

# ENVIRONMENTAL SYNOPSIS

## The Chairman's Corner

Rep. Scott E. Hutchinson, Chairman



A report was issued earlier this year regarding a topic that the Joint Legislative Air and Water Pollution Control and Conservation Committee (Committee) has also spent time and effort examining. The topic is the future of the state's heritage areas and the Pennsylvania Heritage Areas Program. It is interesting and thought-provoking reading.

The report was issued by the Conservation and Natural Resources Advisory Council (CNRAC), a body which offers advice and recommendations to the Pennsylvania Department of Conservation and Natural Resources (DCNR), which houses the heritage areas program. The report marks the end of a priority study by CNRAC and is the first step in a two-step process. This report focuses on the immediate needs of the heritage area program until the end of the current administration. The second priority will be to provide longer-term recommendations about the state's heritage areas that will be included in CNRAC's "transition document" for the next administration.

The report is instructive because it shows the difficulties Pennsylvania is facing today in trying to put together a 2009-2010 fiscal year budget (a process that was still a work in progress at the time of the writing of this column). The report notes that the heritage areas program is one of value that provides positives for Pennsylvania and that it deserves state support. Unfortunately, like some other deserving programs in this strange and difficult year, heritage areas were zeroed out by the administration in its proposed budget. Like other worthwhile programs, it was not because the state's 12 heritage areas did not provide a valuable service to the Commonwealth. The actuality is quite the contrary. The reason is

simply tough financial times.

The first recommendation of CNRAC in the report is that Pennsylvania should "maintain management grant funding for the 2009-10 fiscal year to prevent the loss of leadership and management for ongoing projects." A cutoff of funds, states the report, would most likely result in most heritage area offices closing their doors and operations within one year.

(continued on page 8)

### In This Issue...

- **The Chairman's Corner** .....p. 1
- **Notes From the Director** .....p. 2
- **Research Briefs** .....p. 3-6
  
- ✓ **GAO...Endangered Species Act Falling Short**
- ✓ **Are Energy Answers "Blowin' In The Wind"?**
- ✓ **Great Lakes Beaches - Not So Great**
- ✓ **Clean Water Trust Fund Possibilities Examined**
  
- **On The Horizon** .....p. 7
- **Committee Chronicles** ..... p. 7

# NOTES FROM THE DIRECTOR

CRAIG D. BROOKS, EXECUTIVE DIRECTOR

Federal clean energy and climate legislation (H.R. 2454) includes provisions to advance smart grid technology. Smart grid proponents say that will give households and businesses the ability to take more control over the amount of electricity they use and how much they pay.

The smart grid is a proposed nationwide network that will use 21st century information technology to deliver electricity efficiently, reliably and securely, while allowing increased use of renewable energy resources. The American Clean Energy and Security Act, which was passed by the House in June 2009, adds several consumer awareness programs to the smart grid initiative that was launched by the Energy Independence and Security Act in 2007. With the smart grid getting started, and with \$4.5 billion in funding from the economic stimulus package, it appears that federal lawmakers chose not to make any major changes to the program.

However, the House climate bill and the Senate energy bill include the first federal mandate on utilities and state regulators to set goals for reducing electricity usage during peak periods of demand. The House and Senate bills do not mandate specific reduction percentages for utility peak loads. The House bill would require demand reductions that are "realistically achievable". It appears that the House bill sets up a flexible way for regulators and utilities to begin the process of establishing peak demand reduction goals. Six states have already established their own peak demand reduction goals, in addition to renewable energy and energy efficiency requirements.

The Department of Energy (DOE) and the Envi-

ronmental Protection Agency are directed to determine whether smart grid technologies and products can be designated as Energy Star products and to include smart grid products in an expanded rebate program for energy efficient appliances. The House bill also directs the Federal Energy Regulatory Commission (FERC), the DOE and the North American Electric Reliability Corporation to develop a system of measuring and verifying peak demand reductions that all states can use.

**Is smart-grid technology the key to controlling energy use and cost in the future?**

New technologies such as in-home information displays or home area networks, known as HANS, will be available in the future to provide con-

sumers with the information they need to make better choices on their power consumption.

FERC predicts that the nation's use of electricity during peak periods could be reduced by as much as 20 percent through better conservation measures. It has also been suggested that future smart grid legislation include provisions for tax incentives and more funding. Currently, smart grid technologies are not eligible for tax credits that are available to other energy sectors.

