

MEETING MINUTES
Conventional Oil and Gas Advisory Committee
March 30, 2016

COGAC MEMBERS PRESENT

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

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

DEP STAFF PRESENT

Scott Perry, Kurt Klapkowski, Elizabeth Nolan, Joe Adams, Seth Pelepko, Myron Suchodolski, Susan Ghoweri, Todd Wallace, Jessica Shirley, Joe Kelly, Ann Mathew

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 March 30, 2016. This meeting was open to the public. David Ochs (Chair) called the meeting to order at 10:01 am.

OPENING REMARKS

David Ochs reported that David Yingling has resigned as a voting member of COGAC. Ochs expressed that he is willing to recommend the names of alternate qualified candidates to DEP for consideration. Scott Perry thanked each of the members of COGAC for their ongoing service as committee members.

APPROVAL OF MINUTES

Ochs asked members of COGAC if they had an opportunity to review the December 22, 2015 and January 13, 2016 draft meeting minutes and if additional time was needed to review the draft minutes.

Motion was moved by Burt Waite to accept the December 22, 2015 and January 13, 2016 minutes. The motion was seconded by Mark Cline. Motion carried unanimously.

UPDATE ON STATUS OF CHAPTER 78/78a RULEMAKING AND OPPORTUNITIES FOR TRAINING

For the benefit of the members of COGAC and the public, Kurt Klapkowski provided a verbal summary of the remaining review and approval steps related to the promulgation of Chapter 78/78a Surface Activities Rulemaking. Klapkowski stated that DEP is committed to conducting internal training for DEP oil and gas staff and will also provide external training to the regulated community and public.

DEP plans to offer training sessions throughout the state prior to publication of the final rulemaking.

Cline asked if separate training opportunities will be offered to conventional operators versus unconventional operators. Klapkowski responded that DEP is considering this approach and is also considering tailoring each training session to those individuals who register for the training. Klapkowski reminded COGAC that DEP is willing to respond to any questions raised by operators even before the formal training sessions are scheduled.

TRANSITION FROM EXISTING SURFACE ACTIVITIES REGULATIONS TO NEW REGULATIONS

Ochs asked Klapkowski to provide some insight about the process for transitioning from the current surface activities regulations to the final proposed surface activities regulations. Klapkowski stated that the final form rulemaking will be effective on the date that it is published in the Pennsylvania Bulletin. That said, Klapkowski explained that there are some instances where activities that commenced prior to the effective date of the final rule would be allowed to proceed as initiated. For example, an operator that initiated a cleanup under the existing rule would be allowed to continue cleaning up the spill as initially planned. Similarly, Klapkowski stated that if an operator commenced drilling prior to the effective date of the rulemaking, the operator would not be expected to conduct an area of review survey at that point in the process. Klapkowski stated that if a permit is submitted to DEP for renewal, then DEP would consider the requirements of the rule that is in effect at the time the permit is renewed. Finally, Klapkowski stated that tanks that are replaced after the effective date of the rulemaking must meet the requirements contained in the final rulemaking.

Klapkowski stated that additional clarity will be provided during the training sessions that are provided to operators. Klapkowski also stated that it is DEP's intent to make training available on its website; possibly in the form of YouTube videos.

Ochs asked if DEP is considering developing a "Frequently Asked Questions" (FAQ) document that will help clarify for operators the transition periods related to the various sections of the final rule. Klapkowski responded that DEP intends to develop such a document since it benefits both operators and DEP staff. Perry invited Ochs to provide to DEP specific transition related topics that are of particular interest to operators so DEP can be certain to provide targeted direction and assistance. Ochs responded that the key topics seem to include: area of review, the spill policy, public resources and water supply complaints. Perry pointed out that the water supply complaints section of the rule codifies the standards that were established in the Oil and Gas Act of 2012, so those requirements have been in effect since that time.

