

MINUTES
ENVIRONMENTAL QUALITY BOARD MEETING
January 21, 2014

VOTING MEMBERS OR ALTERNATES PRESENT

E. Christopher Abruzzo, Chairman, Secretary, Department of Environmental Protection (DEP)
Eric Kratz, alternate for Julia Hearthway, Secretary, Department of Labor and Industry – *by phone*
Kathryn Tartaglia, alternate for Barry Schoch, Secretary, Department of Transportation – *by phone*
Pamela Witmer, alternate for Robert Powelson, Chairman, PA Utility Commission
Sarah Clark, alternate for Representative Greg Vitali
Jonathan Lutz, alternate for Representative Ron Miller – *by phone*
Richard Fox, alternate for Senator John Yudichak
Adam Pankake, alternate for Senator Gene Yaw
Bill Capouillez, alternate for Carl Roe, Executive Director, PA Game Commission – *by phone*
Burt Waite, Citizens Advisory Council
David Spotts, alternate for John Arway, Executive Director, PA Fish and Boat Commission
Doug McLearn, alternate for James Vaughan, Executive Director, Pennsylvania Historical and Museum
Commission
Matthew O'Donnell, alternate for Jennifer Branstetter, Director, Governor's Office of Policy and
Planning
Cynthia Carrow, Citizens Advisory Council
William Fink, Citizens Advisory Council
Walter Heine, Citizens Advisory Council
Terry Dayton, Alternate for John Walliser, Citizens Advisory Council
Dr. James Logue, alternate for Michael Wolf, Secretary, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Hayley Book, Director, Policy Office
Doug Brennan, Director, Bureau of Regulatory Counsel
Laura Edinger, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Abruzzo called the meeting to order at 9:02 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business – the November 19, 2013, EQB meeting minutes.

Burt Waite moved to adopt the November 19, 2013, EQB meeting minutes.
Adam Pankake seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF FINAL RULEMAKING: OIL AND GAS WELL PERMIT FEE
(25 Pa Code Chapter 78)

Scott Perry, Deputy Secretary for Office of Oil and Gas Management, provided an overview of the final rulemaking. Kurt Klappowski, Director, Bureau of Oil and Gas Planning and Program Management, and Trisha Salvia, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation along with Jeffrey M. Logan, Deputy Secretary for Administration and Management.

Following the presentation, Burt Waite noted that he would not be voting in favor of the proposed fee increase. He stated concern that the drilling industry is slowing down and that is having an impact on several people. It is impacting the firm for which Mr. Waite works. Mr. Waite noted his appreciation that the conventional well fees will remain unchanged, and he believes that to be appropriate. However, the negative impact that the slowing down of the industry is causing would be further impacted by a fee increase for unconventional wells, and so he would not vote in favor of the fee increase.

Richard Fox noted that one of the slides in the presentation illustrated how many applications have been received. Mr. Fox inquired what percentage of these have been drilled.

Deputy Secretary Perry responded that, while he did not have the exact numbers, about 2,900 shale wells were permitted last year and somewhere around 50 percent were drilled. He further explained that this is what would be expected on a multi-well pad development. Once a viable well has been established in an area, permitting efficiency approaches 100 percent. Conventional well drilling is more hit or miss because of the nature of the conventional reservoir. Further, typically only 30 percent of the permits received are drilled for conventional wells. Deputy Secretary Perry stated that while he also did not have the precise number of conventional wells drilled, that number would be expected to be higher than 30 percent.

Richard Fox inquired as to the amount of staff time involved per application. Mr. Fox asked when a staff person would be sent out to the field. Specifically, is staff sent into the field during the application process or when the Department is notified that a company is going to start well developing?

Deputy Secretary Perry responded that inspectors are obligated to inspect unconventional well sites prior to drilling. They are obligated to inspect an unconventional well pad before drilling can commence, at the time when the erosion and sediment control best management practices are in place to ensure that they are effective. Conventional well operators typically do not require that same erosion and sediment control permit. Nonetheless they must obtain a well permit before they begin to develop their well sites as a result of the change brought about by Act 13. Once we get the spud or drilling commencement notification, that's typically for conventional operators when you go and inspect the site; for unconventional, it is during pad development every single time.

Bill Fink commented that this is the second time in less than one year that one of the Department's programs has come to the Board looking for a fee increase. Mr. Fink would like the programs to consider potential alternatives to fee increases going forward.

Terry Dayton inquired if the Department expects unconventional wells to continue to increase over the next five to ten years.

