

MINUTES
CONVENTIONAL OIL AND GAS ADVISORY COMMITTEE MEETING
August 27, 2015

COGAC MEMBERS PRESENT

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Deputy Secretary Scott Perry, Kurt Klapkowski, Elizabeth Nolan, Kimberly Childe, Joseph Adams, Seth Pelepko, Joseph Kelly, Bruce Jankura, Susan Ghoweri, Harry Wise, Ann Mathew, Todd Wallace, Jessica Shirley.

CALL TO ORDER

The 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 August 27, 2015. The meeting convened at 10:00 AM.

REVIEW AND APPROVAL OF BYLAWS/ELECTION OF OFFICERS

COGAC began the meeting with a discussion of draft Bylaws provided by the Department. Waite discussed the rights of COGAC as compared to TAB to present in front of the Environmental Quality Board (EQB). Perry noted that TAB is created by statute and therefore has a statutory right to formally present information to EQB. COGAC certainly has the right to write a letter requesting that privilege to the EQB.

Motion: to accept bylaws as drafted, by Waite, seconded by Ochs. Unanimous vote to approve the bylaws as drafted. Motion carried.

Motion: to nominate Ochs as chairman of the committee, by Grindle, seconded by Yingling. Ochs accepted the nomination. Vote was unanimous to approve Ochs as the chairman. Motion carried.

REVIEW AND APPROVAL OF MINUTES

Waite stated he would like the minutes to reflect the committee's requirement to abide by the Sunshine Law and the advisory board's freedom to meet and discuss issues, as they deem appropriate outside of the public. (Letter attached)

Motion: to amend the minutes to reflect the previous discussion of the Sunshine Law by Waite, seconded by Cline. Vote was unanimous to approve motion. Motion carried.

Cline asked to have the minutes reflect conversation regarding the Comment/Response document

and availability of forms to those without a computer. Table approval of minutes pending additions. Chairman Ochs indicated he would get details to DEP.

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 and 5,000 public comments on the Advanced Notice of Final Rulemaking, including the efforts to reach this point in the process and next steps.

Klapkowski stated additions, deletions, and changes were listed (see Draft Final – Form Rulemaking). Many of the changes are for clarity and not substantive.

As an initial matter, Klapkowski noted that the Department removed noise mitigation from Chapter 78a and centralized tank storage from Chapters 78 and 78a.

Ochs asked that the Department’s consideration of the need for regulations and the estimated cost of compliance of small business be provided for all changes. Perry said cost analysis was based on current business practices and available in the Regulation Analysis Form.

“Common Areas of a School’s Property” this definition is added to the existing public impact screening process and is for communication purposes with entities outside of the purview of the current regulation as it stands. This would include publicly used school facilities such as sports field, track, playground, etc. After discussions with DEP Bureau of Waste Management, the term “containment systems” was deleted and broken into “primary” and “secondary containment.” Ochs questioned if “gathering pipeline” definition should be deleted. Klapkowski stated that the Department would consider the deletion. “Pennsylvania Natural Diversity Inventory (PNDI)” and “PNDI receipt” definitions were added. “Other critical communities” definition was updated to utilize the PNDI receipt information. “Playground” definition was added to include community-operated recreational facilities that are open to the general public but are not municipal parks.

“Primary containment” is the actual tank, pit, vessel, or drum. “Secondary containment” is the physical barrier/containment around the primary containment. Waite asked if lining a pad would be considered to be secondary containment. The Department replied that it would not be considered secondary containment. Secondary containment was intended to minimize the impact of releases and whole pad liners would not accomplish that goal. Adams stated that there must be control from co-mingling by berm or some other barrier.

“Wellhead protection area” definition refers to Section 109.1 (relating to definitions). COGAC raised the issue of where to find these areas on maps. Perry agreed to look into providing the information on which municipalities are participating on DEP website. For public resource impact screening, the draft final rulemaking returned to proposed language from “constructing a well site” to “drilling a well” as the trigger. Under the 2012 Oil and Gas Act, the public resource impact screen is tied to drilling a well. Anti-degradation requirements are added to 78.15(h) under the Clean Streams Law to be consistent with the current well permit erosion and sediment

control plan.

