

MEETING MINUTES

Oil and Gas Technical Advisory Board

April 25, 2022

[The Oil and Gas Technical Advisory Board (TAB) meeting was held as a hybrid meeting in Room 105, Rachel Carson State Office Building, Harrisburg and via WebEx. This meeting was open to the public.]

TAB MEMBERS PRESENT

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

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

DEP STAFF (Meeting Participants)

Kurt Klapkowski, Joe Kelly, Myron Suchodolski, Harry Wise, P.G., Todd Wallace, Darek Jagiela, Crystal Magon, Shahed Noyon, P.E., Justin Dula, Tammi Opila, Tom Donahue, Susan Price, Robert Kachonik and Adam Duh

CALL TO ORDER

Mr. Klapkowski opened the meeting at approximately 10:00 am with welcoming remarks and turned the meeting over to Chairperson Yoxtheimer. Dr. Yoxtheimer conducted a roll call of members of the Oil and Gas Technical Advisory Board (TAB or board).

APPROVAL OF MEETING MINUTES

Dr. Yoxtheimer asked the board members if there were any general comments regarding the January 14, 2022 draft TAB meeting minutes. Mr. Walentosky made a motion to approve the meeting minutes as presented. Mr. Saunders seconded the motion and the motion passed unanimously.

PUBLIC COMMENT

Dr. Yoxtheimer opened the meeting for public comment. Patrick Henderson (on behalf of the Marcellus Shale Coalition) provided verbal comment. Mr. Henderson stated that the Department's ePermitting tool was modified with no public input and essentially creates a new individual permit that resembles the federal NPDES permit. On the topic of the draft Environmental Justice (EJ) Public Participation Policy, Mr. Henderson stated that the unconventional industry supports outreach to communities in which oil and gas activities occur; however, the draft EJ policy imposes regulatory requirements and should be advanced as a formal regulation rather than as a policy. Mr. Henderson stated that the

policy was vague and will create confusion and that the “trigger permit” section in the policy conflicts with itself. Henderson stated that the draft policy includes a public engagement section for unconventional wells that is unnecessary and will impose time and cost constraints on Oil and Gas program staff and industry. Mr. Henderson stated that opportunity already exists for input on oil and gas activities within the Oil and Gas Act. Mr. Henderson concluded his remarks on the following two points. First, the MSC is willing to meet with the Department to discuss the priority use of the federal Infrastructure Investment and Jobs Act funding that is anticipated. Secondly, Mr. Henderson stated that the oil and gas funding is borne disproportionately to the unconventional oil and gas industry. The unconventional oil and gas industry pays for about 99 percent of the fee funding in comparison to about 60 percent of the Department’s efforts to oversee the oil and gas industry in Pennsylvania. The MSC understands that a long-term sustainable funding solution is needed and is willing to participate in discussions with the Department to address this matter.

DRAFT ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION POLICY

Justin Dula, Director of the DEP Office of Environmental Justice, presented a PowerPoint presentation to the board. At the conclusion of the presentation, Mr. Walentosky asked three questions.

First, Mr. Walentosky asked what the major differences are between the 2004 EJ Policy and the 2022 draft EJ Policy. Mr. Dula responded that the 2004 EJ Policy focused primarily on public participation, while the 2022 draft EJ Policy looks at opportunities in other areas of the Department such as compliance inspections, grants and Climate Action Planning.

Second, Mr. Walentosky asked how “Environmental Justice Area” is defined in the 2022 draft EJ Policy. Mr. Dula responded that the 2004 EJ Policy used two thresholds to define an Environmental Justice Area: census tracts with equal or greater than 30% people of color, and census tracts equal or greater than 20% of people below the poverty line. Current models allow for a “percentile-based” approach and focuses consistently on the highest percentile and the most affected populations.

Third, Mr. Walentosky asked what the perceived EJ impacts as a result of the oil and gas industry in Pennsylvania are. Mr. Dula responded that comments received in 2018 recommended oil and gas drilling permits be categorized as trigger permits; however, statutory constraints prevented the Department from taking this approach. The measures taken in the draft EJ Policy attempts to engage communities without categorizing such permits as trigger permits. Mr. Klapkowski pointed out that the draft EJ Policy provides a mechanism for the “opt-in” of Class 2 Underground Injection Control (UIC) disposal well permits.

Dr. Brantley asked how the draft EJ Policy affects orphan and abandoned wells that are distributed throughout the commonwealth versus UIC wells that are localized in limited

areas. Mr. Dula explained that based on the existing definition of an EJ community, 66 of 67 counties in Pennsylvania have at least one identified EJ area.

GUIDELINES ON NOTIFICATION REQUIREMENTS FOR UNAUTHORIZED DISCHARGES TO WATERS OF THE COMMONWEALTH UNDER PENNSYLVANIA'S CLEAN STREAMS LAW

Tami Opila (Bureau of Clean Water Wastewater Operations) presented a PowerPoint presentation to the board and was accompanied by Robert Kachonik and Adam Duh.

