

MINUTES
OIL AND GAS TECHNICAL ADVISORY BOARD MEETING
February 16, 2012

A meeting of the Oil and Gas Technical Advisory Board (TAB) was held on February 16, 2012 in Room 105 of the DEP Rachel Carson State Office Building, Harrisburg.

TAB MEMBERS PRESENT

Chairman Robert Watson, Burt Waite, Gary Slagel, Art Yingling, and Sam Fragale.

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Deputy Secretary Scott Perry, Kurt Klapkowski, Susan Ghoweri, Simeon Suter, Eugene Pine, M. Seth Pelepko, Stephen Brokenshire, James Kline, Shamus Malone, Laura Henry, Todd Wallace, Elizabeth Nolan, Joseph Lee, Joseph Adams, Dan Lapato, Jessica Shirley, Susan Weaver, Trisha Salvia, Kevin Sunday, and Darek Jagiela attended from DEP.

INTRODUCTION AND OPENING REMARKS

Chairman Robert Watson calls the meeting to order at 10:05 a.m. and introductions followed.

APPROVAL OF DRAFT MINUTES FROM THE PREVIOUS ADVISORY BOARD MEETING

Robert Watson makes a motion to approve the minutes from the October 21, 2011, Technical Advisory Board (TAB) meeting, the other board members second. Minutes are approved.

SPILL POLICY UPDATE

Scott Perry, Deputy Secretary for Oil and Gas Management, addressed the comments he received from the Technical Advisory Board regarding the proposed spill policy. The first comment that Scott addressed is whether product is a waste if it is spilled on the ground. In the revised proposed version, the Department has eliminated that particular term and replaced it with the term "pollutional substance." The Department believes that when a product (like diesel fuel) is spilled, the contaminated soil and the product have become a waste, and that it is not necessary to have that discussion for this document. Although the term pollutional substance is not defined specifically, rather than create more confusion with a term for every scenario, the Department decided to use a generic term.

Perry stated that the second area the Department made changes to was reporting spills and incidents. He then addressed TAB comments that pertain to quantities of spills that should be reported, referencing the regulatory definition for reportable releases of brine. Similar in approach to those releases, the Department feels that it would be prudent to make spills of any size apply. The Department is not establishing a regulatory requirement that a spill of any quantity be reported to the Department, rather it is recommended that such a spill be reported.

Perry then addressed a TAB comment regarding secondary containment. The Department requests that spills to secondary containment greater than 42 gallons be reported. The Department mainly wants to be aware of systematic failures, but this is not a mandatory notification requirement. Perry stated that the issue of when to notify the Department of spills has been a question in the past. He states two defined times when the spills should be reported: Two hours after noticing or detecting a spill, or immediately if it impacts waters of the commonwealth.

Perry addressed the remediation of a spill or release. Scott stated he heard strongly from TAB that mandating the Act 2 process was not necessary and not a favored approach. Implementation is not about the administrative process rather it is about cleaning up the spill. There is agreement that cleaning a spill up to the Act 2 standards is the appropriate standard; the disagreement was about the administrative process. Perry explained that the Department wants to see these spills cleaned up in a timely fashion, characterized, and remediated.

Perry explained what options exist for how to clean up a spill. He stated one option is to enter an Act 2 process, go through the administrative procedures, and obtain relief from liability after demonstrating that the site has been cleaned up. The Department believes it has the ability to order operators to clean spills and releases through the Act 2 process, but reserves that authority to instances where there is substantial threat of harm to the environment, or where the responsible party is not fulfilling their responsibility to address the spill in a timely manner. The Department proposes that the party notify the DEP of the process chosen within 15 days of the spill. A very brief report will be required. The Alternative process would require operators to do a site characterization 180 days after the spill, and also document and develop a remedial action plan if needed.

Scott Perry stated that the last portion of the policy really has not changed and it deals with spills that leave the well pad and the need to restore those affected areas and the timeframes established by the Oil and Gas Act. The Department will be re-evaluating this due to the changes from House Bill 1950.