Ochs inquired whether the training that is developed by DEP will specifically address what is characterized as inconsistencies between what is currently required by regulation and what will be required per the final regulations versus how DEP inspectors currently

conduct inspections (i.e., signage requirements). Perry responded that DEP is willing to address any perceived inconsistencies that are raised by operators.

DISCUSSION OF DRAFT FORMS

Klapkowski explained that during the COGAC meeting DEP intends to discuss the draft forms in two segments. First, DEP will discuss 18 surface activities related draft forms and will then discuss the remaining 7 subsurface activities related draft forms. A list of all 25 draft forms, as well as the actual draft forms, was provided to members of the committee in advance of the meeting and was also made available to the public on the DEP website.

Ochs asked DEP why certain forms were included on the list of forms contained in the Regulatory Analysis Form (RAF) but were not identified on the list of draft forms that was distributed to members of COGAC for review and comment. Klapkowski and staff provided an explanation for each form referenced by Ochs. In most cases, the information requested is not required to be reported to DEP on a specific form prepared by DEP. In other cases, no revisions are proposed to the form or the form is not intended to be developed.

Klapkowski explained that it is DEP's intent during the COGAC meeting to respond to any questions, comments or concerns related to the draft forms rather than getting into the minutia of every data field or box contained on each draft form.

Ochs and Bruce Grindle asked DEP if an operator can use existing well tender inspection forms to capture the information that is listed on the "Quarterly Maintenance Inspection Checklist". Joe Adams responded that DEP designed this checklist as a benefit for conventional operators; however, the operators may use its own form to track quarterly inspection results. Grindle also pointed out that the form states that the checklist must be maintained on the well site. Adams explained that the information must be maintained in such a way as to be available at DEP's request. Adams agreed to revisit the language in the instructions regarding the location where the information is required to be maintained.

Ochs, Grindle and Waite raised concern regarding the requirement for notarization of the forms that pertain to landowner consent and landowner waiver. Grindle expressed a concern that the requirement for notarization may deter landowners from signing these forms. Perry explained that DEP will take this concern under consideration.

Ochs re-emphasized during the discussion of the "Landowner Consent Form for Storing and Drilling Supplies and Equipment" that operators have advocated that a lease agreement serves the same purpose as the consent form. Perry stated that DEP does not intend to interpret private lease agreements or enforce private lease agreements. DEP plans for this consent form to serve as the vehicle to document written consent on behalf of the landowner to allow the storage of supplies and equipment. Doug D'Amore asked if the Department of Conservation and Natural Resources, as landowner, can include an addendum to the consent form. Perry explained that DEP would accept such an

addendum; however, it would not take the position of enforcing such addendums. Jim Seyler expressed concern that National Allegheny Forest lands are sometime used as “satellite storage” for equipment and supplies by conventional operators. Seyler believes that alternate locations off forest lands should be used for this purpose.

Ochs asked if the wells that are referenced in Section C of the “Oil and Gas Operators Well Development Impoundment Form” applies to wells owned by the “transferor” or “transferee”. Adams responded that this applies to the person who is receiving the wells (i.e., transferee). Klapkowski stated that DEP will consider adding some language in Section C of this form to clarify this point.

Related to the “Request for Approval of Previously Approved Alternate Waste Management Practices” form, Ochs asked DEP if it plans to make a list available to the public of alternate waste practices that have already been approved by DEP prior to these draft forms going into effect. Perry responded that DEP is willing to populate a list of such approved alternate waste practices on request by operators. Since DEP does not currently electronically track such practices, it would rely on operators to provide documentation of approved alternative waste practices and DEP would consider adding such practices to the list that will be developed. On a related matter, Ochs and Grindle asked if the method of storage of brine (i.e., brine tanks) are subject to alternate waste practices. Perry and Adams responded that alternate waste practices are only applicable to large modular storage tanks.

Ochs asked if the addition of sawdust to cuttings for disposal is considered an alternate waste practice. Adams responded that adding solidifiers to material that is transported off site for disposal is not considered an alternative waste practice; however, materials that are solidified for placement on a well site would be considered an alternate waste practice and would require DEP approval.

