard	Donna Powell	At Large	Don Dampier
Harrison	Charlie Tribble	At Large	Sandra Dunahoo
Jessamine	Tom Calkins	At Large	Amy Sohner (pxy)
Jessamine	Dave Carlstedt	Chair	Edwinna Baker
Lincoln	Dale Kirkpatrick (pxy)	Vice-chair	Milward Dedman

Rhonda Cromer was Shanda Cecil's proxy; Sandy Bottoms was Amy Sohner's proxy; Ron White was Dale Kirkpatrick's proxy; also present were Tom Marshall together with ADD staffers Don Hassall, Betsy Laski, David Duttlinger, Margaret Ridley, and Mary Ann Fegley.

Members recorded as being absent were:

Bourbon	Kevin Crump	Powell	Mike Briggs
Boyle	Lynne Coleman	Scott	Eric Larson
Clark	Karis Pumphrey	At Large	Alan Banks
Estill	Billy Williams	At Large	Steve Jackson
Franklin	Robert Hewitt	At Large	Bill Martin
Madison	Scott Tussey	At Large	Paul Simmons

Minutes of Previous Meeting

The minutes of the April 13, 2011 meeting were approved as previously distributed electronically.

Staff Liaison Change

Chair Baker stated that the June 8 advisory committee meeting would be the last for staff liaison Don Hassall since he is retiring “on or about” July 1, 2011 after 39 years with the ADD and 38 ½ years as staff liaison to the committee. Mr. Hassall responded to Mayor Baker’s comments by saying that one of the hardest things to leave behind upon his retirement was the association with the many good friends he had made through the years with members of the committee—both past and present. Harrison County’s Charlie Tribble, Fayette County’s Jim Rebmann, and Woodford County’s Libby Jones were recognized as perhaps the present-day members with the longest records of continuous service on the advisory committee—each having serving 25 years or more.

Mr. Hassall introduced his replacement as committee liaison, **Betsy Laski**. Ms. Laski has her Master’s degree in Public Administration and has been on the ADD staff for longer than two years. Ms. Laski has also worked with Mr. Hassall on a number of projects during her tenure as a community development specialist for the ADD. Mr. Hassall encouraged committee members to support Ms. Laski as she stepped in to guide the committee which has long been recognized as the strongest and the most vital of a number of ADD advisory committees that serve the 17-county Central Kentucky region.

Guest Speaker

Chair Baker introduced guest speaker Jeff Cummins, director of the KY Division of Enforcement (DENF). Mr. Cummins said his division was small as compared to the other divisions within the Energy and Environment Cabinet—just 23 staffers. DENF is charged with enforcing the many environmental laws, rules, and regulations in the Commonwealth. DENF normally has about 1,000 *open* cases in a year’s time—with about 400 new cases and 400 cases being resolved. DENF deals with individuals, companies, and public entities in numerous subject areas—like underground storage tanks, drinking water, wastewater, solid waste, hazardous waste, air quality, various kinds of mining, et al.

The Division’s goal is to resolve problems and to return these situations to compliance with environmental law. Civil penalties can be assessed, but the emphasis is not simply to collect fines but rather to protect the environment by returning violators to compliance with environmental laws and regulations.

During the present state fiscal year, approximately \$2 million in civil fines have been assessed and collected, but the DENF does not get to retain any of the fines collected. State law spells out that the first \$150,000 in fines collected annually go to various aspects of environmental education while any receipts in excess of \$150,000 goes to the Land Heritage Conservation Fund which is the same fund that receives funds from the sale of the environmental license plates. Money that comes into the fund is used to purchase (from willing sellers) privately-owned lands that are then used as park lands and/or nature preserves.

