

# MEETING MINUTES

## Oil and Gas Technical Advisory Board

September 17, 2020

*[In accordance with Governor Tom Wolf's emergency disaster declaration and based on advice from the Department of Health regarding the mitigation of the spread of the novel Coronavirus (COVID-19), the Oil and Gas Technical Advisory Board (TAB) meeting was held virtually as a conference call via Skype for Business. This meeting was open to the public and persons wishing to attend the meeting could do so via registration on the DEP oil and gas website.]*

### **TAB MEMBERS PRESENT**

Voting Members: David Yoxtheimer, Ph.D., P.G. (Chair), Fred Baldassare, P.G., Casey Saunders, P.E., Jeffrey Walentosky, P.G.

Non-voting Advisors: John Walliser, Esq., Michael Griffin, Ph.D., Susan Brantley, Ph.D.

### **DEP STAFF PRESENT**

Scott Perry, Kurt Klapkowski, Joe Kelly, Seth Pelepko, Myron Suchodolski, Steve Brokenshire, Bruce Jankura, Crystal Magon, Michael Heuft, Ann Mathew, Brian Babb, Todd Wallace, Kate Cole, Anne Shapiro

### **CALL TO ORDER**

Yoxtheimer called the meeting to order at 10:03 a.m.

Perry informed the Oil and Gas Technical Advisory Board (TAB) members and all individuals on the call that the meeting is recorded in its entirety and participation in the meeting conveys implied acceptance and consent for all meeting participants to be recorded.

Perry and Yoxtheimer agreed to limit introductions to TAB members and DEP employees and a roll call was taken to confirm the names of the TAB members and DEP employees who participated in this meeting.

Perry announced that there is a vacant seat on TAB as a result of the resignation of Bob Hendricks who is now working out of state; therefore, DEP is currently seeking to fill this vacancy. Klapkowski explained the statutory/eligibility requirements for individuals who are interested in being considered for appointment to TAB. Any interested candidates should forward a Letter of Interest and copy of their resume to Wallace at DEP. Contact information for Wallace is available on the meeting notice that was published in the *Pennsylvania Bulletin*. Yoxtheimer asked if there is a submission deadline and Perry

responded that the Department would like to fill the vacancy by the December TAB meeting, if possible.

### **APPROVAL OF MEETING MINUTES**

Yoxtheimer asked the board members if there were any general comments related to the May 20, 2020 draft TAB meeting minutes. Saunders made a motion to approve the meeting minutes as presented. Walentosky seconded the motion and the motion passed unanimously.

### **PROPOSED CHAPTER 78 RULEMAKINGS (SURFACE ACTIVITIES AT CONVENTIONAL WELLS)**

Klapkowski explained the events that led to the development of the proposed Chapter 78 rulemakings related to conventional wells.

In 2016, DEP advanced a final rulemaking that was approved by the Environmental Quality Board (EQB) and the Independent Regulatory Review Committee (IRRC) which contained amendments to cover both Chapter 78 conventional well surface activities and created a new Chapter 78a that addressed unconventional well activities. In 2016, Governor Wolf signed Act 52 into law that abrogated this final rulemaking but did not repeal Act 13. As a result of Act 52, the Pennsylvania Grade Crude Development Council (CDAC) was established to advise DEP in matters related to conventional wells. Also, the governor directed DEP to re-draft a rulemaking to address conventional wells.

DEP worked productively with CDAC over a two-year period from 2016-2018 to develop a proposed rulemaking to address surface activities at conventional well sites. During this time, the conventional industry expressed a preference for the creation of a separate statute to address conventional well operations. When a compromise could not be reached on a statutory vehicle, DEP turned its attention back to the development of a proposed regulation for surface activities at conventional well sites.

As a starting point, DEP returned to the final rulemaking that was approved by EQB and IRRC in 2016, since that rulemaking contained many provisions that had already been discussed with the conventional industry and presented to TAB. Klapkowski explained that DEP separated this rulemaking into two parts (Environmental Protection Standards and Waste Management) and made minor amendments to reflect the ongoing dialogue with the conventional industry and the Department's best thoughts to more efficiently and effectively advance the rulemaking process.

Klapkowski informed the TAB members that both rulemakings were presented to CDAC on August 6, 2020. CDAC passed two motions: One motion supports re-starting conversations about the conventional rulemaking based on a list of regulatory concepts that was presented to CDAC in 2017; The other motion directs a workgroup to be formed to consider the two proposed rulemakings that were presented to CDAC as compared to the Chapter 78 regulations as they exist in their present form.