One possibility under consideration is a "demand reduction tax credit" that would allow companies that produce or use products that reduce electricity to receive tax credits. However, state regulators are watching closely to assure that their ratepayers are not stuck with a big bill for new technologies that can quickly become outdated or obsolete.

Information on the smart grid and FERC's assessment of demand response is available at: <http://www.ferc.gov/legal/staff-reports/06-09-demand-response.pdf>.

# RESEARCH BRIEFS

Each month, the committee's staff researches and prepares a number of "briefs" on several topics relevant to the Joint Conservation Committee's mission. Very often, these briefs include references to reports and further research on the topics so that readers may pursue issues on their own.

## GAO Critical of Fish and Wildlife Service Endangered Species Oversight

-- Tony M. Guerrieri, Research Analyst

The Endangered Species Act (ESA) of 1973 directs the Department of Interior's U.S. Fish and Wildlife Service (FWS) and other federal agencies to protect endangered and threatened species and the ecosystems they depend on. Under Section 7 of the act, federal agencies must ensure that any actions they authorize, fund, or carry out, whether on federal or private lands, do not jeopardize listed species. To fulfill this responsibility, the agencies often must formally consult with the FWS to determine whether their projects comply with this standard. The FWS issues a biological opinion, which must be based on the best available science, which evaluates a project's effects and determines whether jeopardy or adverse modification will occur.

A report by the U.S. Government Accountability Office (GAO) highlights deficiencies in the FWS' oversight of the consultation process, which is considered key to protecting threatened and endangered species. The GAO report, *"Endangered Species Act: The U.S. Fish and Wildlife Service Has Incomplete Information about Effects on Listed Species from Section 7 Consultations"*, indicates that the FWS has not established a systematic means of tracking the monitoring reports it requires in biological opinions and does not know the extent of compliance with these requirements.

To track monitoring reports, the FWS relies on its biologists to keep abreast of biological opinions and follow up on required monitoring reports. At the field offices GAO visited, FWS biologists could not account for all required monitoring reports in 40 of 64 consultation files (63 percent) requiring such reports.

Agency staff said they face a demanding workload, and responding to new consultation requests

often takes higher priority than following up on monitoring reports. The GAO report suggests this reliance on individual biologists leaves the FWS with incomplete institutional knowledge of the extent of compliance with reporting requirements, as well as with incomplete information on species' responses to the actions under consultation.

The FWS also lacks a systematic method for tracking cumulative "take" of most listed species. The term take, in this context, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. For example, out of 497 listed species in the western states, the GAO report identified only three species for which the FWS has a formal database for tracking cumulative take, mostly as a result of litigation.

**The GAO found serious deficiencies in required monitoring reports and tracking databases**

Agency biologists have also developed their own informal ways to track the cumulative take of seven other species, but they may not include all relevant consultations or information, according to the report.

While FWS staff generally agreed that it is important to track cumulative take of all species, they cautioned that one size does not fit all in terms of tracking take. For some species, FWS biologists said, systematically tracking cumulative take has not been critical, either because very few consultations have occurred with little to no take anticipated, or the FWS has good information on the species' status through other sources.

For other species, however, such as those that are frequently consulted on and wide-ranging, FWS biologists believed that having a more systematic take-tracking method was warranted. The lack of

systematic means to track cumulative take for some species, and the resulting gap in knowledge of the species' status, exposes the FWS to vulnerabilities, including the threat of litigation and unobserved decline in species.

The FWS has been developing various databases for more systematically tracking cumulative take, though their development largely depends on resources not yet available in the FWS' budget, according to the report.

The GAO recommends that the FWS develop a simple, cost-effective method for tracking required monitoring reports systematically and continue to develop existing databases to enable tracking of cumulative take.

The report can be found at: <http://www.gao.gov/new.items/d09550.pdf>.

## Wind Power Industry Grew in 2008, But Slowdown Expected

-- Craig D. Brooks, Executive Director

The U.S. wind industry experienced a banner year in 2008, once again surpassing the most optimistic growth projections from past years. At the same time, however, the wind industry is likely to experience a considerable slowdown in installation of new capacity this year, according to a Department of Energy report released July 2009.

