

MINUTES
OIL AND GAS TECHNICAL ADVISORY BOARD MEETING
June 12, 2013

A meeting of the Oil and Gas Technical Advisory Board (TAB) was held on June 12, 2013, in Room 105 of the DEP Rachel Carson State Office Building, Harrisburg.

TAB MEMBERS PRESENT

Chairman Robert Watson, Burt Waite, and Gary Slagel.

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Deputy Secretary Scott Perry, Kurt Klapkowski, Elizabeth Nolan, Eugene Pine, M. Seth Pelepko, Harry Wise, Todd Wallace, Jessica Shirley, Daniel Lapato, Ian Irvin, Marge Hughes, and Darek Jagiela attended from DEP.

INTRODUCTION AND OPENING REMARKS

Chairman Robert Watson called the meeting to order at 10:01 a.m. and introductions followed.

APPROVAL OF DRAFT MINUTES FROM THE TWO PREVIOUS ADVISORY BOARD MEETINGS

Chairman Watson motioned for approval of the draft minutes from the February 20, and April 23, 2013, O&G TAB Meetings from the other board members. Burt Waite and Gary Slagel seconded. The motion to accept the minutes was passed.

ESTABLISHMENT OF TAB WORKGROUPS TO CONSIDER ISSUES RELATING TO THE DRAFT PROPOSED RULEMAKING, 25 PA. CODE CHAPTER 78, SUBCHAPTER C (SURFACE ACTIVITIES)

A) ISSUES FOR WORKGROUP CONSIDERATION

Deputy Secretary Scott Perry said the core issues the Department established from comments it received for further evaluation were: 1) Public Resource Protection 2) Pre-hydraulic Fracturing Assessment 3) Waste Management at Well Sites and 4) Water Supply Restoration Standards.

B) PARTICIPANTS AND PARTICIPATION

Perry asked for the participants representing the organizations that were interested in taking part of the upcoming TAB subcommittee meetings. The participants then informed the TAB and the Department which subcommittees they would be involved in.

Jim Erb stated that the American Petroleum Institute would like to participate in all four subcommittees.

Jean Mosites stated that the Pennsylvania Independent Oil and Gas Association would like to participate in all four subcommittees.

Terry Bossert stated that the Marcellus Shale Coalition (MSC) would like to participate in all four subcommittees, but that different representatives from the MSC might attend each meeting.

Roberta Winters stated that the League of Women Voters of Pennsylvania would like to participate in all four subcommittees.

John Walliser stated that the Pennsylvania Environmental Council would like to participate in subcommittees 1, 2, and 3.

Ronald Ramsey stated that The Nature Conservancy would like to participate in the Public Resource Protection Subcommittee.

Cynthia Carrow stated that the Western Pennsylvania Conservancy would like to participate in the Public Resource Protection Subcommittee.

Deborah Goldberg stated that Environment Coalition would like to participate in all four subcommittees. She asked for the scope of the topics, and if they are the only items up for discussion. Perry responds that these topics were established by TAB for further subcommittee discussions.

Arianne Proctor stated that the Department of Conservation and Natural Resources would like to participate in the Public Resources Protection Subcommittee.

Michael Arnold stated that the newly formed Pennsylvania Grade Crude Oil Coalition would like to participate in all four subcommittees.

Emily Krafjack stated COGENT would like to participate in subcommittees 1, 3, and 4.

Vince Straub stated that the Pennsylvania Independent Petroleum Producers would like to participate in all four subcommittees.

Watson asked who would be representing the Department. Perry responded the he and Kurt Klapkowski would be involved in all subcommittees along with other employees of the Department pertinent to each subject.

C) WORKGROUP STRUCTURE AND GOALS

Deputy Secretary Perry asked TAB how the meetings should be structured, remarking that they could be sequential. He expressed the Department would prefer not to have a meeting once a week and incur excessive travel time, asking how the meetings could be lined up to make it convenient for all stakeholders. He asked for feedback from the organization representatives and TAB as to how they would conduct these meetings.

Slagel said that two days of meetings would be preferred, but that having an additional meeting might be required for a couple of the issues being considered. Watson remarked that concentrating these meetings would minimize travel and time needed by the interested parties. Perry asked if discussion could be made about dates and locations.

Slagel asked for clarification about the subcommittees, questioning if they were going to operate on a consensus basis or a majority vote basis. Waite commented that he believed TAB should make the final call about the official recommendation to the Department, to which Perry agreed.

Watson wanted Perry to reiterate that TAB only advises the Department, it does not make legislation. The Oil and Gas Act of 1984 established TAB and the 5 person board. Jean Mosites read the provision that specifies the representatives that sit on the O&G TAB. Perry appreciates the long serving members who are at the current TAB for their service to the Commonwealth. Slagel said he thought it was TAB's intention for the results of the subcommittees to be given a higher level of evaluation and the consideration from the Department as opposed to draft rules. Daniel Lapato said the subcommittees will not substitute the regular regulatory process and public comment, and that the Department is going above and beyond its responsibility.

