

MEETING MINUTES
Conventional Oil and Gas Advisory Committee (COGAC)
October 29, 2015

COGAC MEMBERS PRESENT

Voting Members: Dave Ochs (Chair), David Yingling, Burt Waite, Bruce Grindle, Mark Cline

Non-voting Advisors: Doug D'Amore, Jim Seyler

DEP STAFF PRESENT

Scott Perry, Kurt Klapkowski, Elizabeth Nolan, Joe Adams, Seth Pelepko, Myron Suchodolski, Todd Wallace, Jessica Shirley, Katie Hetherington-Cunfer, Joe Kelly, Ann Mathew, Jennifer Zarefoss, Tara DeVore

CALL TO ORDER

A regular meeting of the Conventional Oil and Gas Advisory Committee (COGAC) was held in Room 105 of the Rachel Carson State Office Building, Harrisburg, Pennsylvania on October 29, 2015. Dave Ochs (Chair) called the meeting to order at 10:01 am.

OPENING REMARKS

Burt Waite asked DEP if it intends to take the Chapter 78, Subchapter C and Chapter 78a, Subchapter C final draft rulemaking to the Environmental Quality Board (EQB) in January 2016. Scott Perry responded that DEP will recommend to the EQB that the January 2016 EQB meeting be pushed back to the first week in February 2016 to allow the EQB members additional time to review the final form rulemaking package in advance of the meeting. It will be the decision of the EQB to determine whether to accept this suggestion.

Ochs asked if members of COGAC will have an opportunity to review the final form regulatory package at the point that the package is transmitted to the EQB. Perry responded that the package will be posted to the EQB website at the time of transmittal so the public and members of COGAC will have access to the information at the same time.

Ochs requested that the October 29, 2015 meeting agenda be slightly adjusted as follows: 1) reverse agenda topics #7 and #8 so that the meeting will conclude with a discussion of Seismic Monitoring and 2) insert a short break after the discussion of the Chapter 78 rulemaking.

APPROVAL OF MINUTES

Ochs asked members of COGAC if they had an opportunity to review the March 26, 2015 and August 27, 2015 meeting minutes and invited comments.

Waite thanked DEP for making revisions to the March 26, 2015 meeting minutes, but questioned what the phrase “on final” that appears on page 1 was intended to mean. Elizabeth Nolan explained that this phrase refers to the final form rulemaking. Waite then commented on the August 27, 2015 meeting minutes. Specifically, Waite requested that the sentence appearing in the 4th paragraph on page 4 of the minutes that reads “Radioactive logging sources...” be moved to a separate paragraph since it is a separate thought. DEP agreed to amend the minutes as requested.

Motion was moved by Waite to accept the March 26, 2015 minutes and August 27, 2015 minutes as amended. The motion was concurrently seconded by Bruce Grindle and David Yingling. Motion carried unanimously.

PRESENTATION/DISCUSSION CHAPTER 78, SUBCHAPTER C

Kurt Klapkowski summarized the regulatory history and process related to the promulgation of the Chapter 78, Subchapter C draft final rulemaking.

Mark Cline inquired about the nature and volume of the environmental impacts of oil and gas activities that were considered by DEP in advancing this rulemaking. Perry responded that DEP has documented approximately 260 instances where drinking water supplies were affected and one family was killed as a result such impacts.

Waite asked at what point in time the Comment & Response Document and Regulatory Analysis Form (RAF) will be available to the public. Klapkowski responded that both documents will become public at the time they are finalized and submitted to the EQB; as is the standard process for all rulemakings.

Grindle asked Klapkowski if he believes DEP has adequately addressed economic impacts of this rulemaking as outlined in the original RAF since there seems to be a disparity as to what was presented by the Department as compared to what industry believes the economic impacts to be. Klapkowski explained that the RAF developed as part of the final rulemaking is more robust than the initial version and has been updated to address comments received and considered by DEP during the comment response period. Perry pointed out that the initial baseline economic data was provided by industry and that the disparity can also be attributed to the differing perceived views regarding the actual scope of the rulemaking.