Walentosky asked the Department what the expected timeline is for advancing the proposed rulemakings. Klapkowski stated that the Department is committed to an open and transparent process and wants to work collaboratively with CDAC in the development of this rulemaking and also wants to keep TAB informed along the way. DEP does not have a specific date to advance these rulemakings to the EQB, since DEP does not want to rush the process or be driven by a specific deadline. Walentosky responded that TAB is interested in being part of the process.

Walentosky asked the Department what TAB can expect to discuss regarding these proposed rulemakings at the next TAB meeting scheduled in December 2020. Klapkowski responded that this is somewhat conditioned on follow up discussions that DEP expects to have with CDAC. Klapkowski explained that DEP will keep TAB apprised of any future CDAC subcommittee meetings so that TAB members can coordinate with CDAC as appropriate. Klapkowski said DEP will likely only be in a position to share a status update with TAB at the upcoming December TAB meeting, but there should be more substance to discuss at the TAB meetings in 2021.

### **UPDATE ON TECHNICAL GUIDANCE DEVELOPMENT**

#### **Final Chain Pillar Technical Guidance Document (TGD)**

Pelepko reminded TAB members that a workgroup was formed in 2016 and an interim final TGD was developed in 2017. Pelepko highlighted for TAB members all substantive changes that were made to this TGD as a result of comments received during the interim.

Saunders thanked Pelepko, the Department and other stakeholders for their efforts to bring this TGD to a final product and inquired about the current status of this guidance document. Pelepko stated that DEP would appreciate TAB's feedback ahead of advancing this TGD for publication as final in the *Pennsylvania Bulletin*. Saunders responded that the final version of this document reflects a number of additions and revisions since the interim final version was made available in 2017 and would appreciate 14 days to review the final TGD; which will allow TAB an opportunity to provide additional comments before publication. Klapkowski responded that he is agreeable to a 14-day review period. Yoxtheimer asked that TAB members respond to Pelepko by close of business on September 30, 2020.

#### **Pressure Barrier Policy**

Pelepko reminded TAB that this draft policy has been a work in progress for several years. Pelepko thanked Walentosky for feedback received on this draft policy following the May 20, 2020 TAB meeting and stated that several changes were made to the draft policy as a result of TAB's feedback; however, not all comments submitted by TAB resulted in changes to the draft policy. This document was published in the *Pennsylvania Bulletin* as a draft policy for public comment until September 28, 2020.

Yoxtheimer stated that members of TAB recently discussed the current version of the draft policy and asked Walentosky to provide a further response on behalf of TAB.

Walentosky expressed appreciation for the opportunity to provide comments to DEP prior to the draft policy being published for public comment, but he expressed disappointment that not more of the comments and suggested edits submitted by TAB were reflected in the version of the draft policy that was published for comment. Perry responded that the Department fully considered all of TAB's comments, but the Department did not reach full agreement on all of the comments submitted by TAB. Yoxthimer stated that it would be useful to TAB in the future if DEP would consider providing feedback to TAB regarding DEP's rationale when it is not in full agreement on suggested revisions to draft guidance documents. Perry responded that this is a valid point and is one that is well taken since the Department values the feedback. Perry invited TAB to re-submit any comments to the Department during the public comment period, since DEP will be responding to all comments via a Comment and Response Document.

#### Water Supply Replacement TGD

Kelly explained that the development of this TGD began at the time the Chapter 78a regulations were initiated and it is intended to provide further guidance as it relates to Chapter 78a.51 (Protection of Water Supplies). The TGD was published as draft in the *Pennsylvania Bulletin* on October 8, 2016 and was open for comment for 60 days. During the comment period, six commentators submitted 108 individual comments to DEP.

The Department formed a workgroup that included representation from DEP, the regulated community and members of TAB. The workgroup met regularly throughout 2017 and 2018 to consider comments and assist with the development of the TGD. The Water Supply Replacement TGD was published as final in the *Pennsylvania Bulletin* on August 8, 2020. The Department is currently developing training tools that will be rolled out to DEP staff and will be followed by training opportunities that will be offered to the regulated community.