While 8,558 megawatts (MW) of new capacity were installed in 2008, projections among the industry for 2009 range from 4,400 to 6,800 MW, largely due to the global financial downturn and a lag in implementing some \$118 million in stimulus funding slated for the wind industry. Key findings from the "2008 Wind Technologies Market Report" include:

-- **U.S. wind power additions shattered old records in 2008, with new capacity and \$16.4 billion invested.** The pace of utility-scale wind development in 2008 was more than 60 percent higher than the previous U.S. record of 5,249 MW, set in 2007. To date, all wind power installations in the U.S. have been onshore, however there are 11 new offshore wind project proposals in various stages of development.

-- **Wind power contributed 42 percent of all new U.S. electric generation capacity in 2008.** This contribution was up 35 percent from 2007. For the

second year in a row, wind power was the second largest new resource added to the U.S. electrical grid in terms of capacity, behind natural gas, and ahead of new coal.

-- **The U.S. continued to lead the world in annual capacity growth and overtook Germany in cumulative wind capacity.** For the fourth straight year, the United States led the world in wind capacity additions, capturing about 30 percent of the worldwide market. At the end of 2008, cumulative wind power capacity stood at 25,369 MW, ahead of Germany's 23,933 MW.

-- **Upward pressure on wind power prices continued in 2008.** Although many of the cost pressures facing the industry in recent years began to ease in the second half of 2008, it will take some time before these effects flow through the project development pipeline to impact wind power prices.

-- **Wind remained competitive in wholesale power markets in 2008, but 2009 is likely to be more challenging.** Despite moving higher in 2008, average wind power prices remained at or below the low end of the wholesale power price range. However, with wholesale prices of other sources decreasing at the end of 2008 and 2009, the economic position of wind in the near-term has become more challenging.

The 2008 Wind Technologies Market Report is available at: <http://eetd.lbl.gov/ea/ems/reports/2008-wind-technologies.pdf>.

## Great Lakes Have Dirtiest Beaches in the United States

-- Tony M. Guerrieri, Research Analyst

Pennsylvania is not known for beautiful, sandy beaches. But, when residents want to play on a warm, sandy stretch, they head to Presque Isle State Park in Erie County. As Pennsylvania's only "seashore," Presque Isle provides visitors with the only surf swimming within the state.

However, according to the 19th annual beach water quality report by the Natural Resources Defense Council (NRDC), Pennsylvania's Lake Erie coast ranked among the worst in beach water quality nationwide, coming in 23rd out of 30 coastal states.

The results of the NRDC report, "Testing the Waters: A Guide to Water Quality at Vacation Beaches", are based on the percentage of water samples that

fell below minimum safety standards during the summer of 2008. The report tallied 45 beach closing and health advisory days in 2008 for Pennsylvania beaches, up nearly eight-fold from the six days in 2007. The source, according to the report, is stormwater runoff, which is responsible for 100 percent of the water contamination that causes the pollution.

Beachwater pollution makes swimmers vulnerable to a range of serious waterborne illnesses. For senior citizens, small children and people with weak immune systems, the results can be fatal.

### **The vacation beach report contains some bad news for Pennsylvania's Lake Erie shoreline**

Nationwide, the number of closing and advisory days at ocean, bay and Great Lakes beaches reached more than 20,000 in 2008. While the report found a ten percent decrease in closing and advisory days at beaches nationwide from 2007 (from 22,571 to 20,341 days), it suggests this drop was the result of dry conditions in many parts of the country and decreased funding in water monitoring in some states in 2008, rather than a sign of large-scale improvement. The decline follows two years of record-high closing and advisory days.

Nationally, seven percent of beachwater samples violated health standards – indicating the presence of human or animal waste – showing no improvement from 2007 or 2006, but down from eight percent in 2005. The highest level of contamination was found in the Great Lakes, where 12 percent of beachwater samples violated public health standards. In fact, from 2005-2008, the Great Lakes consistently tested the dirtiest, while the Southeast and Delmarva Peninsula (Delaware, Maryland and Virginia) proved relatively cleaner than other regions.

While there was an overall decrease in closing and advisory days from 2007 nationwide, regionally the picture varied. Dry conditions led to decreases in closings and advisories in 2008 in the Delmarva Peninsula (67 percent decrease), Gulf of Mexico (39 percent), California and Hawaii (21 percent), and the Southeast (12 percent). Wetter than usual conditions, however, led to an increase in closing and advisory days in New England (64 percent) and the Great Lakes (13 percent).

The report ranked each state based on the percentage of beachwater samples that exceeded the national daily standard. In 2008, the state with the highest percentage of samples exceeding health standards was Louisiana (29 percent).

Pennsylvania's Lake Erie beaches exceeded health standards about nine percent of the time in 2008.