Mr. Cummins stressed many enforcement actions are open for years and some even for decades before such cases are cleared and closed. He discussed recent and some ongoing cases involving Bluegrass Area entities and how the ADD can and has, at times, been involved in resolving environmental law violations by acting as an intermediary between DENF and public bodies such as cities. Particular cases were cited that have been returned to environmental compliance or are headed in that direction. Such cases include the City of North Middletown and its long history of water pollution by the improper operation of its wastewater treatment plant, the cities of Stanton and Clay City which also were in violation with water pollution statutes, Irvine and the Estill County Water District which also had a long history of KPDES

permit violations. In each of those instances, Bluegrass ADD had undertaken initiatives that resulted (or would eventually result) in actions that would satisfy ongoing and long-standing of violations environmental laws. Few of the other 14 Kentucky area development districts have chosen to become so involved in assisting public entities within their boundaries in achieving compliance with environmental law.

Mr. Cummins stressed that the US Environmental Protection Agency and the US Department of Justice can intervene (and have intervened) in cases involving non-compliance with environmental law when those federal agencies have conclude that the Commonwealth is moving too slowly (or not at all) to deal with violators. Situations involving Lexington (and its water pollution issues), Winchester (and its water pollution woes) and Frankfort (with its combined sewer overflow problems) were cited as Bluegrass Area cases having attracted federal attention.

Some cities actually seek out DENF enforcement actions, e.g., Agreed Orders, (which can result in the levying of fines) in order those cities might gain support from the public to take actions necessary to return to environmental compliance. Such actions can and do include the passage of increases to water or wastewater service charges in order the public entity can undertake projects eventually resulting in a return to compliance with environmental law.

Committee member Tom Calkins said the City of Nicholasville had actually asked enforcement actions be taken against the city on two occasions over recent years in order the local leadership might be able to point to enforcement action (including fines) from DENF as the reason water and/or sewer user charges had to be increased to deal with situations such as overloaded wastewater treatment facilities. Mr. Hassall said the ADD had similarly resorted to the same measures—always with the prior approval of local elected officials who were seeking public support to take actions that could otherwise would have been very difficult to take in the absence state enforcement actions.

Beyond the issuance of fines, DENF can take other enforcement actions, such as the imposition of water system tap-on bans or sewer tap-on bans in order to gain the attention of local leaders and the public. Such bans can have the effect of stifling economic growth and economic vitality. Some such bans have been in place for years before a resolution to the cause for the environmental enforcement action is finally resolved.

Mr. Cummins said he is quite willing the play the role of *scapegoat* in situations where local leaders need to be able to point to the DENF and its enforcement actions as sufficient justification to approve some action that otherwise would likely have been unpopular. Some local leaders prefer to be able to point to the DENF and say, “They made me do it.”

Some asked if there might, in the future, be more transparency in the matter of how the magnitude of a DENF-imposed fine was determined to be sufficient. Several members suggested some companies may consider fines from DENF is simply a *business expense* they must bear in order to continue to operate as they had always operate—in environmental non-compliance.

There being no further questions, the committee membership thanked Mr. Cummins for his presentation.

Old Business

Among those topics discussed under old business were the following:

- Actions by the ADD to assist the communities of North Middletown, Berry, Harrodsburg, Crab Orchard, Burgin, Stanton, and Clay City with the financing of projects whose implemental would be instrumental to solving an existing problem (or soon-to-be-a-problem) and to resolve water or wastewater infrastructure problems that could result in a loss of planned economic growth and vitality. Mr. Hassall stated that one such case was particularly newsworthy in that action by the City of Harrodsburg to increase the capacity of its water treatment plant had an almost immediate pay-back. Wausau Paper, an industry with a national reputation (and with a manufacturing facility already located in Harrodsburg) needed significant additional water for a planned plant expansion. The company concluded that it would expand its operations in Harrodsburg (rather than in a competing city in Ohio) because Harrodsburg would have the capacity to provide the company's significantly increased demands for potable water service and for wastewater service within the desired time period. The result was an additional 70 jobs would be created in Harrodsburg along with an investment of about \$200 million in the company's Harrodsburg plant and equipment.

Seldom is such a payback in economic growth as apparent or immediate as with the Harrodsburg situation. It was determined the Harrodsburg water treatment plant expansion project—already well underway—would be complete and serviceable about two months before Wausau Paper would need to draw upon the newly created water treatment plant capacity—water that Wausau would need for its expanded operations in Harrodsburg.

