Legislative Budget and Finance Committee

A Performance Evaluation of the Department of Environmental Protection Chapter 102 and Chapter 105 Permitting Programs

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June 19, 2019

Mr. Chairman and Members of the Committee, I am here today to present the results of our performance evaluation of the Department of Environmental Protection. Specifically, Senate Resolution 226 directs LBFC to review the Chapter 102 Erosion and Sediment Pollution Control Program and the Chapter 105 Water Obstruction and Encroachment Program.

The resolution requires LBFC to, among others things, review stakeholder concerns; analyze and compare resources and workloads; and compare permit review times, performance levels, and goals for the Department and County Conservation Districts.

It is important to note that we were not asked to, and therefore did not, conduct a technical review of permit applications. Put another way, we did not pass judgement on whether any permits should or should not have been issued.

To carry out our mandate, we met with stakeholders from DEP, the CCDs, and the private sector; obtained information from DEP regarding employees, permits disposed, and

expenditures; conducted a file review of 440 DEP permit applications; and reviewed DEP and CCD regulations, policies, and procedures.

At the conclusion of our work, we found DEP did not appropriately administer and manage these two important programs. While the Department's leadership rightly says the programs are designed to protect the water resources of Pennsylvania, they do not take the necessary measures to ensure the program is accomplishing that fundamental goal. During our review of DEP files, we found that documents critical to monitoring the programs were regularly missing. Through our information requests, we found that DEP does not know how many permits are reviewed by the CCDs, how many people it takes to review them, or how much it costs. We found the Department does not systematically collect, compile, analyze, and report the data necessary to accurately monitor its own program and protect the waters of the Commonwealth.

Concerns of Stakeholders

Throughout our interviews with stakeholders in the regulated and regulator community, we found a wide variety of concerns about the administration of the application process. The two issues raised most frequently were inconsistencies in interpreting the regulations and requirements of the permitting programs, and the length of time that permit applications took in order to be reviewed and disposed. For example, one region conducts pre-application conferences using a "reviewer of the month." The reviewer of the month is

not necessarily the same person who reviews the actual application. This leads to inconsistencies; for example, the reviewer of the month might agree the project qualifies for small project status, but the person actually reviewing the application disagrees and requires the applicant to submit a full individual permit.

We found that DEP and CCD rank and file employees also acknowledge problems with consistency, citing the aquatic resource table as a policy that is interpreted differently across the state. We also learned from comments received by DEP regional offices and CCDs that changes in policy and procedures are not sent to all regional offices and may or may not be given to the CCDs.

To address these concerns, we recommend that DEP develop a test project using the same permit application to be reviewed by CCDs and regional offices across the state to test for consistency in the interpretation of applicable statutes and regulations. We also recommend that DEP establish a state-wide mechanism to resolve conflicting interpretation decisions between and within DEP regional offices and the CCDs.

Analysis of Resources and Workloads

As noted earlier, we were asked to analyze and compare the total and individual resources and workloads for the permitting programs. This analysis included all offices charged with administration of the programs, including the Central and regional offices

of DEP and the 66 CCDs. We reviewed all available data from fiscal year 2015-16 to fiscal year 2017-18 in the case of DEP, and calendar year 2015 through 2017 in the case of the CCDs. Our computations are based on the complete dataset of permits disposed for the years under review. Any anomalies in the data fall along the normal distribution. For example, large projects that may divert staff from their regular review responsibilities are offset by small projects that are determined quickly.

We found that data provided by DEP failed to establish a strong relationship between expenditures and the number of permits disposed by DEP regional offices. Data provided by DEP also failed to show a strong relationship between the total number of FTEs and the total number of permits disposed by DEP regional offices. In fact, when we calculated the correlation coefficient between expenditures and the number of permits disposed by DEP, we found a negative correlation. The same held true when comparing FTEs and the number of permits disposed by DEP.

Conversely, we found a strong relationship in the data provided by the CCDs for their permit decisions as they relate to FTEs, expenditures, and the number of permits disposed.

To address these findings, we strongly recommend that DEP systematically collect, compile, analyze, and report data related to inputs (FTEs and expenditures) and outputs (permits disposed). DEP should use that information to determine the reasons for the positive

correlation between FTEs, expenditures, and permits disposed by the CCDs and the negative correlation between FTEs, expenditures, and permits disposed by DEP regional offices.

DEP Policies, Performance Levels, and Fees

LBFC staff conducted a file review of 440 DEP permits to gauge whether the CCDs and DEP consistently adhere to the review process outlined in both the Chapter 102 and Chapter 105 administrative manuals. We reviewed files for what is called a **completeness checklist** and whether the checklist was completed properly. For Chapter 102 Individual Permits, only 34 percent had the checklist properly completed. For Chapter 105 Individual Permits only 22 percent were properly filled out.

The Erosion and Sedimentation Control Checklists are used in the Chapter 102 General Permit and Individual Permit programs to ensure that all the required elements of the application have been submitted and the application is technically adequate. Only 12 percent were filled out properly. Twenty-four percent of Chapter 102 Individual Permit application files contained a checklist that was properly completed.