Cline asked DEP about the applicability of Section 78.55 as it relates to the development of Preparedness, Prevention and Contingency (PPC) Plans. Cline stated that if operators must develop individual PPC plans for each well, this would place a significant burden on operators. Klapkowski, Perry and Joe Adams jointly responded that the final rulemaking does not state that a unique PPC plan must be developed for each well. A PPC plan can apply to multiple wells provided the emergency response information is consistent with the respective wells it represents.

Ochs asked if it is possible, if not likely, that the outcome of the efforts of the area of review workgroup will affect the current provisions of the rulemaking at Section 78.52(a) and Section 78.73. Pelepko responded that the current regulatory language provides enough flexibility that individual circumstances can be addressed through future policy and/or technical guidance that is developed by DEP. Ochs expressed concern about proceeding with this rulemaking prior to the workgroup completing its efforts. Klapkowski reminded the committee that the established rulemaking process begins with the development of regulations that set standards. After regulations are promulgated, policies and guidance are developed to assist the regulated community in better understanding how to achieve those standards.

Ochs asked DEP if all wells must be monitored during stimulation. Pelepko explained that the area of review workgroup is examining what type of monitoring will be required. Ochs asked if it would be better for the workgroup to complete developing its guidance before DEP advances the final draft rulemaking. Klapkowski explained that DEP typically promulgates regulations before developing policy and guidance. Klapkowski stated that the Department does not ordinarily develop policies and technical guidance prior to the finalization of a rulemaking. DEP's oil and gas program has taken an extraordinarily proactive approach to initiate the development of guidance documents and forms so that additional instruction and direction is available to the regulated community at the time the final regulations are published. Perry stated that DEP intends to begin discussing forms and guidance that are under development at the COGAC meeting that is scheduled for January 13, 2016.

Ochs commented that he believes that the area of review language in the final regulation has changed significantly since the public comment period on proposed and again after the Advanced Notice of Final Rulemaking (ANFR) phase. Perry responded that the area of review provision has been contemplated since 2010 and the current regulatory language has considered public comment and input. A considerable amount of debate on this subject occurred before this rulemaking was proposed. DEP has considered all comments and is comfortable with the current regulatory approach.

Klapkowski highlighted minor revisions to two definitions at Section 78.1 based on comments received. Specifically, the definition of "Abandoned Water Well" was amended by changing the term "water supply" to "water source." This change was made since the term "water supply" is only used in Chapter 78a.69 as it relates to Water Management Plans. Since this section does not apply to conventional operators, this term is changed for clarity sake. Secondly, the words "...located on the well site" was added to the definition "Primary Containment" to address long linear pipeline projects.

Cline commented that the provision in Section 78.15 that relates to the electronic submittal of permit applications will present a burden to operators that do not own a computer. Klapkowski explained that DEP is committed to transitioning from a paper-based method of collecting permits and data from the regulated community to electronic methods. DEP has already made the drill and operate a well permit available for use electronically on its website. Perry responded that the Department will continue to

provide assistance to the regulated community as necessary and is also considering alternate electronic systems such as telephonic capabilities to aid operators who do not own a computer. Myron Suchodolski pointed out that 500 operators have recently registered on DEP's web-based portal (called GreenPort) since DEP initiated compliance notifications to operators that failed to comply with production reporting requirements.

Doug D'Amore pointed out in his reading of Section 78.15(f)(2) that potential conflicts could arise between operators and resource agencies when severed rights exist (i.e., the resource agency owns the surface property rights, but the operator owns the sub-surface mineral rights). Klapkowski explained that Section 78.15(f) contemplates this situation and that the rulemaking lays out a process for addressing this matter. In particular, the operator must notify the public resource agency who, in turn, may submit comments to DEP for consideration. DEP will consider comments from the resource agency and operator during the permit review process prior to issuance of the permit. DEP has the ability to condition the permit as necessary to avoid, minimize, or mitigate probable harmful impacts to the public resource.

Klapkowski noted that playgrounds and wellhead protection (zones 1 and 2) areas are included in the screening measures of Section 78.15(f). Grindle asked how DEP will identify wellhead protection zones effectively. Perry responded that DEP will post on the DEP website a list of entities (e.g., municipalities, water authorities, etc.) that have DEP approved wellhead protection zones.

