

MEETING MINUTES

Oil and Gas Technical Advisory Board

August 23, 2017

TAB MEMBERS PRESENT

Voting Members: Bryan McConnell, P.G. (Chair), Robert Hendricks, P.G., Casey Saunders, P.E., David Yoxtheimer, P.G., Fred Baldassare, P.G. (via WebEx)

Non-voting Advisors: W. Michael Griffin, Ph.D., John Walliser, Esq. (via WebEx)

DEP STAFF PRESENT

Scott Perry, Kurt Klappkowski, Seth Pelepko, Bruce Jankura, Harry Wise, Joe Kelly, Steve Brokenshire, Myron Suchodolski, Todd Wallace, Elizabeth Davis, Joseph Iole, Ann Mathew, Jennifer Zarefoss, Roma Monteiro, Neil Bakshi

CALL TO ORDER

A meeting of the Oil and Gas Technical Advisory Board (TAB) was held in Room 105 at the Rachel Carson State Office Building, 400 Market Street, Harrisburg. This meeting was open to the public. McConnell (Chair) called the meeting to order at 10:03 a.m.

OPENING REMARKS

McConnell opened the meeting by inviting introductions of those in attendance. McConnell asked Perry if he had any opening remarks. Perry introduced Neil Bakshi to the TAB members and explained that he is the Executive Policy Specialist who is currently working with DEP's Office of Oil and Gas Management. Perry also informed the members that Elizabeth Davis has returned from maternity leave to DEP's Bureau of Regulatory Counsel.

Perry introduced Secretary Patrick McDonnell to the TAB members and Secretary McDonnell provided brief opening remarks to the group. Secretary McDonnell emphasized DEP's efforts to focus on increased public participation and stated that the role of TAB is important in furthering this effort.

APPROVAL OF MEETING MINUTES

McConnell asked TAB members if there were any comments related to the draft April 13, 2017 TAB meeting minutes. Hendricks made a motion to approve the meeting minutes as presented. Saunders seconded the motion. There was no further comment. The motion passed unanimously.

AMENDMENT OF TAB BYLAWS

Perry stated that DEP prepared draft revised TAB Bylaws to clarify how DEP will interface with TAB in light of the passage of Act 52 which established the PA Grade Crude Development Advisory Council (CDAC). Specifically, DEP wants to encourage operational efficiencies as it advances future rulemakings that pertain to conventional versus unconventional matters.

McConnell responded that he is concerned with the sentence in the draft revised TAB Bylaws that reads “*The Advisory Board may, after consultation from the Department pursuant to Section 3226(d) of the 2012 Oil and Gas Act, defer the opportunity for review and comment on regulations of a technical nature related to conventional oil and gas operations to [CDAC], created by Act 52 of 2016.*” In particular, McConnell is concerned that TAB will not meet its statutory obligation to review all oil and gas regulations of a technical nature if it “defers” review of conventional oil and gas regulations to CDAC.

Perry explained that DEP considered this issue and worked with legal counsel to arrive at this draft revised Bylaw language. DEP believes that the proposed language serves to clarify how the oil and gas program can work effectively and efficiently with both TAB and CDAC in a manner that the board and council can meet their respective legislative mandates.

Hendricks commented that he understands DEP’s desire to streamline the review of oil and gas matters related to conventional operations. He questioned if this issue is not clarified in the TAB Bylaws, then in what other document could this be memorialized. McConnell suggested that perhaps this issue could be addressed in a Memorandum of Understanding (MOU) that is agreed to between TAB and CDAC. Perry responded that TAB may pursue this option if it so chooses, but he would like for this matter to be clearly addressed within the body of the TAB Bylaws.

Saunders commented that there could be coal and gas issues that cross over between TAB and CDAC in the future.

Baldassare commented that, on further review, he finds the proposed Bylaw language to be acceptable since it does not seem to remove TAB from the regulatory review process.

Griffin concurred that the draft proposed Bylaw language provides an ability for TAB members to consider oil and gas regulations of a technical nature. TAB’s review can be extensive or more limited as it so chooses.