The **Engineering Technical Checklist** is used to assist the engineer reviewing the permit application by ensuring all required elements are *adequate* and *sufficient* during the technical review of the Chapter 105 individual permit application. It is one of two management controls that are at the heart of the permit review process. Only 51 percent of all

Chapter 105 individual permit application files contained a properly completed Engineering Technical Checklist.

The **Environmental Technical Checklist** is used to assist the reviewers with ensuring all required elements are adequate and sufficient during the technical review of the Chapter 105 permit application. This is the second management control at the heart of the process. Only 61 percent of these were properly completed.

In their entirety, these four checklists are used to determine whether the internal policies and procedures for the review of permits are being followed.

Throughout our interviews with stakeholders, we were told it takes too long to review permit applications. For that reason, we also evaluated the length of time it takes DEP and CCD staff to review a permit application. Both the Chapter 102 and Chapter 105 administrative manuals outline the maximum number of business days to complete a review. Our file review showed that the longest review time was 809 business days for a Chapter 105 Individual Permit that was eventually withdrawn by the applicant. The shortest review time was one business day for a Chapter 105 General Permit.

The response from DEP to stakeholder complaints was that permits were submitted incomplete and technically inadequate, which resulted in longer permit review times. However, the data says otherwise. For example, only 41 percent of complete and technically adequate Chapter 105 Individual Permits were reviewed and disposed within the

time established by DEP policy. Seventy percent of complete and technically adequate Chapter 102 Individual Permits were completed within the time established by DEP policy. Only one permit category of five, the Chapter 105 GP-11 permit exceeded a success rate of 90 percent. It should be noted that the GP-11 accounts for only ten percent of permits.

We also found that most applications are submitted "complete" to DEP or the CCDs, contrary to what DEP reported to us. Seventy percent of Chapter 102 General Permits, 76 percent of Chapter 102 individual Permits, 93 percent of Chapter 105 General Permits, and 83 percent of Chapter 105 Individual Permits are submitted complete based on our review of files.

Further, we found that, with the exception of Chapter 102 Individual Permits, most permits are technically adequate when submitted for review.

Chapter 102 and Chapter 105 programs are funded with a combination of state general funds, federal funds, and programs fees. DEP has raised concerns about the adequacy of its funding and the impact on its mission. However we found that DEP has not sought an increase in fees to supplement funding for either permitting program. The Chapter 102 program fees were last increased in 2010 and Chapter 105 program fees were last increased in 2013. Further, DEP failed to perform a mandated Chapter 102 fee report that

could have been used to ask for a fee increase if it were necessary. DEP did submit its mandated Chapter 105 fee report, but declined to seek an increase in fees.

One of the stated purposes of both permitting programs is protection of the environment, however, we found that DEP does not have policies and procedures to systematically collect, compile, analyze, and report data that may be used to measure whether or not DEP is achieving that goal. In fact, DEP did not provide any documentation showing it is meeting the stated purpose of the program.

To address these findings, we recommend that DEP should periodically conduct random audits of permit application files to ensure that DEP regional offices and CCDs are adhering to internal controls and meeting maximum review time requirements. Further, to ensure protection of the environment, DEP and the CCDs should systematically collect, compile, analyze, and report data that measure and explain the environmental effects of the Chapter 102 and Chapter 105 permitting programs. Finally, the Department should submit the mandated Chapter 102 and Chapter 105 fee reports to the EQB and include recommendations to adjust fees as appropriate to ensure the efficient functioning of the program.

Initiatives to Improve Permit Programs

DEP has undertaken several significant initiatives to improve implementation of the Chapter 102 and Chapter 105 permitting programs. For example, the department has replaced the Money-Back Guarantee Program with the Permit Decision Guarantee Program, created the Regional Project Coordination Office, partnered with the PA Department of Transportation, and established an ePermitting program to allow applicants to submit applications online for Chapter 105 general permits. While these initiatives are important, their implementation has faced significant challenges.

For example, the Regional Project Coordination Office, or RPCO, was established by DEP in March 2017, and is overseen by the Executive Deputy Secretary for Programs. According to DEP, the mission of the office is to provide synchronized and consistent reviews and approvals for general to complex projects related to Chapter 102 and Chapter 105 from a Central Office.

That said, it took the new office 22 months to begin accepting permit applications. As of January 24, 2019, only one permit application had been disposed.

DEP has also developed an electronic permit application system for chapter 105 General Permits. The system began accepting applications on October 18, 2018. In order to access the application system, an applicant must be registered on DEP's "Greenport" as an Electronic File Administrator. In 2017-18, DEP disposed 3,445 permits. However, only

59 people had registered as an Electronic File Administrator. This would indicate that there will be significant problems moving forward if more people do not register soon.

To address concerns related to these initiatives, we recommend that DEP systematically collect, compile, analyze, and report data on PDG-eligible applications and implement a plan of action to ensure eligible applications are approved within the guaranteed time frame.

In closing, I would like to thank the analysts on this project, Anne Witkonis, Amy Hockenberry, Anna Amsbaugh, and Shanika Mitchell-St. Jean. These four analysts conducted a review of over 400 permit applications, some of which were several file boxes of material, in the basement of DEP headquarters.

I'm happy to address any questions Members of the Committee may have.