D) MEETING DATES AND LOCATIONS

It was mentioned that DCNR has a facility in the southwest part of the state that might be able to accommodate the meetings. Chairman Watson noted that PIOGA and MSC have decent facilities, but asked Scott Perry if it would be alright to hold a public meeting at a trade organization, to which Perry replied that he'd have to look into it. A member of the audience asked for a more central location.

Perry said he is looking at three two day meetings, 6 days total. Daniel Lapato explained the reasoning behind this approach. Perry advised that all six may not be needed; asking if anyone had a preference for frequency of the meetings while mentioning that the entire summer is open.

Slagel asked for a new timeline regarding the Environmental Quality Board (EQB), to which Perry responded that the regulations are going to be proposed at the next EQB meeting in July 2013. Perry informed TAB that the document is currently set in stone for the next EQB due to Department timelines. Kurt Klappowski said the proposed rulemaking will likely be posted in the PA Bulletin in mid-October, followed by a 60 day public comment period, which will provide a significant amount of time between then and the time of this meeting.

Watson asked the Department how long before the subcommittee meetings could be scheduled. Lapato responded saying officially two weeks, but 30 days is more practical. Jessica Shirley suggested holding the meetings after July 4. Lapato laid out a timeline of July, August, and September. Further discussion amongst the meeting participants established September 18 & 19 to replace the next formal TAB Meeting. The first subcommittee meeting on July 17 & 18 would be held in the southwest region of the state, the second subcommittee meeting held on August 14 & 15 in State College, and the final set was arranged for September 18 & 19 to be held in Harrisburg.

One of the subcommittee members asked if it was possible to have a designated alternate in case the primary representative is unable to attend. TAB responded that they anticipate this may happen. In light of that, Ron Ramsey asked if conference call accommodations could be made.

Slagel asked what can be expected as far as information available prior to these meetings. Perry said for the first set of meetings the Department would be looking for the participants to provide their issues to the entire subcommittee. Perry stated he is willing to be the repository of comments and able to circulate them to the group two weeks prior to the meeting.

Slagel said TAB submitted a list of concerns and issues to be addressed, and asked if that would be a starting point distributed to the subcommittee participants to determine what issues they would like to address. Perry said he would provide the subcommittee members with the comments on the draft proposed rulemaking that DEP received.

Perry noted that Anadarko had submitted comments and should be represented. Nathan Bennett said Anadarko would like to participate in all four subcommittees.

Perry said he would like to discuss the key points of each subject. Terry Bossert said the MSC submitted extensive comments on the first draft and asked if the Department would like new comments on the entire current rulemaking. A representative of Hydro Recovery said they also have comments, to which Perry replied that the Department should be able to address them directly.

1) General Comments on Public Resource Protection

Perry asked if the scope of the jurisdiction for public resources should be expanded. He noted the other comments the Department received were about who is supposed to identify something at the well pad.

TAB's Comments

The phrase "may adversely impact" is a very subjective standard and TAB questioned if better options are available. TAB also asked if the public resource agency has an obligation to identify the uses of the resource, should operator still be obligated too. TAB asked what the Department would do if the public resource agency did not respond within the 15-day period and the alternate options available to operators at that point. TAB also questioned the Department on how these changes will affect conventional wells. TAB commented on the inclusion of "species of special concern" in this section. Concerns raised included whether it should be included since the term is not used in the statute, and if Perry is aware of the additional workload that this will place on his staff and if it can be justified. TAB also questioned if the scope of public resources listed in the regulation and the process for identification of functions and uses of public resources is sufficient.

Cynthia Carrow of the Western Pennsylvania Conservancy said they had concerns as to how the Department could prove conditions would be detrimental to the environment. Ron Ramsey said The Nature Conservancy advocates setbacks and other procedures to protect the resources listed in the section, along with more details about how the process will work. He also suggests terms in the rulemaking, such as discrete area, need to be defined better. Carrow asked about the species of special concern, to which Perry responded the law states that they are a public resource. Perry said PNDI was not tied in due to the fact that the Department is considering allowing operators to use the same plans at current well sites on new well sites in regards to species of special concern. He gave the example of rattlesnakes, saying that the operator would be compliant by continuing to implement measures that the Game Commission has allowed them to use in the past. Jean Mosites said PIOGA presented the Department with alternative solutions.

2) General Comments on Pre-Hydraulic Fracturing Assessment

Perry indicated that the purpose of this section is to identify abandoned and orphan wells that penetrate a formation to be stimulated and faults that may provide pathways for frac fluids to enter groundwater resources. Perry stated that the Department may also be interested in identifying operating wells in the same formation as unconventional wells to be stimulated.

Perry provided TAB's comments on this issue. First, TAB questioned what evidence exists to show horizontal well communication with abandoned wells. Second, what if the landowner fails to provide the specific location of the wells in question. Should action be taken to locate the well? Third, what action should a well operator take if the landowner takes too long to respond? Fourth, if the response indicates a search may be necessary but the landowner refuses access to the operator, what should DEP do? Fifth, DEP has suggested a pre-hydraulic fracturing geologic analysis, which is currently not a best management practice; what is the relative value of conducting such a survey compared to impacts to nearby wells. If a landowner does not disclose the location of a nearby well, should the landowner have any liability in the event communication of wells occurs. What will constitute refusal of a landowner to participate in such a survey?