Ochs inquired whether the cutting and shredding of pad liners is considered an alternate waste practice. Adams explained that in many cases, the processing of pad liners for waste disposal involves cleaning and other processes. Perry stated that in cases where pad liners are processed on a well site, this would be considered an alternate waste practice and the operator should notify DEP using the “Request for Approval of Alternate Waste Management Practices” form.

D'Amore asked DEP if landowner consent is required for the land application of drill cuttings on a well site. Perry responded that DEP does not seem to have authority to require landowner consent in cases where drill cuttings are land applied on the well site. D'Amore asked about situations where drill cuttings are transported off the site for use in road construction and abandoned mine reclamation projects. Perry explained that when drill cuttings are transported off of the well site for beneficial reuse, the operator must obtain an individual waste permit from DEP’s Waste Program.

As it relates to the “Post Drilling Well Site Restoration Report”, Ochs asked if the waste code for hydraulic fracturing fluid contained under the heading “For waste disposed prior

to January 1, 2016...” should be waste code 804 rather than 805 (since this waste code did not exist prior to this date). Adams agreed. Ochs requested DEP to include in the instructions of this form several examples of materials or wastes that would be categorized as “other” in Section C of the form. Adams agreed.

As it relates to the “Post – Plugging Well Site Restoration Report”, Ochs raised the same comment regarding waste code 804 as mentioned on the form above. Ochs also questioned whether the word “contours” in the second check box of Section C should be “conditions”. Adams agreed to revisit the final proposed regulations to ensure that the proper wording is used.

As it relates to the “Request for Road-Spreading of Brine Approval Plan” and the “Monthly Brine Road-Spreading Report”, Ochs asked if taking a representative sample, rather than individual samples, for chemical analysis of brine is acceptable for the purposes of completing these forms. Klapkowski pointed out that DEP is concerned that if brine used for de-icing purposes does not meet adequate salinity percentages this could result in the inadvertent icing of roads. Perry stated that a sample taken from the well where the brine is generated would be acceptable for all brine generated from that same well in the future. Ochs asked if DEP would consider tying geography to the formation where the brine is generated so that a sample analysis could apply to multiple wells. Perry responded that until some historical data is available for DEP’s review and consideration actual samples will be required.

Ochs raised several questions about the applicability of the “Request for Road-Spreading of Brine Approval Plan” and asked DEP if this form should be replaced with two separate forms (i.e., one for deicing and a separate one for dust suppression). Adams agreed to revisit the content that is captured on this form and determine if it makes sense to create two forms to capture this information separately.

As it relates to the “Oil and Gas Operations Borrow Pit Registration Form”, Ochs pointed out two typographical errors. The first sentence of the instructions should be amended to refer to borrow pits rather than new underground or partially buried tanks. Also, the terms latitude and longitude are referred to twice in section B of the instructions. There was discussion about the possibility of whether some information that is submitted on the Well Record could serve in lieu of reporting the information using this form. DEP agreed to revisit whether this approach is acceptable.

[LUNCH BREAK - The meeting reconvened at 1:15 pm.]

As it relates to the “Consideration of Public Resources Form”, Ochs asked if DEP has had an opportunity to develop a list of wellhead protection areas as previously discussed. Perry responded that this list has not yet been developed, but DEP plans to do so.

At the conclusion of the discussion of the surface activities forms, Ochs asked how DEP plans to proceed with the forms after modifications are made based on discussion during the meeting. Ochs asked if DEP plans to make all changes prior to the meeting of the

Independent Regulatory Review Commission (IRRC) scheduled for April 21, 2016. Perry responded that DEP does not intend to make all changes to the forms prior to the IRRC meeting. Perry explained that DEP will post all modified forms on the DEP website for members of the committee and public to review before the forms are finalized. Adams reminded COGAC that even after the forms are finalized and posted on the DEP website, DEP will likely receive additional feedback from operators after they are placed in use. It's possible that fine tuning of the forms will occur as they are implemented and used by the regulated community.