Waite asked if playgrounds that are subject to Section 78.15(f)(1)(vi) must exist at the time the permit is submitted to DEP. Perry responded that this section is intended to address playgrounds that exist at the time of permit issuance. Perry also explained that "Rails to Trails" are considered playgrounds under this section of the rule.

Ochs raised a couple of questions related to the issue of "Other Critical Communities". The questions related to whether species that are defined as species of special concern are subject to elevated protections for non-listed species that are neither threatened nor endangered. Also, Ochs inquired about how determinations are made by resource agencies to classify plants and animals as species of special concern. Klapkowski explained that DEP consulted with the various resource agencies to ensure that the process of identifying other critical communities as outlined in the rulemaking aligns with the process that is currently implemented by the resource agencies. Perry stated that the newly enhanced PA Natural Diversity Index (PNDI) tool that was developed by the Department of Conservation and Natural Resources (DCNR) identifies the actual plant and/or animal that is the species of special concern. Operators will have the ability to submit the PNDI receipt and mitigation measures to DEP for review rather than obtaining a PNDI clearance letter from the affected resource agency. Klapkowski stated that the Oil and Gas Technical Advisory Board (TAB) asked DEP to invite the resource agencies to meet with TAB at a future date to provide a presentation regarding roles and responsibilities as it relates to the identification of species of special concern.

PUBLIC COMMENT:

Chairman Ochs extended an opportunity for members of the public to provide public comment to the board.

Mr. Arthur Stewart, Secretary of the PA Grade Crude Coalition, provided verbal comment that focused on concerns of the final rulemaking including PPC Plans, area of review, and species of special concern. Mr. Stewart urged DEP to not advance the final rulemaking in its present form to the Environmental Quality Board.

[LUNCH BREAK - The meeting reconvened at 12:55 pm.]

PRESENTATION/DISCUSSION CHAPTER 78, SUBCHAPTER C

Motion was moved by Waite to request DEP to invite the Commonwealth's resource agencies to meet with COGAC members at a future date to provide a presentation to the committee members regarding their roles and responsibilities as it relates to the identification of species of special concern. Motion was seconded and passed unanimously.

Klapkowski agreed to contact the resource agencies and invite their participation in a future meeting. Ochs also reminded the board that DEP offered to provide a presentation to the members about the Clean Power Plan (CPP). Klapkowski stated that DEP would provide this CCP presentation to COGAC members at a future committee meeting.

Waite stated that he objects to the current provisions of Chapter 78.51 [related to the protection of water supplies] both on a technical basis, as well as a cost basis. Klapkowski responded that it is the Department's position that this section of the rule serves to implement the statutory provisions of the Oil and Gas Act of 2012. DEP will work with the regulated community to address appropriate technical issues.

Cline stated that a Regulatory Analysis Form (RAF) related to the final rulemaking suggests that Section 78.52a does not apply to conventional operators. Perry clarified that the version of the RAF to which Cline referred is a prior draft version and that the current version of the RAF is located on the Independent Regulatory Review Commission (IRRC) website at www.IRRC.state.pa.us.

Grindle asked if a conventional operator must conduct an area of review survey per Section 78.52a if, at the time of permit submittal, the operator is unsure whether it intends to stimulate the well via hydraulic fracturing. Klapkowski responded that the operator is not obligated to conduct the survey if the operator has no knowledge that the proposed well is to be stimulated. Ochs asked if future drilling could be impeded if an operator does not submit an area of review survey up front and it is later determined there is a potential problem when the survey is eventually submitted. Perry responded that this, in fact, could occur. If necessary, DEP may condition a permit to address a situation where potential communication with an active, orphaned, or abandoned well might occur.

Klapkowski stated that DEP will address this scenario on a case-by-case basis and the operator should work directly with the District oil and gas inspector.

Waite asked if the regulation will provide any exemption language as it relates to the 500-foot radius in which an operator must conduct an area of review survey. Pelepko explained that the technical guidance document that is under development will address this matter. The search distances will remain consistent with the regulatory requirement; however, some flexibility will be provided in terms of the type of monitoring that will be required.