The well permit is valid for 12 months if drilling has commenced. If drilling has commenced, then drilling with due diligence requires completion of drilling within 16 months. A permit extension for good cause is available. If drilling has not commenced within the first 12 months, a single renewal for 2-years may be applied for.

PUBLIC COMMENT:

Comments were received from Representative Cris Dush from Indiana County: First, Act 126 legislative intent was not met in the rulemaking process; Perry stated that this issue would likely be settled in court. Second, noise violations are not under Department jurisdiction. The Department replied that noise poses both a public nuisance and health concern. Third, is the public resource impact screening a setback or not - should this be explicitly stated? The Department responded that the regulation was clear that this was a screen only.

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.

Waite voiced an objection to replacing the phrase “oil and gas activities” with “oil and gas operations” in Section 78.51.

Subsection 78.51(d)(2) is codifying the language in the 2012 Oil and Gas Act. Waite asked if policy or guidance regarding water quality is being addressed. Adams stated that DEP has been working on technical guidance regarding water quality and will likely be creating a stakeholders group. Ochs questioned and the need to restore water supplies that are for industrial or agricultural to drinking water quality. The discussion noted that subsection (e) which is not shown in the copy of the draft rulemaking addresses water not used for human consumption. No changes were proposed to that subsection. Klapkowski addressed section 78.52(d) that allows for submission of the predrill survey 10 business days prior to the commencement of drilling. This change allows for operator control over the completion of the survey based on drilling schedules and for water quality sampling closer to time of drilling.

Pelepko explained the area of review section of the draft final form rulemaking. He stated that the area of review work group draft product is expected by the end of this year, including forms being created and recording templates. Waite was concerned that according to section 78.52a(a) the well top and bottom must be identified for all wells. Pelepko clarified that intentionally deviated wells would require top and bottom locations, but vertical wells would be assumed to be the same location. Subsection (e) allows the Department to act on substandard surveys or monitoring plans.

Cline questioned notifying the Department at least 3-business days before commencing construction of a pit used during servicing, plugging, or recompleting the well. The concept of a small size pit without notification was discussed. Perry recommended 30 square feet and said

the Department would consider adding a cutoff. The concept of reviewing the pit slope requirement from section 78.56 was discussed. Ochs raised the idea of setting a time limit requirement to trigger the pit slope requirement (90 days in use). The Department suggested a site limit, with one pit per site. Perry proposed further discussion on this subject before the October meeting.

Radiation action plans would be required to be in place in case of emergency for operators processing waste on-site under section 78.58(d). This change does not generally affect those sending waste product to treatment facilities.

Waite stated that submitting a Remedial Action Completion Report within 45 days of the remedial action plan being fully implemented is not reasonable. Some of the activities would not be completed within that time. The Department agreed to consider changes to section 78.66 to address this timing issue.

Ochs brought up why condensate is not being looked at in the same manner in both sections 78.57 and 78.64. The Department stated that waste storage is more stringent than product that is appropriate given the nature of the stored treatment of materials. Radioactive logging sources was added to the draft final rulemaking to fix a cross-reference to a Radiation Protection regulation that does not exist anymore.

Pelepko discussed monitoring abandoned and plugged wells as part of the monitoring plan. Ochs asked to go back to site restoration to discuss written consent of the landowners. Grindle asked if a lease could be used for written consent for storage of equipment. The Department responded that the regulation reflected is the exact words from the statute.

The next COGAC meeting will be Thursday, October 29, 2015.

Perry stated there would be a webinar scheduled prior to the October meeting for further discussion of some of the more complex issues. Three topics were requested to be discussed by COGAC:

- (1) Secondary containment for the oil and condensate tanks and brine
- (2) The use of a lease as a written consent of landowner for restoration
- (3) 2:1 Pit slope requirements and size or time cutoffs for the requirement to apply

NEW BUSINESS:

Cline asked the Department to work with industry to find an answer to the high treatment cost of production fluid wastes in brine plants.

ADJOURNMENT:

Motion: to adjourn; by Waite, seconded by Cline, with voting members unanimously approving.

Motion carried.

The meeting was adjourned at 3:56 PM.

DRAFT