McConnell asked DEP how TAB would get an opportunity to review or comment on all oil and gas regulations of a technical nature in the future if such a regulation is taken under review by CDAC. Perry stated that TAB is not prevented the opportunity to review or comment, rather, it would be TAB’s responsibility to stay informed about the affairs of CDAC.

Hendricks made a motion to accept all changes of the draft proposed TAB Bylaws with the exception of the “Scope of Review” section in Article III, Section A of the Bylaws. Saunders seconded.

McConnell stated that the first sentence of Article III of the draft proposed Bylaws contains the words “*pertaining to oil and gas operations*” which goes beyond the language in the 2012 Oil and Gas Act. The members of TAB agreed that these words should be deleted from that sentence. It was further suggested that the words “*2012 Oil and Gas Act*” in the first sentence of the same Article III should be revised to read “*Chapter 32, Title 58 of the Pennsylvania Consolidated Statutes.*”

Yoxtheimer made a motion to amend the previous motion to table the discussion of this matter until after the TAB members have further considered this issue during the lunch period of the meeting. The matter will be revisited after the lunch period. Hendricks seconded the motion and the motion passed unanimously.

AREA OF REVIEW (AOR) TECHNICAL GUIDANCE DOCUMENT (TGD)

Klapkowski summarized the history of the development of the AOR TGD.

Pelepko asked the board if there were any specific comments or suggestions related to the AOR TGD. Hendricks suggested that the last paragraph in Section B of the TGD be broken out as a separate section to clarify that the requirements outlined in that paragraph only apply when a communication incident falls below the reporting thresholds outlined in this section. Hendricks also suggested that the term “adjacent operator” should be clarified. Finally, Hendricks suggested that the language in the last paragraph in Section B be amended to clarify that the notification process should be followed when there is disagreement between the operator conducting hydraulic fracturing and the operator whose well is subject to a communication incident. Pelepko responded that DEP will consider these changes to the TGD.

Pelepko proceeded with a discussion of all other proposed amendments to the AOR TGD.

Hendricks asked about the process to finalize this TGD and inquired whether the board will have an opportunity to review the draft TGD prior to publication in the *Pennsylvania Bulletin*. Klapkowski responded that DEP intends to bring the final draft AOR TGD back to the board at the next TAB meeting scheduled on November 1, 2017.

CHAPTER 230 PROPOSED RULEMAKING

David Allard, Director of DEP’s Bureau of Radiation Protection (BRP), provided a summary of a proposed rulemaking that is being advanced by DEP’s radiation protection program. The BRP has advanced an update to Pennsylvania’s radiological health regulations that pertains to x-ray equipment, radon and the packaging and transportation of radioactive materials.

TAB invited Allard to discuss the Chapter 230.15 proposed rulemaking that specifically pertains to the transport of unlicensed radioactive material. Allard explained that this proposed rulemaking is intended to adopt the federal Department of Transportation rules at 49 CFR 173.403 that pertain to the transport of unlicensed radioactive material. Allard explained that most oil and gas byproducts do not exceed the federal threshold of more than 270 picocuries/gram that would result in the need to meet the federal transportation requirements of unlicensed radioactive materials. One exception might be wastewater treatment sludges from the treatment of oil and gas flowback fluids that exceed the federal threshold.

McConnell inquired about the definition of “Technologically Enhanced Naturally Occurring Radioactive Materials” (TENORM). Allard explained that this term is defined in Pennsylvania’s Solid Waste Regulations.

PUBLIC COMMENT

McConnell opened the floor and invited the public to provide comment.

Loren Anderson, Marcellus Shale Coalition, indicated via the chat function of the Webinar that he had the following two questions:

1. What is considered a “reasonable timeframe” for landowners to respond to the landowner survey form as referenced in AOR TGD? Pelepko responded that the response time is 10 days for the “standard” option and 30 days for the “development plan” option.
2. Does DEP intend to publish the Comment/Response (C/R) Document that is associated with the AOR TGD? Pelepko responded that the C/R Document will be published when the final AOR TGD is published in the *Pennsylvania Bulletin*.