At this point in the meeting, Seth Pelepko (Pelepko) transitioned to a discussion of the seven subsurface activities forms.

As it relates to the "Permit Application to Adopt an Oil or Gas Well", Waite asked how DEP will handle situations when an operator volunteers to plug an abandoned well, but does not want to take ownership of the abandoned well. Perry responded that the Environmental Good Samaritan Act is the appropriate vehicle to encourage this practice.

Ochs suggested that the landowner notification survey be revised to allow "someone with knowledge of the property" or the surface landowner to sign as an authorized representative on the survey. Pelepko agreed to revisit this matter and will consider this suggestion.

As it relates to the "Area of Review Landowner Survey for Vertical Oil Wells" form, Ochs stated that there appears to be a typographical error with question #1. The distance referenced in this question should be "500 feet" not "1,000 feet". Pelepko agreed that this is an error and will make this correction.

As it relates to the "Area of Review Landowner Survey Development Plan Option" form, Ochs suggested that the instruction that pertain to the API # be revised to include the following sentence: "If well has not been permitted, enter farm name and number as it will appear on the permit application". Pelepko agreed that this sentence should be added to these instructions.

As it relates to the "Area of Review Hydraulic Fracturing Communication Incident Report Instructions for Conventional Operations" form, Ochs suggested that the fifth sentence on the first page should read "...resolve the communication incident *before* *recommencing*...". Perry agreed.

DISCUSSION OF DRAFT TECHNICAL GUIDANCE DOCUMENTS

Discussion of draft "Guidelines for Implementing Area of Review Regulatory Requirement" (Area of Review policy):

Mark Cline thanked Pelepko and DEP for their efforts in working productively with the workgroup and being receptive to adjustments, edits and modifications to the Area of Review policy when appropriate. According to Cline, DEP agreed to make 243 changes

to this policy based on discussions during workgroup meetings. That said, Cline wanted to state for the record that the conventional industry requested that DEP develop a separate Area of Review policy to apply solely to conventional operators, but DEP declined to do so. Cline also stated that DEP refused to address various cost and small business alternatives in the proposed Area of Review policy.

Cline asked if the “5,000 feet” value on page 22 of the Area of Review policy should instead read “2,000 feet”. Cline stated this depth would be consistent with the definition of “visual monitoring” that is listed on page 6 of this same policy. Pelepko responded that the 5,000-foot reference was in error and that the change would be made.

Cline stated that it should be noted in Section III (AOR Geometry) that the predominant fracturing propagation trend lies in a northeast to southwest alignment. Perry agreed that this concept is worth including in this section.

Cline asked why it is necessary for operators to maintain documentation of attempts to contact adjacent operators for a period of up to five years as stated in the fourth paragraph of Section VI (A) [p. 17] of the policy. Pelepko responded that DEP recommends this record retention period, but this is not a requirement. Perry stated that DEP will clarify that this is a recommended practice and not a requirement.

Cline asked how an operator should document conditions at a well prior to hydraulic fracturing as stated in Section V (D) [p. 16] of the policy. Pelepko responded that all items listed in this section are recommended practices not requirements.

Cline suggested that the language in Section X (A)(1) and Section X (D) that directs operators to prepare a plan for plugging an abandoned well or actually plug an abandoned well should be amended to acknowledge that in some instances an operator may voluntarily choose to adopt the affected well. Pelepko agreed that the language in both sections will be modified to account for such situations.

Cline identified two additional instances where language directs the operator to plug an orphan or abandoned well, but it is possible that an operator could voluntarily choose to adopt the affected well. This language is found in Section XI in the eleventh and twelfth bullets that state “...(these wells must be plugged/re-plugged)...”. Pelepko agreed to revise this language also.