Klapkowski pointed out to the committee members a correction that DEP intends to make to the rulemaking prior to submittal to the EQB. Specifically, in Table 2 in Section 78.73, the header language will be amended to read “true vertical depth to top **OF NOTCHES OR** stimulation perforations...”. This is important since these are the measures from where monitoring of the area of review must be conducted.

Cline asked what data was used in the development of Section 78.56 [related to Temporary Storage] to establish the use of a 30 millimeter pit liner as opposed to a 20 millimeter pit liner. Perry responded that the requirement for 30 millimeter liners has been in place since 1989. Ochs asked if DEP can provide a list of approved alternate liners that are already approved by the Department. Adams responded that notification of approved alternate liners has historically been documented through publication in the *PA Bulletin*. Adams agreed to review DEP files and pull a list together for the committee’s review.

Ochs asked if DEP would consider increasing the pit size threshold in Section 78.56(e) from 250 square feet to 300 square feet since this is the average size of a pit that the conventional industry currently constructs a well for servicing, plugging and recompleting a conventional well. Klapkowski agreed that the Department would consider the change and alter the final rulemaking language if appropriate.

Klapkowski stated that, at the request of TAB, DEP agreed to revise Section 78.57 to delete the words “regulated substances” and “substances”.

Klapkowski explained that DEP corrected the language in Section 78.64(a) and Section 78.64(e) to clarify that secondary containment is required when a single tank or multiple tanks combined exceed 1,320 gallons of oil or condensate.

Klapkowski highlighted for COGAC that TAB suggested at its most recent meeting that Section 78.65(b)(5) [related to site restoration standards] be amended to add the words “required under Chapter 102”. The revised language will read as follows: “Any required post construction stormwater management (PCSM) best management practices (BMPs) **REQUIRED UNDER CHAPTER 102**; remaining in place must comply with Section 102.8(l) and (m)...” Waite and Ochs initially suggested some alternate language; however, Perry responded that the language that was agreed to with TAB would

accomplish the same purpose. Klapkowski agreed to include language in the Order to clarify the intent of this section of the rulemaking.

D'Amore raised a concern regarding the types of approved stormwater management BMPs that operators are installing on state forest lands; particularly when a stream or watercourse is a great distance from the actual well pad location. He provided several examples where BMP installation has resulted in more earth disturbance than might otherwise have occurred if the BMP was not installed or a different type of BMP was selected by the operator. Perry responded that DEP is obligated under Chapter 102 to review BMPs as proposed in a permit application as submitted by an operator. DEP is obligated to review the permits as submitted and does not deny a permit when an applicant exceeds a regulatory requirement. Perry explained that DEP is willing to work with DCNR and operators to discuss how stormwater BMPs requirements can be achieved while also limiting unnecessary earth disturbance or practices that are not preferred by DCNR.

Klapkowski pointed out that Section 78.65(b)(7) was added to this rulemaking to clarify that the provisions of this section satisfy the requirements of Section 102.8(n) for only those operators who are otherwise required to obtain a permit under Section 102.5(c). Klapkowski simply wanted to point this out since this is new language that was developed prior to this rulemaking being submitted to the EQB, but this language does not require operators to go beyond what is currently required under Section 102.5(c).

Cline asked if bioremediation is an acceptable method to achieve a remediation standard pursuant to Section 78.66. Klapkowski responded that bioremediation is an acceptable remediation method and it is up to the responsible party to determine what acceptable Act 2 (Pennsylvania Land Recycling and Environmental Remediation Standards Act) cleanup standard it intends to use.

Waite requested that DEP consider reinstating a regulatory provision for the use of alternative methods to address spills at well sites, rather than requiring the existing Act 2 cleanup procedures to be followed. Perry stated that the motivation for the concept of the use of an alternate cleanup method was to avoid the required Notice of Intent to Remediate (NIR) process contained in this Act 2. Perry explained that the current administration is more interested in a higher level of transparency; therefore, the standard Act 2 process has been selected as the preferred approach. Klapkowski explained that if operators choose to act swiftly to complete a remediation within 90 days of the spill, the notice and review provisions will not apply. Also, at the conclusion of the remediation, the operator will enjoy a release from liability that would not be available if an alternate process was used.

