

MINUTES
OIL AND GAS TECHNICAL ADVISORY BOARD MEETING
April 23, 2015

A regular meeting of the Oil and Gas Technical Advisory Board (TAB) was held on April 23, 2015 in Room 105 of the DEP Rachel Carson State Office Building, Harrisburg.

TAB MEMBERS PRESENT

Bryan McConnell, Robert Hendricks, Casey Saunders, Fred Baldassare, David Yoxtheimer. Non-voting members present: John Walliser, W. Michael Griffin, Emily Krafjack, Barbara Kutchko.

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

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

CALL TO ORDER: Deputy Secretary Scott Perry called the meeting to order at 9:56 a.m.

As an initial matter, the Pennsylvania Independent Oil and Gas Association of Pennsylvania (PIOGA) wrote a letter to the members of TAB asking them to take action on the composition of TAB and the removal of non-voting members. Elizabeth Nolan said Section 3226 Oil & Gas Act does not contain any limiting language for the addition of board members and does not say the TAB has to exist exclusively comprised of voting members. Perry said the Department is asking TAB to vote on how it does business as reflected in the Bylaws, not its composition.

Motion: Moved by Hendricks that nominates Bryan McConnell for chairperson. Saunders seconded the nomination. McConnell unanimously approved as chairperson.

A discussion of the draft changes to the Bylaws followed. Klapkowski relayed that DEP would like to remove unconventional from the proposed bylaws as conventional issues will be brought before the board as well. Hendricks said they were not aware if they had that responsibility, asking how TAB will be involved in conventional issues. Perry noted it is in the Department's best interest in receiving as much feedback as possible. Klapkowski said the Department is nine months away from bringing the documents to the Environmental Quality Board (EQB), and wants to hold discussions on both documents with TAB before the rulemaking is brought before the EQB, giving TAB a formal action point on the final rulemaking.

McConnell requested to establish communication with COGAC so they can both be on the same page. Klapkowski responded that TAB would need to speak with COGAC on whether they would want to play an ad-hoc role or if they would rather stand alone.

There were major changes to the draft Bylaws Article IV concerning the addition of the non-voting members. Non-voting members changed to non-voting advisors. For the Bylaws, Hendricks questioned using the phrase “public interest” for the non-voting TAB advisors, and would like to identify a difference between the voting and non-voting members. Hendricks expressed that he is representing the public interests as well as Shell. Perry removed that the non-voting members will represent the public interest from the bylaws, and replaced the language with “selected by the Secretary of the Department”.

The Department proposed a four-year term of service, with staggered terms in the draft Bylaws. Hendricks stated the letter from the Governor indicated members were elected for four years, and felt that no one should be limited to two years. Klapkowski said if we keep the course, in late 2018 we’ll need to consider re-nomination or new nomination. Bylaws now say that members and advisors shall serve for a period of four years or until such time as a successor has been named. TAB members would have the option to designate their alternates. Alternates should be submitted to the chair, and then the chair would submit to the Department. Perry says it does not have to happen today, but the Department would like feedback on the question.

TAB decided that if the chair cannot be present, prior to the meeting the chair can designate another TAB member to serve as the chair at the next meeting. TAB requested to change the term “non-voting member” to “non-voting advisor.”

Quorum requirements were established, with four voting members or their designated alternates constituting a quorum. For meeting frequency, no less than semi-annually and the chair can call meetings as deemed appropriate by at least three members of TAB. An amendment of the Bylaws shall be “provided” instead of being “mailed,” but that provision of draft amendments to the Bylaws shall be done by verifiable methods.

Motion: McConnell made a Motion for a vote on the proposed by laws absent of Section IV approval, with voting members unanimously approving. Motion carried.

UNFINISHED BUSINESS:

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78A

Hendricks brought up a minor edit on the definition of “approximate original conditions,” saying it closely resembles closer to exact than reasonably exact. TAB asked if the word “closely” could be changed. Joseph Adams replied he did not believe changing that word would change the intent of the regulation.

Hendricks said from feedback he has received, there is a general concern that the “threatened and endangered species” definition is beyond the Pennsylvania Natural Diversity Inventory (PNDI) and clarification and guidance are needed to make this definition more effective. Walliser said the updated PNDI tool should be online this summer.

Nolan said that section 78a.15(b.1) is authorized under the Clean Streams Law, in the Robinson Township decision the Supreme Court invalidated section 3215(b)(4) of the 2012 Oil and Gas Act, as they found the setbacks were not separable from the waiver. Although the authority under the Oil & Gas Act was invalidated, the Department has separate authority and obligations under the Clean Streams Law to ensure protection of the waters of the Commonwealth.

PUBLIC COMMENT ON DRAFT FINAL RULEMAKING, CHAPTER 78A

Aaron Jacobs Smith of Clean Air Council encouraged the Department to remove mention of pits in section 78a.56 (relating to temporary storage).

Amy Nassif of Mars Parent Group said their group has consulted with industry leaders for health and safety impacts on children. Their research concludes that health and safety hazards are present within 2 miles of an unconventional well. Ms. Nassif requested that setbacks of that distance be established to protect school children from the impacts of drilling.

Matt Step of Penn Future noted that all non-regulated methane emissions in the State were increasing, and that the report issued by the Department shows increased regulations addressing methane releases are needed.

Andrew Williams of the Environmental Defense Fund supported the Department's efforts to increase the regulations and applauds the addition of non-voting members of TAB.

SUMMARY OF DRAFT FINAL RULEMAKING AMENDING CHAPTER 78A (CONTINUED)

In section 78a.17, Hendricks requested an increase from 16 to 24 months for due diligence permit expiration.

Baldassare asked if the Department talked to Alberta about any issues they ran into with implementing their noise ordinance. Alberta's Directive 38 has been in place for 35-40 years, and the current document probably reflects any issues they may have encountered. The Department responded that Directive 38, as well as other existing guidance, would serve as a model for the Department's efforts to address noise impacts.

Under section 78a.51, Hendricks asked that a "contaminants of concern list" be developed for Oil & Gas Activities similar to the list developed for storage tank releases. Perry said there are two issues handled in this section, did Oil & Gas operations impact the water, and how do they rectify it if they did. Hendricks said there has to be a technical assessment done to make sure the impact is not naturally occurring. Baldassare stated that there needs to be an overview of the sampling.

Saunders raised the issue of coordination between coal and oil and gas operators. He stated that there are 425 wells in the process of being permitted and 183 wells in the process of being

drilled, which is 600+ wells total. He noted that neither side wants a coal operator to hit a live Marcellus well. He will submit specific language on this issue, requesting that the location be verified before drilling.

Klapkowski said the centralized tank storage in sections 78.57a and 78a.57a are a potential replacement for centralized impoundments. Section 78a.59c will require existing impoundments to be closed or permitted under the residual waste regulations within 3 years of the effective date of the new regulations. The centralized tank storage section does represent the Department's view of requirements for aboveground tank storage of residual waste.

Klapkowski said the Department made changes to the area of review section, adding language about penetration of formation to be stimulated to try and limit the need for operators to come in and monitor shallow conventional wells in these areas. The Department does not believe the hydraulic fracturing will reach that level, and there really is no risk there. Perry noted that communication with active wells is a much more frequent occurrence than communication with inactive or abandoned wells.

Seth Pelepko said the Department took steps to define the geometry of the area required for the survey of inactive wells, and noted that a detailed guidance document is planned for this topic.

New business:

The next TAB meeting was set for Tuesday, August 25, 2015.

Adjournment: The meeting was adjourned at 1:16 PM.