UPDATE ON FORM DEVELOPMENT

As a result of the passage of Chapter 78 and Chapter 78a, certain requirements went into effect that require the restoration of borrow pits and well development impoundments nine months after the effective date of the regulations. There is a provision in the regulations that operators can request DEP for an extension to meet these restoration requirements. Several operators approached DEP about what form should be used for this purpose. DEP consider the use of an existing form; however, since there is no form currently in use that would serve this purpose, DEP developed the following two forms: “Borrow Pit Restoration Extension Request Form” and “Well Development Impoundment Extension Request Form.” Both forms are currently available to the public on the eLibrary page of the DEP website.

TECHNICAL GUIDANCE DOCUMENT DEVELOPMENT UPDATES

Klapkowski provided an update on the status of several ongoing technical guidance documents:

Water Supply Replacement TGD:

Klapkowski reported that in addition to the AOR TGD that was discussed earlier in the TAB meeting, DEP is also developing the “Water Supply Replacement TGD.” DEP is still in the process of making edits to this TGD so it will be brought back to TAB at the next meeting scheduled for November 1, 2017.

Pressure Barrier TGD:

This document is currently undergoing internal review and DEP expects to publish this TGD with a 30-day public comment in September 2017.

Integrated Contingency Plan TGD:

This TGD will consolidate several existing planning requirements for unconventional well sites (i.e., emergency response plans, site containment plans, Preparedness, Prevention and Contingency plans) into a single Integrated Contingency Plan. DEP intends to publish this TGD in late October with a 30-day public comment period. This TGD will likely be presented to TAB at the first meeting scheduled in calendar year 2018.

Guidelines for Longwall Mining Development Adjacent to Operating Unconventional Wells:

This TGD has been under development and review by TAB’s Coal-Gas Subcommittee and includes two components: 1. Coal pillar permit, and 2. Review of inactive status requests for unconventional wells in the path of longwall mining. It is anticipated that DEP will present this TGD to TAB at the November 1, 2017 board meeting prior to publishing the document as interim final.

Erosion and Sediment Control Policy:

In 2012 when DEP published the Erosion and Sediment Control General Permit-2 (ESCGP-2), it also developed a companion Erosion and Sediment Control Policy to clarify how DEP would approach various erosion and sediment control matters. The ESCGP-2 is scheduled to expire in December 2017 and DEP intends to administratively extend this general permit until it is formally updated. The Erosion and Sediment Control Policy will also be updated to align with the revised general permit. DEP plans to publish a notice in the *Pennsylvania Bulletin* to announce the extension of the general permit and notice the establishment of a workgroup that will focus on updating the Erosion and Sediment Control Policy.

Civil Penalty Assessment TGD:

The prior version of this guidance was published in 2002, so DEP is currently updating this guidance document to address new provisions as a result of promulgation of the 2012 Oil and Gas Act.

Civil Penalty Assessment Informal Hearing Procedure:

Klapkowski explained that prior to promulgation of the 2012 Oil and Gas Act, DEP was required to file a formal complaint with the Environmental Hearing Board (EHB) before pursuing a civil penalty. DEP may now assess a civil penalty without EHB notice, provided it offers an opportunity for a hearing to the entity that is assessed the civil penalty. DEP published a proposed draft of this procedure several years ago that outlines the process that DEP district staff should follow if it intends to issue a civil penalty. DEP is working to finalize this document.

Hendricks stated that, at the request of DEP, industry submitted comments regarding the “Integrated Contingency Plan TGD” and “Pressure Barrier TGD”. Hendricks asked if DEP will consider these comments prior to proceeding with publication of these guidance documents. Klapkowski responded that DEP will consider these comments.

COAL-GAS COORDINATION WORKGROUP REPORT

Saunders provided an update of the efforts of the Coal-Gas Coordination workgroup. Many of the geophysical and geomechanical issues were addressed at the most recent meeting of this workgroup. A few remaining issues such as underground monitoring remain; however, much progress has been made and the “Guidelines for Longwall Mining Development Adjacent to Operating Unconventional Wells” document is nearly complete.

Klapkowski commended the members of this workgroup and the process that was used to discuss and reach agreement on a path forward for the many coal and gas issues that required coordination. Pelepko reported that this group will remain in place to address other issues such as coordination of pipelines, drilling through gob areas, mine-through issues, etc.