Ron Ramsey said The Nature Conservancy would like to touch on the materials disclosed to the Department, and the type of testing that operators may have to do for assessment. What types of monitoring and mitigation or prevention will well operators be required to conduct relating to these wells? The issue of the proper scope of the overall area of assessment was also questioned. The suggestion was made that if the landowner doesn't have information about abandoned wells, that there still be a requirement for well operators to conduct a survey. PIOGA expressed concern that the scope of the investigation to meet due diligence be specified by the Department.

3) General Comments on Waste Management at Well Sites

Perry indicated that the Department is interested in the creation of a permitting process similar to centralized impoundments for tank farms. The Department is also concerned about odor control at centralized impoundments, included but not limited to removing hydrocarbons from flowback fluid. The Department wants to consider adding fencing requirements for centralized impoundments. The Department would like to discuss management of wastes in pits at unconventional well sites, should there be additional protective provisions there, or even possibly requiring storage of wastewater in tanks?

Perry then summarized TAB's comments regarding analyzing sludges and toxic wastes after drilling. Perry noted that the Department is currently working on truncated testing procedures relating to naturally occurring radioactive materials, limited to a holding time of 3 days. TAB questioned whether removal of volatile organic compounds from flowback should be required and that such removal was not a best management practice. TAB questioned whether there was a need for freshwater impoundment embankment construction standards, and whether the seasonal high groundwater table is an issue for such impoundments.

Deborah Goldberg suggested that in the category of odor and volatile control, the Department should consider adding setbacks from nearby residences to the regulation. Perry responded that we do have setbacks now. The concern was raised that such setbacks only dictate centralized impoundments locations, but not setbacks for on-site pits. Perry responded that the Act established setback requirements for well sites.

4) General Comments on Water Supply Restoration Standards

Perry stated that Act 13 coined a new term, leading to the proposed regulation, due to the law stating that the restored or replaced water supply must meet or exceed Bureau of Safe Drinking Water standards. Perry outlined the two possible interpretations of the language in the Act. First, if you had water that was worse than drinking water standards, you will get replacement water that meets drinking water standards. If your water was better than ("exceeded") drinking water standards, the water supply owner will receive replacement water that is as good as the water before drilling impacted the supply.

Under the second interpretation, if the water supply was better than drinking water standards, the replacement water supply need only meet those standards, not equal the water quality prior to drilling. If you had water that was worse than ("exceeded") drinking water standards, you will only get replacement water that is the same quality as prior to drilling (that is, does not meet drinking water standards).

Perry indicated that the second interpretation reflected Department policy for many years prior to the passage of Act 13, as well as the mining program's current policy. The Department believes that Act 13 altered the existing policy so that if your water was better than or "exceeded" drinking water standards, you should get that better water again after it is impacted.

Perry indicated that several concerns have been raised about this interpretation, including the viability of providing a supply that is better than safe drinking water quality standards and the variability of groundwater quality over a period of time. TAB has asked to have further discussions related to the decision-making process and the Department's current interpretation regarding water supply restoration.

5) Public Comment

A member of the public asked how the Department will define "comparable water" for water supply replacement – will it be on a parameter-by-parameter basis, and how can we address the vagaries of fluctuating groundwater quality over time?

Teresa McCurdy raised issues about the Spill Policy and spills and releases into secondary containment. Klapkowski suggested that perhaps this topic could be squeezed in under the "onsite waste management" topic. Perry and the TAB agreed, with Perry indicating that the topic of onsite waste management would be expanded to address the additional issues, including spills and releases and freshwater impoundments. No further comments were issued or addressed.

NEW BUSINESS

Scott Perry said he wants to reiterate what you can expect from the Department in the coming days. Perry asked for Microsoft Word copies of everyone's comments on the draft proposed rulemaking so that the Department can distribute them to all participants prior to the next meeting. Elizabeth Nolan suggested that the Word documents requested be provided by the end of this week.

Perry stated that TAB had asked for an update on the Department's quarterly integrity inspection form. Eugene Pine said he would defer the specifics to Seth Pelepko. Pine said these forms will capture the information concerning well integrity required from the February 5, 2011 final rulemaking.

Pine said he did capture data and gave examples to the well integrity workgroup on May 14 and asked for comments by the end of May. Pine listed the names of organizations and operators that submitted comments by the deadline. He noted that there is a lot of redundancy among operator's concerns. Pine said he expects to have an internal meeting and a general response to the comments. To address technical concerns, Pine indicated intent to resurrect a casing and cementing workgroup for a late July meeting.

Burt Waite asked Pine about noncompliance and whether it would become a Notice of Violation (NOV) in the near future before the forms are completed. Pine indicated that the Department would exercise enforcement discretion but that the Department encourages operators to proceed to monitor their wells for mechanical integrity even in the absence of an approved form. Slagel said that after seeing some of the comments the Department received from various associations that he is glad that the Department is going to restart the casing and cementing workgroup to iron out more of the issues.

ADJOURN

A motion to adjourn the meeting was made by Chairman Watson at 11:41 a.m.