### **EROSION AND SEDIMENT CONTROL UPDATES**

#### GeoHazard Guidance Document

Kelly stated that pursuant to Chapter 102, when an operator applies for an Erosion and Sediment Control General Permit, it must identify potentially hazardous geologic or soil conditions and plan to avoid or mitigate the potential impacts in the Erosion and Sediment Plan or Post Construction Stormwater Management Plan. The Office of Oil and Gas Management worked with the DEP Regional Permit Coordination Office, Bureau of Active and Abandoned Mine program and a Soil Scientist in the Bureau of Clean Water in the development of this guidance document. The current layout of the guidance document includes the following three general sections: investigation of geologic hazards, mitigation of geologic hazards and reporting of geologic hazards. The next steps are for the Oil and Gas permit review staff to review the document and then advance the document to DEP oil and gas management for review.

#### Chapter 102 Amendment FAQ

This Frequently Asked Questions (FAQ) document was developed by the DEP Bureau of Clean Water which is responsible for administering the overarching Chapter 102 program at DEP. This FAQ document historically focused on residential earthmoving activities; however, the DEP oil and gas program has recently worked with the Bureau of Clean Water to amend this FAQ to highlight some specific examples of earthmoving activities related to the oil and gas industry. In particular, this FAQ describes the types of changes to Chapter 102 permits that would be handled by DEP as red-lined field changes, minor permit amendments and major permit amendments. Kelly explained the nature of each of these types of amendments. The Office of Oil and Gas Management recently completed drafting suggested language to amend this FAQ and will forward it to the Bureau of Clean Water for consideration.

### ESCGP-3 Permitting Issues

Kelly explained that the availability of the Erosion and Sediment Control General Permit (ESCGP-3) along with a “Transition Plan” was published on October 8, 2018. On October 29, 2018, DEP introduced a tool that operators could use to electronically submit an ESCGP-3 permit to the Department rather than a paper version of the permit. Initially, the electronic permit was optional; however, on July 11, 2020, DEP announced it would require all new and major modifications of ESCGP-3 permits be electronically submitted to the Department starting September 9, 2020. Kelly mentioned that the electronic submission of the ESCGP-3 only applies to oil and gas activities, not to permits submitted to County Conservation Districts, the DEP Bureau of Waterways and Wetlands or the DEP Regional Permit Coordination Office. Kelly reported that the electronic permit has been well-received by oil and gas operators and since October 2018, DEP has received 275 electronic ESCGP-3 permits.

Kelly stated a “compliance history” module to the electronic permit is under development and review and will be rolled out when finalized. Kelly also reported that the Department has been experiencing a problem associated with the ePayment vendor related to the ESCGP-3 electronic permit. Currently, there is a posting delay in the ePayment module that suggests the permit remains in “draft” status when it has actually moved to “final” status. In some instances, applicants have submitted duplicate permit fees that resulted in DEP providing a reimbursement to those applicant. Perry explained that this situation has affected all DEP program areas that use online permitting and fee collection and the Department is working with the ePayment vendor to resolve this matter as quickly as possible.

### Prioritized Review Program/Guidance Document Update

Kelly discussed the purpose of DEP transitioning to a prioritized permit review process. Innovative approaches through design and implementation of environmentally enhanced Best Management Practices (BMPs) and superior construction practices reduce environmental impacts from oil and gas operations. To incentivize these technologies and practices, the Department intends to replace the ESCGP Expedited Review process

with a Prioritized Review process that will allow for voluntary participation by industry. Permit applications submitted as Prioritized Review will be given a score based on the BMPs and environmentally superior construction practices proposed. Projects that score well will be given priority to be reviewed before projects that are not submitted as Prioritized Review.

Kelly reported that a technical workgroup was formed to assist DEP in the development of the draft Prioritized Review Guidance Document. The workgroup has met five times since August 2019 and is scheduled to meet again in October 2020. The Department is currently making revisions to the draft guidance document based on feedback received from the Workgroup at the most recent meeting held in July 2020.

DEP will share the revised guidance document with the workgroup at its next meeting in October and will incorporate any additional comments from the workgroup into a final draft version of the guidance document that will be presented to TAB on December 16, 2020. After TAB has reviewed the draft document, DEP intends to publish the draft Prioritized Review Guidance Document for public comment in the *Pennsylvania Bulletin* sometime during the first quarter of 2021.

Walentosky commended Kelly and the members of the workgroup for the good work that they have accomplished thus far in the development of this guidance document. Perry echoed this sentiment and thanked Walentosky for his active participation on this workgroup.