Deputy Secretary Perry responded that the volume of well drillings will continue to increase. He further explained that this is the beginning of unconventional well development in Pennsylvania. Operators continue to explore the Marcellus shale. There are several other shales that can be explored as well. Operators are exploring the Utica shale, of which we have less than 30 total wells permitted. The Burkett shale above the Marcellus is also being developed as well as the Rhinestreet shale further above Marcellus. Fortunately, all of these formations are being developed off the same well pad. Square foot by square foot it is probably the most efficient energy source that we have. Deputy Secretary Perry predicted that shale will develop and will be occurring for easily the next 10-15 years.

Terry Dayton asked if shale gas wells will continue to be developed in spite of the recent Act 13 court ruling.

Deputy Secretary Perry responded that, although the Supreme Court ruling has certainly injected a level of uncertainty into what the regulatory landscape will look like at a local level, it is also pretty clear that the rules on the ground today are no different than they were when the lawsuit was originally filed. Some municipalities are moving forward with municipal zoning at varying levels and some counties and municipalities are not. He further predicted that the operators will continue to be adaptive to whatever regulatory environment they face and, although it may have a somewhat chilling effect on well development, that development will nonetheless proceed at a fairly robust pace.

Walter Heine stated that the Board received a letter requesting additional public hearings at different locations throughout the state. The letter suggests that there are not enough hearings in the counties most heavily impacted by drilling and, as such, stakeholders living or working in those areas are not able to offer spoken testimony. Mr. Heine inquired as to how much of a financial setback it would be for the program to extend the comment period and then had to wait another four or five months before the package came back to the Board.

Deputy Secretary Perry explained that the letter the Board received pertains to a separate regulation that is being developed to revamp the surface activities regulation. Therefore, extending the comment period and adding hearings would have no financial impact on the Department. He further explained that the sentiment expressed in the letter has been frequently stated during the public hearings currently being held for this regulation. Mr. Waite, Mr. Fink, Mr. Fox, and Ms. Witmer have chaired hearings and can attest to this as well. The Department is evaluating and seriously considering extending the comment period and adding additional hearings for the surface activities regulation. This has no effect on the fee regulation.

Bill Fink moved to adopt the final rulemaking. Cynthia Carrow seconded the motion, which was approved by a majority of the Board members. Burt Waite voted in opposition to the final rulemaking.

OTHER BUSINESS:

Chairman Abruzzo referenced Mr. Heine's question regarding the letter requesting additional hearings and an extension of the comment period for the Subchapter C, Chapter 78 proposed regulations. Chairman Abruzzo stated that two additional hearings will be added. Chairman Abruzzo commended the Board members who have chaired hearings stating that they have done a fantastic job. The Chairman further noted that there is heightened interest in these regulations and significant public participation. Many of the commentators at the hearings have provided feedback advocating for an extended comment period and additional hearings. In light of this feedback, the Department has agreed to hold two

additional hearings in February; one in Warren County and the other in Bradford County. Holding additional hearings in February may necessitate the extension of the public comment period. If extended, it would be for, most likely, an additional 30 days. These extensions are designed to provide as much opportunity for public input as possible while continuing to move the process forward. This will be beneficial for all involved. The Chairman reaffirmed his previous commendation and extended his gratitude to those who have chaired hearings stating that the hearings can be challenging and that all who have chaired have done a fantastic job.

Richard Fox noted that Department staff has been very helpful at the hearings. He chaired a hearing in West Chester where some commentators requested the comment period be open for 120 days. Mr. Fox, while not advocating for 120 days, asked if the additional hearings will be held within the time frame of the 60 days of the public comment period.

Jessica Shirley responded that the original public comment period was scheduled to close on February 12, 2014. One of the hearings will likely be near that date and thus the public comment period will likely be extended.

Chairman Abruzzo stated that we may have to extend the public comment period but it will not be extended to 120 days. The Chairman explained that it would be best if the comment period was extended only enough as is necessary to include both hearings within the public comment period. This level of public participation and the number of hearings is unprecedented. This will bring the total number of hearings to nine. These hearings are very important to the regulatory process. Stakeholders from industry, environmental groups and the public at large need to be heard. The Chairman thanked Department staff for working hard to accommodate the hearings' schedule. The Chairman noted that a chair was still needed for the hearing on January 27th in Tunkhannock.

Chairman Abruzzo welcomed Laura Edinger. He noted that she joined the staff as Regulatory Coordinator about a month ago. This is Laura's first EQB meeting.

The next meeting of the Board is scheduled for Tuesday, February 18, 2014. The meeting will convene at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, Harrisburg.

ADJOURN:

With no further business before the Board, Terry Dayton moved to adjourn the meeting. Patricia Witmer seconded the motion, which was unanimously approved by the Board. The January 21, 2014, meeting of the Board was adjourned at 9:37 a.m.