Waite requested that the requirement at Section 78.66(b)(2)(vii) [related to DEP notification of any injuries as a result of a spill or release] be removed from the final rulemaking. Klapkowski responded that this provision is intended to assist DEP emergency responders to better understand potential risks that could be encountered during emergency response activities. Perry explained that DEP often serves as the

spokesperson in the event of emergency response situations and full information about any personal injuries is helpful when serving in this capacity.

Cline inquired if DEP conducted a cost analysis of the restoration requirements for borrow pits as described in Section 78.67. Klapkowski explained that DEP understands the projected costs for the restoration of borrow pits; however, the full universe of borrow pits that fall under the exception described in this section is not fully understood. Regardless, this section of the rule should not result in additional costs to operators other than what is already required under the Oil and Gas Act of 2012 and Noncoal Surface Mining Conservation and Reclamation Act of 1984.

Cline requested that DEP consider extending an alternative approach to the electronic submission of production report information to DEP when certain operators, such as members of Pennsylvania Independent Petroleum Producers (PIPP), do not have the capability to submit its information electronically to the Department. Perry responded that DEP will work with those operators to establish an alternate approach.

Ochs asked what was intended by the addition of the words “arrange for the submission of” in Section 78.122(14)(b) as it relates to the submission of completion report data to DEP. Perry explained that this amendment was requested by the company Halliburton since it is a major supplier of hydraulic fracturing products used by operators. Specifically, Halliburton wanted the ability to submit chemical information directly to DEP rather than providing this proprietary and trade secret information to operators. Klapkowski explained that this does not create a separate provision to what is already required for operators to complete and submit a completion report to DEP.

PUBLIC COMMENT:

Chairman Ochs extended an opportunity for members of the public to provide public comment to the board.

Mr. Arthur Stewart, Secretary of the PA Grade Crude Coalition, provided additional verbal public comment that focused on concerns of the final rulemaking. In particular, Stewart focused his statements about the impact of the regulations on small business and that DEP did not rely on data in the development of this rulemaking. Mr. Stewart urged COGAC to not advance the final rulemaking in its present form to the EQB until DEP reveals all of the data that was used in the development of the rulemaking.

[BREAK - The meeting reconvened at 3:43 pm.]

NEW BUSINESS

Resolution

Ochs invited any topics of new business and Grindle stated that he wanted to present a written Resolution to COGAC for discussion. Grindle distributed the written resolution

to members of the committee and DEP representatives and read the resolution in its entirety.

Cline moved to accept the Resolution and Waite seconded. Ochs asked if any individuals from the public or committee had any additional comment. No comments were provided by the public. Ochs commented that he fully endorsed the language contained in the Resolution and emphasized that he believes that it outlines what is needed for the committee to do the best job possible.

Seismic Monitoring

Waite made a motion to delay the discussion of the seismic monitoring agenda item to a future COGAC meeting given that the meeting was running late. Motion was seconded by Cline and passed unanimously.

2016 Meeting Dates

Todd Wallace discussed a series of suggested meeting dates for calendar year 2016 that were shared with COGAC members and advisors in advance of the meeting.

The suggested COGAC meeting dates for calendar year 2016 are as follows:

January 13, March 30, May 18, August 24, November 2

Waite asked if it is possible to cancel any of these meeting dates at a later time if it is determined that a previously scheduled meeting is not necessary. Wallace responded that it is easier to cancel a meeting than to add a meeting to the schedule in the future.

McConnell stated on behalf of the board that these dates are acceptable.

Clean Power Plan Update

Wallace reminded the committee that DEP plans to provide a presentation about the Clean Power Plan to members of COGAC and TAB at some point in the future. More information will be provided when the logistics of this presentation are available.

Adjournment

A motion was made to adjourn the meeting. Motion was moved and seconded. Motion passed and meeting was adjourned at 4:09 pm.