Burt Waite asked if the comments he gave Scott Perry on February 15 were addressed. Perry responded that an operator can choose to develop their PPC plan under either chapter 78 or 91. Mr. Waite's next comment pertained to reporting releases of any quantity. Perry stated that the Department is not establishing a mandatory requirement that all spills must be reported since the wording "should" was used instead of the word "shall." Mr. Waite reiterated that the regional offices should understand that the word "should" does not mean "must".

Burt Waite asked about chloride and other substances in relation to the Spill Policy. Mr. Waite recommended taking this issue to the Scientific Advisory Board to determine when these contaminants, such as chloride, become leachable and when they need to be reported. Gary Slagel suggested that the Department remove the last paragraph of the spill policy until it can be determined by the Scientific Advisory Board as fact.

Scott Perry mentioned Burt Waite's comment about the 15 day timeframe. Burt says Act 2 does not dictate a time frame, but in the case of the proposed policy, a decision must be made in 15 days. Mr. Waite stated that requirement will be before initial sample results return from the lab. Perry stated that the intent is an operator must clean it up to an appropriate standard, and that the

Department wants to know if they plan to go through the Act 2 standard within 15 days of the spill. Mr. Waite posed the scenario - is an operator able to pull out of the Act 2 process if the spill does not require those types of standards? Scott Perry asked Burt Waite and TAB what kind of time period is more reasonable than the 15 days. Gary Slagel stated that Act 2 does not have timelines, and he feels that it allows time for examination of the results. Scott Perry stated that if 15 days is too short, he'd entertain a longer time frame, but he feels that operators need to be proactive in cleaning up spills. Slagel stated that he feels 15 days is too short, and would like to get back to Scott with a better example. Waite asked if an operator is able to switch from the Act 2 process after the 15 day period, if they decide to choose the alternative method. Scott replied that an operator would be able to.

Gary Slagel discussed the confusion of the spill policy for operators. Mr. Slagel stated it does not tell the operators how to prepare a spill prevention or spill cleanup plan. Perry stated that it is important for the Department to know what happened, what the plan is for cleanup, and that the plan has a defined timeframe. Perry doesn't want the cleanup process to linger over a long period of time and he does not want to hinder an operator's quick response.

Gary Slagel asked the Department's expectation if an operator files an intermediate or remedial action plan. Mr. Slagel asked if it is going to have to be reviewed by Department personnel before the operator can take action. Scott again stated that he does not want to hinder a timely response, but he does not want to encourage the "natural attenuation" process of cleaning up a spill.

TAB asked about the 2-hour notification requirement. If you have a spill at a site, and you have everyone at a site working to clean it up, Slagel feels that having someone break away to report the spill within 2 hours hinders the process. Slagel stated that he feels that notification within 24 hours of the spill would give operators more time to focus efforts on a quick response. Slagel stated it may be difficult to report spills within the 2 hour time frame when spills occur at remote locations and that it should be extended. Perry reiterated that the Department wants to know when spills happen in a timely manner.

Perry stated he would like to publish the revised spill policy for public comment.

Art Yingling mentioned drill cuttings in the first paragraph on page two, Perry stated it will be changed so that the residual waste and drill cuttings is moved to after production fluids because the policy addresses controlled disposal of fluids and then it has residual waste, stating that drill cuttings do not including top hole water.

Perry states he would like to get this document out as soon as possible so people can make decisions in a more consistent manner. Burt Waite compliments Scott on the revised spill policy document when compared to the previous draft spill policy. Scott gives credit to Laura Henry for her work on the document.

From the audience, Andrew Paterson (Marcellus Shale Coalition) stated that spills that would impact waters of the commonwealth should be responded to immediately, but spills on secondary containment should be responded to on a longer timeframe. He stated that he feels DEP inspectors will expect a 2-hour response for every spill. He feels the Department should take Mr.

Slagel's advice and extend the timeframe for reporting it. Perry states that alternate reporting timeframes may be considered when the spill is small and on a secondary containment.