GP-5/GP-5A UPDATE

Perry updated the board members on the current status of GP-5 and GP-5A since the comment period for these two general permits closed on June 5, 2017. GP-5 is largely an update of Best Available Technologies from the existing compressor gas processing general permit; whereas, GP-5A transitions from Exemption 38 to a general permit for oil and gas operations.

About 10,000 individual comments were received for both permits. Perry and staff from DEP’s Bureau of Air Quality (BAQ) have met with various trade organizations and environmental groups that have expressed an interest in these general permits. The BAQ is in the process of preparing a Comment/Response Document and the final products are still months away from completion. Perry stated that DEP plans to present the final version of these general permits to TAB and the public when they are completed.

DEP's main objective with these general permits is to advance an approach that results in a reduction of methane emissions at well sites in a manner that will allow industry to succeed.

OLD BUSINESS

McConnell stated that TAB should revisit the matter of business pertaining to the proposed changes to the TAB Bylaws. McConnell stated that the original motion remains on the floor. Perry asked McConnell to restate the motion for clarity's sake. McConnell stated that the motion is to accept all proposed amendments to the Bylaws with the exception of the proposed language in the Scope of Review section in Article III, Section A. All other amendments as recorded on the document during the Webinar will be included in the amended Bylaws. McConnell called for a formal vote on the motion by TAB members. All TAB members voted in favor of the motion.

McConnell reported that during the lunch period board members discussed a concept of developing a list of expectations that will serve to clarify TAB's responsibilities while enabling TAB to operate efficiently and not duplicate efforts. McConnell stated that he will take the lead in developing a draft list of expectations in the next several weeks and present them to the board members and DEP for review and consideration.

NEW BUSINESS

Underground Storage of Natural Gas Liquids

Perry reported on a recent meeting of the West Virginia Energy Institute at which DEP and several other states participated. The issue of solution mining of salt fields was discussed as a method for creating underground storage capacity for the storage of natural gas liquids. Other options for underground storage include storage in depleted oil and gas reservoirs and in underground hard rock caverns. Representatives from Kansas and Texas presented findings from their respective states and Ohio reported that solution mining is already occurring to a degree in Ohio. McConnell stated a comprehensive study was conducted by DEP and DCNR about 10 years ago that examined solution mining for carbon sequestration purposes and there could be some findings from that study that might be useful.

Underground Gas Storage Field Analysis

Pelepko reported that DEP has been examining gas storage wells in Pennsylvania and asked Jankura to provide a verbal update to TAB. Jankura stated that in response to the Aliso Canyon natural gas leak from an underground storage facility near Los Angeles, California in October 2015, a DEP technical workgroup was formed to evaluate current monitoring and compliance activities at natural gas storage fields in Pennsylvania. The workgroup is developing draft protocol that will be used by DEP's oil and gas districts to facilitate consistency in its operations. In particular, DEP is considering wells that might be similar in construction to those in the Aliso Canyon incident that failed. The workgroup is also preparing an inventory of gas storage operators and gathering insight into how the operators are managing their wells at gas storage facilities in Pennsylvania.

McConnell asked how many Federal Energy Regulatory Commission (FERC) regulated gas storage wells exist in Pennsylvania. Jankura responded that out of a total of about 1,500 gas storage wells in Pennsylvania, about 1,400 are regulated by FERC and are classified as being associated with interstate facilities. Currently, there are about 75 intrastate gas storage wells in Pennsylvania.

PUBLIC COMMENT

The following questions were submitted by Loren Anderson via the WebEx chat feature:

1. Does DEP plan to ultimately make the ESCGP-3 permit application available to operators only in an online format? Klapkowski responded that the ESCGP-3 permit will be published for comment in the *Pennsylvania Bulletin*. A decision whether to make this permit available solely in an electronic format will be based on comments received after publication.
2. Does DEP plan to conduct Beta testing of the ESCGP-3 permit application? Klapkowski responded that, due to technology limitations, Beta testing will be limited to in-house testing. However, DEP will seek and consider input from operators about what worked well (and what did not work well) as a result of the roll-out of the eWell online permit.

ADJOURNMENT

Saunders made a motion to adjourn the meeting and Baldassare seconded. Motion passed and meeting was adjourned at 2:00 pm.

DRAFT