- Initiatives by the Kentucky-American Water Company to purchase city-owned water and wastewater systems in Midway and Lancaster. Both Bluegrass cities are entertaining “offers to purchase” as that investor-owned utility seeks to increase its customer base in Central Kentucky.
- Frankfort and its “on again-off again” initiative to deal with an almost \$1 million revenue shortfall in the operation of its residential solid waste collection and disposal operation.
- Stanford's additional activity to expand the size of the city through the annexation of previously urbanized tracts of land around the city's periphery.

Kentucky Intergovernmental Review Projects (KIRP)

Only a single KIRP came before the committee for review. That project was the New Gravity Interceptor Sewer for the Farmdale Sanitation District (Franklin County). Upon a motion by Billy Jenkins, seconded by Tom Calkins and unanimous action, the project was recommended for endorsement to the ADD Board.

New Business

Among items of new business to be discussed were the following:

- Plans by the City of Danville to increase its role as a supplier of potable water service beyond the boundaries of Boyle County.
- Management changes at the City of Danville resulting in the recent appointment of former City of Danville Mayor John Bowling as the city's interim city manager. Mr. Bowling was for many years chair of the ADD's Natural Resources and Environmental Protection Advisory Committee and has held just about every leadership post at the Bluegrass ADD. Mr. Bowling also served two terms as state representative in the General Assembly from Boyle County.

- Passage, on first reading, by the Powell County Fiscal Court, of an ordinance that, if adopted on second reading, would result in the county's withdrawal from the Federal Flood Insurance Program. Such an action would make it impossible for persons who wished to purchase flood insurance to do so because such insurance can only be offered within jurisdictions that are enrolled in that federal program. Additionally, withdrawal from the program would result in no future assistance from FEMA in response to disaster emergencies that might occur in the future. As a result of the initiative by the Powell County Fiscal Court, similar discussions (about withdrawal from the Federal Flood Insurance Program) have reached the floor of the City Council at Stanton.
- Winchester's newly implemented pilot program of house-to-house solid waste recycling service in one subdivision within the city. If the pilot program service receives acceptance by the affected residents; the service could later be expanded to other areas of the city.
- A freshly prepared tabular summary of calendar year 2010 water production in the Bluegrass Area as compared to water production in calendar year 2011. District-wide, the demand for potable water increased by 7.7 percent from 2009 to 2010. This kind of information, seldom collected and compiled by the other ADDs, allows the Bluegrass ADD staff to know where its efforts to deal with "lack of treatment capacity" need to be directed. Heightened water quality standards, set to be implemented in 2014 also play a part the ADD's proactive response to deal with local issues that could, unattended, result in a stagnant local economy or the loss of economic vitality.
- A freshly-prepared tabular summary of calendar year 2010 wastewater treatment flows (for publicly-owned treatment works) as compared to flows recorded in other recent years. Once again, the ability to perceive which Bluegrass Area cities are having issues or may be expected soon to have issues with wastewater treatment capacity allows ADD staff to offer assistance in dealing with such issues before they become significant problems that could hamper planned economic growth as well as a community's economic vitality.

In addition to obtaining a knowledge of how actual measured wastewater flows relate to the capacity of locally owned treatment works, ADD staff also seeks to compile information on how local communities are meeting (or failing to meet) the performance standards that come with owning and operating a wastewater treatment plant. By achieving an understanding of which cities are or may soon expect to have permit violation problems allows the staff of the ADD to act proactively to head off situations leading to enforcement actions, tap-on bans, etc.

There being no further business to come before the committee, it was announced the next meeting of the committee would be on Wednesday afternoon, August 10, beginning at 3:15 p.m. Mr. Hassall reminded the committee members that **Ms. Laski** would be the ADD staff liaison to serve the advisory committee beginning in August. Chair Baker adjourned the meeting at 4:46 p.m.

Respectfully submitted,

Tony White
Committee Secretary