### **ORPHAN AND ABANDONED WELL DECOMMISSIONING/INDUSTRY LIABILITY**

Pelepko reported that DEP is currently advancing three contracts to plug 13 orphan and abandoned wells with no viable responsible party. DEP also continues to partner with the Department of Conservation and Natural Resources (DCNR) to address the plugging of about 60 wells located in Cornplanter State Forest. The contract bid package for the Cornplanter project was finalized in early October and a pre-bid meeting is scheduled in late October. Bids are due in November and the bid opening is scheduled for December 2020. DEP will also respond to emergency abandoned well projects throughout the Commonwealth as necessary.

Pelepko explained that the Department is hopeful that Congress will follow through on a proposed federal stimulus package that was unveiled in June 2020. This proposed bill would establish a federal well-plugging program that would allocate about \$2 billion over five years to employ oil and gas workers to plug orphan and abandoned wells across the country. The outcome of this proposed bill is uncertain, but Pelepko explained that this program would benefit Pennsylvania by providing federal funds to support well plugging. Perry stated that he was contacted by the offices of Rep. Glenn Thomas and Senators Toomey and Casey regarding this matter and he is optimistic about the potential support for this initiative from the Pennsylvania congressional delegation. Walliser noted that federal legislation was introduced on September 16, 2020 that will address legacy wells

and he offered to forward some additional information to TAB members regarding this matter.

Yoxtheimer inquired about the status of the Orphan and Abandoned Well Plugging Grant program that is administered by the Department of Community and Economic Development (DCED). Pelepko responded that this program has been modestly successful in addressing orphan and abandoned wells. Last year, the DCED raised the grant ceiling from \$250,000 to \$1 million per project which should help fund projects that exceed the former grant ceiling. The most recent grant cycle was extended due to COVID-19 and closed sometime over this past summer. Pelepko is aware of at least one proposed grant application that involves the plugging of legacy wells that has been submitted, but DCED has announced final grants to be awarded and DEP has not yet received any grant applications for technical review. DEP has been in productive conversations with the DCED and the Pennsylvania Grade Crude Development Advisory Council about how this grant program can be used to plug more orphan and abandoned wells.

Brantley inquired about the status of a recent study conducted by DEP that pertains to well plugs that have failed. Pelepko responded that he recently delivered a presentation to the Pennsylvania Council of Professional Geologists that includes several PowerPoint slides related to this topic and he offered to forward this presentation to the TAB members. DEP is currently evaluating the data of this study further to better determine if there are common attributes of the failed plugs that were included in this study.

### **2019 OIL AND GAS ANNUAL REPORT**

Wallace provided an overview of the topics and content that are reported in the 2019 Oil and Gas Annual Report.

### **EFFECTS OF COVID-19 ON INSPECTIONS AND COMPLIANCE ACTIONS**

Perry reported that in conformance with the governor's emergency disaster declaration and based on advice from the Department of Health regarding mitigation of the spread of novel Coronavirus (COVID-19), DEP limited its field inspections starting in mid-March 2020. The Office of Oil and Gas Management is committed to conducting inspections related to emergency response, complaints and reports of spills; however, there was a significant decrease in the number of general oil and gas well inspections and inspections of orphan and abandoned wells until August 2020. Perry stated that the Office of Oil and Gas Management recently received direction to resume operation of regular field inspections.

Brantley asked how many requests for regulatory flexibility had been received and granted by DEP since the inception of COVID-19. Perry responded that it is his understanding that this information is available online. He stated that oil and gas operations were deemed an essential business industry in Pennsylvania and no requests

for regulatory flexibility were received or granted for any operators in the oil and gas industry.

### **PUBLIC COMMENT**

Yoxtheimer asked if any person had registered to provide public comment at today's TAB meeting. Wallace responded that no individuals registered to provide public comment and Magon mentioned that no questions had been submitted via the Skype for Business "chat room" feature.

### **NEW BUSINESS**

Yoxtheimer reminded the TAB members and meeting participants that anyone who is interested in being considered for membership to the board should forward a letter of interest and resume to Wallace.

Yoxtheimer also reminded TAB members that the next regularly scheduled meeting is December 16, 2020.

Perry stated that the online TAB meetings have been very productive and commended the board members for their participation and continued service to the Department.

### **ADJOURNMENT**

Yoxtheimer asked if there was a motion to adjourn the meeting. Walentosky made a motion and Saunders seconded. The motion passed unanimously, and the meeting was adjourned at 12:35 pm.