Also from the audience, Craig Wilson (K&L Gates) suggested that Perry review the language in the document relating to reporting spills and releases. Perry stated that a small spill that is not posing a threat to waters of the commonwealth does not seem very necessary that an operator need to contact the DEP immediately. On the other hand if there is a loss of well control event an operator would need to notify the Department immediately.

Perry stated he feels it is appropriate to address spills and reporting when they occur on a secondary containment. Robert Watson asked about how spills are handled on site in secondary containment. Dr. Watson feels that if a vacuum truck is used to clean up a spill and it doesn't affect commonwealth waters, it shouldn't have to be reported. Dr. Watson asked Perry how these spills should be handled. Perry stated that the Department doesn't have the ability to issue a NOV for a spill that is completely contained by secondary containment. Perry states that he is committed to considering other reporting alternatives for spills that occur on secondary containment.

CHAPTER 78 SUBCHAPTER C REVISIONS STATUS – SURFACE ACTIVITIES

Shamus Malone discussed the proposed Chapter 78 Subchapter C revisions, referring the TAB to a handout of the changes.

Gary Slagel stated that non-central office staff have been having trouble keeping up with current standards and implications with regards to paperwork, and asked how DEP intends to address this. Art Yingling asked about the Department's change to well site size reduction during the restoration of the site. Scott Perry stated that the Department is doing this in preparation of the new statutory requirements. At the conclusion of Malone reading the revisions, Perry explained the processes being used to make these changes.

Mike Sherman (Range Resources) stated that some of the proposed changes overlap, and he suggested that there may be ways to incorporate these changes into the ESCGP permit instead of the regulations to make things easier for the regulated community.

Andrew Paterson stated that the MSC has been in talks with PEMA about how best to make emergency response plans, and requested that until that is finished, that DEP delay developing site specific PPC. He also suggests that there should be other ways to prevent unauthorized access from third parties than listed in the changes (such as fencing) and hopes that other alternatives can be incorporated. He also suggested that the proposal to cease horizontal drilling activities when inadvertent returns are discovered and reported to the Department could make be worse than allowing the drilling team onsite to deal with the inadvertent return.

A Break was called at 12:30 PM.

CHAPTER 78 SUBCHAPTER D REVISION STATUS – SUBSURFACE ACTIVITIES

Eugene Pine initiated the discussion on Chapter 78 Subchapter D regulation updates by addressing coalbed methane regulations and the plugging of the laterals of wells.

Simeon Suter reported on a well plugging survey conducted by DEP that was distributed to twenty-one sister states. The survey included twelve questions that the states were asked to respond to. Suter summarized the responses from the states in a table that was shared with the members of TAB. Suter verbally summarized the findings for the benefit of the TAB members.

Eugene Pine mentioned some merging of Chapter 78 with Chapter 79, including moving some waste prevention regulations from Chapter 79 into Chapter 78.

PREDRILL DATABASE STATUS

Joseph Lee discussed the pre-drill database, explaining that there will be training held on how to use it. Lee expects the go-live date for the database to be the end of April. Andrew Paterson stated that only producers and the DEP will have access to the database, but the homeowners will have their own unique identifier.

DEEPEST FRESH GROUNDWATER WORKGROUP UPDATE

Joseph Lee discussed the Deepest Fresh Groundwater meeting in fall of 2011 and gave a brief overview of what was discussed in the Department's endeavor to determine what constitutes fresh groundwater. He stated the next meeting will be this spring. Burt Waite asked if they are working towards a TDS number. Joe Lee responded that he believes that not only TDS quantifies fresh water, but quantity of water can also reflect it as well. Eugene Pine explained that the group is trying to better define fresh water.

CASING, CEMENTING, WELL INTEGRITY UPDATE

Eugene Pine stated that Seth Pelepko and he are developing a form that might be in draft form by the next TAB Meeting in May 2012. The form should assist an operator in solving well integrity issues they might run into.

ADJOURN

A motion to adjourn the meeting was made by Chairman Watson at 1:10 PM.