

MINUTES
CONVENTIONAL OIL AND GAS ADVISORY COMMITTEE MEETING
March 26, 2015

COGAC MEMBERS PRESENT

Marc Cline, Sr.; Bruce Grindle; Dave Ochs, Burt Waite; Dave Yingling. Non-voting members present: Jim Morrison, Doug D'Amore, Sherry Tune.

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Deputy Secretary Scott Perry, Kurt Klapkowski, Elizabeth Nolan, Joseph Adams, Seth Pelepko, Myron Suchodolski, Kelly Burch, Joseph Kelly, Susan Ghoweri, Harry Wise, Ann Mathew, Todd Wallace, Jessica Shirley, Katie Hetherington-Cunfer and Darek Jagiela.

CALL TO ORDER

The initial meeting of the Conventional Oil and Gas Advisory Committee (COGAC) in Room 105 of the Rachel Carson State Office Building, Harrisburg, Pennsylvania on March 26, 2015. The meeting convened at 10:01 AM.

REVIEW AND APPROVAL OF BYLAWS/ELECTION OF OFFICERS

COGAC began the meeting with a discussion of draft Bylaws provided by the Department. Discussion topics included the scope section and the Committee's oversight, statutory authority for the creation and composition of COGAC, the inclusion of non-voting members on COGAC, term limits, the ability of the Committee to have remote participation by members versus the use of alternates and holding meetings in locations outside of Harrisburg. The Committee raised the issue of the use of executive sessions or holding meetings outside the jurisdiction of the Sunshine Act. Perry replied that he believed that the Committee had almost unlimited discretion to interact with each other in that manner, but that if the Committee was going to interact with the agency, it must be in a public setting. The discussion concluded with COGAC tabling any formal action with regard to the Bylaws or election of officers.

REVIEW OF REVISIONS TO 25 PA. CODE CHAPTER 78

Klapkowski provided an overview and summary of the current draft final rulemaking developed by the Department in response to the almost 25,000 public comments received on the proposed surface activities rulemaking, including the efforts to reach this point in the process and next steps. COGAC raised several issues concerning the process used to develop the draft final-form rulemaking. First, the Committee questioned the failure to make the draft Comment and Response Document available with the draft final rulemaking. The Department responded that the consistent historical practice was not to release a Comment and Response Document until the rulemaking was final and presented to the Environmental Quality Board, because the rulemaking language can still change prior to that time. Second, the Committee questioned the Department's decision to not "restart" the process in the wake of the Fiscal Code amendments made by Act 126 of 2014. The Department responded that the process used to bifurcate the regulations into conventional and unconventional Chapters on final was appropriate in light of comments received on the proposed rulemaking and met both the spirit and the letter of Act 126. Finally,

COGAC criticized the Department for not adequately considering the impacts to small businesses from the draft final rulemaking. The Department stated that it believed that the comments relating to small business impacts were adequately considered and addressed in the draft final-form rulemaking as was evidenced by the numerous changes to the proposed rulemaking, particularly in Chapter 78 as the regulations applied to conventional wells.

COGAC raised concerns about the definitions related to the Pennsylvania Natural Diversity Inventory (especially the term “other critical communities”) and possible changes to the PNDI process. Several other definitions were discussed, including “abandoned water well” and “certified mail” as well as the scope of the definition of “conventional well” as it relates to gas storage wells. Waite requested that a definition for “oil well” be added to this section. Ochs suggested that the definition for “gathering lines” be altered to reflect the current Pennsylvania Public Utility Commission regulatory structure, to exempt “production lines.” Under section 78.15(f), Grindle raised a concern about impacts to scenic rivers as part of oil and gas operations and the ability of resource agencies to veto development projects.

PUBLIC COMMENT:

Paul Hart of the Pennsylvania Independent Oil and Gas Association (PIOGA), submitted public comments opposing the draft final rulemaking due to the increased costs of compliance for conventional operators and the process used to develop the draft final rulemaking.

Trisha Sheehan, representing the Moms Clean Air Force, submitted comments supporting protection of children’s health through regulation. While a good first step, Ms. Sheehan urged greater protection, including limits on methane leaks at well sites.

REVIEW OF REVISIONS TO 25 PA. CODE CHAPTER 78 (CONTINUED)

Klapkowski continued with the summary and overview of the draft final rulemaking after public comment and lunch. Cline raised an issue concerning requiring operators to replace impacted water supplies with better water than existed prior to drilling. The Department responded that the standard is in place but that a guidance document will be developed to address difficult technical and specific issues related to water supply replacement in addition to the rulemaking. COGAC also raised concerns about the timing of the submission of the predrill survey data, both in terms of the 10-day window and the relation of submission to assignment of the API number.

Under area of review, Waite raised an issue concerning vertical oil wells being based on a 300-foot spacing situation but it appears that the rulemaking requires additional surveys. Pelepko responded that DEP is balancing risk of communication with actual drainage areas, so it is appropriate to go beyond the basic spacing distances for the purposes of area of review. Waite also raised the issue of landowner response to questionnaires and Grindle asked who bears the liability for communication where the landowner does not respond or a well is not identified.

Under temporary storage, Ochs raised a concern that the 1000 square foot cutoff for the 2:1 slope requirement was too small and that perhaps 3000 or 5000 square feet might be more appropriate for a cutoff. Grindle raised concerns about how manifolded pits would be addressed under this section.

D'amore raised concerns relating to vandalism and security issues at production facilities. A further comment was made that monthly inspections should not be required; especially not on forms provided by the Department. Centralized tank storage was a great concern for the members of COGAC and clarification was requested as to whether or not this section was intended to apply to conventional operations as structured today. The Department stated that this was intended to apply only to waste storage off of the well site and that clarification was appropriate.

Under section 78.58, members expressed concern that the three-day notice requirement would be fairly difficult to comply with given well development timing. For the waste management sections, 78.60 – 78.63, Waite raised concerns about disposal of drill cuttings containing drilling soaps and more information will be provided to the Department to review.

COGAC also raised the issue of requiring secondary containment for all storage of production brines in section 78.57, while only requiring secondary containment for the storage of oil or condensate when total storage capacity exceeded 1,320 gallons. The Department noted that the oil and condensate cutoff was consistent with federal oil spill prevention, control, and countermeasures regulations and agreed to consider exempting storage of brines below 1,320 gallons from the secondary containment requirement.

Cline raised issues concerning approximate original contours in terms of post-drilling and post-plugging restoration issues. Adams responded that including the phrase “to the extent practicable” in the draft final regulation allows for operators to request leaving well sites in their current condition and Perry noted that landowner consent allows for leaving sites in that condition.

Members expressed concerns about the five-gallon spill-reporting requirement as being too stringent, especially given that liquids that are more hazardous can be spilled in greater amounts without notice to the EPA. There was also a request that bioremediation be expressly called out in the remediation section as a potential option for the operator who has a spill or release. Waite expressed basic concerns with the use of the Act 2 process for cleanups, as well as some of the timeframes to have certain steps in the cleanup process to be completed and the 42-gallon cutoff as being too stringent.

NEW BUSINESS:

Holding another COGAC meeting in April was discussed but not agreed upon. The next COGAC meeting was set for Thursday, August 27, 2015 and Thursday, October 29, 2015.

ADJOURNMENT:

The meeting was adjourned at 3:21 PM.