Those with the cleanest beaches in 2008 were Delaware, New Hampshire and Virginia (all with one percent).

Coastal pollution is no day at the beach for the economy, either. In 2000, U.S. coastal tourism and recreation translated into 1.67 million jobs – a 41 percent increase over 1990 – and \$13.8 billion in wages. During the same period, annual economic output from beach activities nearly doubled to a total of \$29.5 billion. The NRDC report speculates that many of those jobs and dollars could be at risk if beach pollution continues to increase.

The report offers a number of recommendations for improving beachwater quality and protecting swimmers' health including:

- Federal, state and local governments requiring better controls on stormwater and sewage, the two largest sources of beachwater pollution.
- Utilizing low impact development techniques in communities to retain and filter rainwater where it falls, letting it soak back into the ground rather than running off into waterways. This includes rain gardens, tree boxes, green roofs and permeable pavement.

The full NRDC report, "*Testing the Waters: A Guide to Water Quality at Vacation Beaches*", is available at: <http://www.nrdc.org/water/oceans/ttw/ttw2009.pdf>.

## **Report Cites Options, Obstacles for Clean Water Trust Fund**

**-- Craig D. Brooks, Executive Director**

Several options could generate revenue to finance a clean water trust fund, including a variety of excise taxes, but obstacles to their implementation would have to be overcome, according to a report by the General Accountability Office (GAO). GAO prepared the report in response to a congressional request to provide information on

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issues that would need to be addressed if Congress decided to establish a dedicated clean water trust fund to help meet a potential funding gap between projected future wastewater infrastructure needs and current spending levels.

According to Environmental Protection Agency (EPA) estimates, a potential gap of about \$150 billion to \$400 billion could occur over the next decade. Without additional funding, EPA and other groups suggest that the environmental gains made by the Clean Water Act during the past three decades would be at risk. While the report identified a number of funding options, GAO did not endorse any particular option.

A clean water trust fund would provide a dedicated source of funding for wastewater infrastructure that would be similar to trust funds that Congress has established for other infrastructure and environmental programs, such as highway construction and coastal wetlands restoration.

According to GAO, excise taxes could be placed on beverages, fertilizers and pesticides, flushable products including soaps, detergents, cooking oils and toiletries, and water appliances and plumbing fixtures. The report estimates that in order to raise \$10 billion, the excise tax would have to range from 6.4 percent to 39.2 percent.

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**The report examines ways to finance a Clean Water Trust Fund to meet wastewater infrastructure needs**

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Another option, according to GAO, would be for Congress to levy a tax on corporate income. An additional 0.1 percent corporate income tax could raise about \$41.4 billion annually. Congress could also levy a water tax. A tax of 0.01 cent per gallon could raise about \$1.3 billion annually, according to the report.

Regardless of the options selected, GAO says, certain implementation obstacles have to be overcome. These include defining products or activities to be taxed, establishing a collection and enforcement framework, and obtaining stakeholder support for a particular option or mix of options. The report suggests that obtaining support for excise taxes may be challenging. Industry groups and taxpayers

were consistently opposed to taxes on their specific products.

In addition to a trust fund, GAO has suggested other approaches to help bridge the infrastructure funding gap. For example, wastewater and drinking water utilities could be encouraged to improve their system management and to charge the full cost for service to their customers. Funding for the clean water state revolving loan fund could be increased and a national infrastructure bank could be established to provide financing for a variety of projects. The report also suggests that public-private partnerships could be encouraged and private bond restrictions on wastewater projects could be lifted.

In designing and establishing a federal clean water trust fund, stakeholders identified three main issues that would have to be addressed:

- how a trust fund should be administered and used;
- what type of financial assistance should be provided; and
- what activities should be eligible to receive trust fund money.

While a majority said a trust fund should be administered through an EPA partnership with states, the stakeholders differed in their views on how a trust fund should be used. About one-third of the respondents said a trust fund should be used only to fund the existing clean water state revolving fund. Others said that a trust fund should be used to fund a separate wastewater infrastructure program, while still others supported using a trust fund to fund both.

According to the report, more than half said that financial assistance should be distributed using a combination of loans and grants. Most stakeholders identified capital projects as the primary activity that should receive funding.

In responding to the report, stakeholders said that there is no silver bullet for creating and funding a clean water trust fund and additional study for funding, investment mechanisms and revenue sources should continue.