Discussion of draft “Policy for the Replacement or Restoration of Private Water Supplies”:

Adams reported that the Water Supply Restoration Workgroup met on March 15, 2016 and March 22, 2016 to discuss and work on this policy. Following the workgroup meetings, 10 members who participated on this workgroup developed a discussion/concept document dated March 28, 2016 that consists of 35 comments that were intended to be submitted to COGAC and the Oil and Gas Technical Advisory Board

for consideration. In the interest of time, Adams summarized the most significant categories of comments that were raised by the workgroup members.

Waite raised one additional comment that was contemplated by the workgroup that pertained to the possible applicability of municipal water well requirements to private residential water wells. The workgroup expressed concern that a number of municipal water well requirements do not pertain to private water wells.

MOTION: Waite made a motion for COGAC to accept the list of comments prepared by the members of the Water Supply Restoration Workgroup as part of COGAC's comments to DEP. Cline seconded the motion and the motion passed unanimously.

Ochs inquired about the next steps associated with advancing both technical guidance documents discussed during the COGAC meeting. Adams responded that he committed to convene one additional meeting of the Water Supply Restoration Workgroup. Cline asked if both technical guidance documents would go out for comment at the same time. Klappowski responded that they will likely be rolled out in a staggered fashion.

DISCUSSION OF DEP'S EFFORTS TO DEVELOP NEW CONTROLS FOR UNDERGROUND INJECTION WELLS

Perry stated that the U.S. Geologic Service (USGS) recently published a report that includes a forecast of earthquake-prone areas of the nation that includes disposal well induced seismicity areas. Perry stated that Pennsylvania is not currently listed as a forecasted area of concern in terms of induced seismicity. Perry provided a summary of DEP's efforts to evaluate possible effects of underground injection well disposal as it relates to potential seismic occurrences. DEP is currently evaluating seismicity issues carefully and is considering the possibility of future requirements to specifically address this matter.

PUBLIC COMMENT:

One public comment was received via the chat feature during the Webinar. Specifically, Ms. Michelle Wice stated that regarding landowner consent, DEP is interpreting gas company leases by not taking lease terms seriously. Perry thanked the requester for this comment and responded that the issue is not that DEP does not take this matter seriously, rather, he does not believe DEP is the appropriate entity to interpret private lease language and render determinations regarding municipal ordinances.

NEW BUSINESS

Spill Policy and Remediation Workgroup

Ochs stated that it is his understanding that Mr. Jeffrey Walentosky sent an e-mail to Perry and Klappowski requesting additional guidance on Section 66 of the Spill Policy. Walentosky suggested the formation of a workgroup to examine this matter further. Jessica Shirley of DEP's Policy Office added that the Cleanup Standards Scientific

Advisory Board recently expressed a similar interest, so Shirley suggested that perhaps the formation of a joint workgroup would be appropriate. Ochs expressed verbal support for this suggestion.

Alternate Meeting Location

Ochs inquired whether DEP would consider an alternate meeting location for the next COGAC meeting. Perry responded that he is open to an alternate location provided the overall costs associated with the meeting do not exceed current costs. It was suggested that if a meeting was held in State College that certain members of COGAC would not necessarily need overnight accommodations since travel to and from the meeting could occur on the same day. Perry agreed to investigate this recommendation and get back to COGAC.

Composition of Coal & Gas Subcommittee

Pelepko reminded COGAC that with the departure of Yingling, this also creates a vacancy on the Coal & Gas Subcommittee. Pelepko and Klapkowski asked COGAC to consider suggesting the name of another individual who could represent the interests of the conventional oil and gas industry; since this was the perspective that Yingling brought to the subcommittee.

Agenda Topics Tabled

In the interest of time, Waite suggested that the following two agenda topics be tabled until the next regularly scheduled COGAC meeting:

- Discussion and Consideration of Modifications to the Oil and Gas Compliance Report Viewer
- Update on Chapter 78, Subchapter D Proposed Rulemaking

Adjournment

Waite made a motion to adjourn the meeting. The motion was seconded by Cline. Motion passed and meeting adjourned at 4:11 pm.