The report, *Clean Water Infrastructure: A Variety of Issues Need to Be Considered When Designing a Clean Water Trust Fund*, (GAO-09-657) is available at <http://www.gao.gov/new.items/d09657.pdf>.

# ON THE HORIZON . . .

A LOOK AT UPCOMING EVENTS

✓ Monday, October 19, 12 noon, Room G-50, K. Leroy Irvis Building, Capitol Complex, Harrisburg, PA - Environmental Issues Forum - Officials from the Pennsylvania Department of Conservation and Natural Resources will make a presentation on programmatic innovations in Pennsylvania's state parks.

Please call the Committee office at 717-787-7570 if you would like to attend.

Visit our website at <http://jcc.legis.state.pa.us> for additions to the schedule.

## Committee Chronicles . . .

REVIEW OF SOME MEMORABLE COMMITTEE EVENTS

Earlier this year, the Joint Legislative Air and Water Pollution Control and Conservation Committee (Committee) traveled to Drexel University in Philadelphia to hold a public hearing in regard to the future of the Schuylkill River Trail Initiative. The Schuylkill River Trail is a multi-purpose trail that would, if and when completed, extend approximately 140 miles from Philadelphia along the river corridor all the way to Schuylkill County. Several sections of the trail are complete, while others are in the design or construction phase.

The trail is an integral component of the Schuylkill River Heritage Area, as explained by the heritage area's Executive Director Kurt Zwinkl (photo at top right), one of several individuals who offered testimony at the hearing.

The hearing was co-chaired by Committee Vice-chairman Sen. Raphael Musto (center in photo at right) and Committee member Rep. Kenyatta Johnson (right in photo at right), whose Philadelphia district includes sections of the trail. Also pictured in the photo at right is Committee Executive Director Craig D. Brooks. The Committee and sizable audience (photo at bottom right) were joined at the hearing by Representatives Babette Josephs, Kathy Manderino and James Roebuck, all representing sections of Philadelphia.



Others who offered testimony included Philadelphia City Councilman Curtis Jones, Jr., the Schuylkill River Development Corporation, the Schuylkill River Park Alliance and Bicycle Coalition of Greater Philadelphia, the Manayunk Development Corporation, the Philadelphia Office of Transportation and Utilities, and planners from Montgomery County and Lower Merion Township.

Transcripts of the testimony are available from the Committee office.



The report goes on to point out that the dependence of heritage areas on state funding for staff and administration costs is one of the system's shortcomings. While heritage areas have demonstrated the ability to leverage other funds effectively (often matching state seed money five times over for project completions), there are few if any sources other than state funds for administrative costs. The six of Pennsylvania's 12 heritage areas that are also nationally recognized do have some additional options from federal funding. The dependence on state funding is an issue to be addressed, however.

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**To learn more about Pennsylvania's Heritage Areas Program, go to [www.dcnr.state.pa.us/brc/heritageparks](http://www.dcnr.state.pa.us/brc/heritageparks)**

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The report predicts two results if state funds are cut off. The first result would be closed offices and uncompleted grant projects. The second result, possibly more serious, would be the disruption of a community communications and coordination network built over 10 years or more. In its key findings, the report stated that one of the strengths of the heritage areas is their ability to "...coordinate regional activities regarding historic preservation, education, recreation, tourism promotion, natural resource conservation, intergovernmental cooperation and economic development." Simply put, heritage areas have been effective in building partnerships, unifying diverse regions and finding ways to maximize scarce dollars.

The second recommendation of the report is that proposed legislation that would formally establish the heritage area program by statute should be enacted. I have cosponsored the legislation (House Bill 1126) in the House. It would also set up an inter-agency advisory group to oversee the activities of the heritage areas. While the report noted that the flexibility, simplicity and unique character of the heritage areas program has been among its assets in the past, its institutionalization may now help to advance the program to new levels, better establish its identity, functions and values and improve a perceived shortcoming in cooperation among state agencies in supporting heritage areas.

The Committee has a good working relationship with the state's heritage areas and found many of the same strengths and shortcomings in a statewide survey of Pennsylvanians it sponsored in 2001. I am hopeful the General Assembly will take into consideration the findings of this CNRAC report as well as the future transition document.

## **News to Use in the Environmental Synopsis... share it with a friend**

The *Environmental Synopsis* is issued monthly.

The newsletter examines timely issues concerning environmental protection and natural resources.

If someone you know would like to receive a copy of the *Synopsis* each month, please contact the Committee office at 717-787-7570.



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