Following the presentation, Mr. Walentosky commented that the 2021 version of these guidelines are much better than the 2020 version; however, there still seems to be some confusion as to the risk characterization framework and the three examples that are included in the guidance. He asked what DEP is doing to address this issue. Mr. Duh responded that each spill is an individual event; therefore, site-specific information is required to make informed decisions. The examples provided in the guidance serve as possibilities of what types of risks and impacts might be anticipated in similar situations.

Mr. Walentosky responded that there is some subjectivity in the three examples and a little more certainty would be useful to those who use the guidance. Mr. Duh explained that specific decisions about pollution events will be determined by the Department. Ms. Opila stated the importance of the regulated community to err on the side of reporting all spills to the Department so appropriate action can be taken.

CLASS II UNDERGROUND INJECTION CONTROL (UIC) PROGRAM UPDATE

Mr. Donahue updated TAB on the status of UIC wells in the southwest region and Ms. Price provided an update of UIC wells in the northwest region of Pennsylvania. Currently, there are no UIC permits that are under review by the Department.

Dr. Brantley asked how the public can get involved and how DEP conducts outreach regarding UIC permits. Mr. Donahue responded that there are no requirements to publish notice in the *Pennsylvania Bulletin* or local newspapers; however, there are other notification requirements that must be followed. Conventional well owners are required to notify the following entities: surface land owner, water supply owners and coal owners within 1,000 feet of a well, municipality and adjacent municipalities where the well is located.

Dr. Brantley asked how the public can get involved in carbon sequestration wells. Mr. Donahue explained that the notification process is the same for carbon sequestration wells as for UIC wells. To date, the Department has not received any permit to construct a carbon sequestration well, so this is not a situation that the Department has encountered.

EROSION AND SEDIMENT CONTROL GENERAL PERMIT-3 UPDATE

Mr. Kelly informed the board that the Department received 194 comments from nine separate commenters. The comments were consolidated into similar categories and program staff have been preparing responses to the comments. Most comments are straight forward and fairly minor in nature (i.e., adding hyperlinks, etc.). The next steps in the process will be to discuss some comments that were received with the DEP Bureau of Air Quality and the Department of Conservation and Natural Resources. After that, the Department will reconvene the ESCGP-3 Workgroup.

Mr. Walentosky asked when the ESCGP-3 Workgroup is expected to be reconvened and Mr. Kelly responded that he hopes it will occur by July 2022. Mr. Klapkowski reminded the board that the Office of Oil and Gas Management has been focusing much of its efforts in preparing for the receipt of the federal Infrastructure Investment and Jobs Act funding and planning for the additional work that will result for implementation of this new program.

Dr. Yoxtheimer asked if the issue of acid producing rock is a prevalent issue or if this is generally associated with instances when coal seams are encountered. Mr. Kelly responded that this issue could be related to coal seams. Mr. Kelly explained that when the Chapter 102 regulations were updated in 2010, language was added to require the use of individual permits rather than general permits when there was an opportunity for pollutional events (i.e., when acid producing rock is encountered) as a result from earth moving activities. The rationale for this change relates to the fact that permit conditions can be included in an individual permit, but cannot be added to a general permit since general permits are intended to apply to a broad range of similar projects. Mr. Walentosky commented that he was somewhat concerned about the possibility of permit review timelines taking longer when acid producing rock is encountered. Mr. Kelly requested any specific examples where this might be the case and offered to meet to discuss this matter further if necessary.

UPDATE ON DRAFT PROPOSED CHAPTER 78 RULEMAKINGS (CONVENTIONAL WELLS)

Mr. Klapkowski provided a verbal update to TAB members regarding the two draft proposed Chapter 78 rulemakings (Environmental Protection rulemaking and Waste Management rulemaking). Mr. Walentosky suggested that TAB would benefit from reviewing the documents that were submitted to the Pennsylvania Grade Crude Development Advisory Counsel (CDAC). It was further suggested that perhaps CDAC and TAB might consider meeting jointly when warranted to discuss subjects that are of interest to both groups. Dr. Yoxtheimer thanked Mr. Walentosky for his role as liaison between TAB and CDAC. Mr. Walentosky also stated that he supports the concept of the use of focused workgroups to get into deeper discussions with the Department on regulatory development issues.

Mr. Klapkowski reminded the board that the Department presented a 3-Year Fee Report to the Environmental Quality Board on February 15, 2022. This report found that the current permit fee structure is not sustainable and will not support the Department's Oil

and Gas Program far into the future. The next steps will be for the Department to develop a draft proposed rulemaking to address this situation. Finally, Mr. Klapkowski summarized two Bonding Petitions that were submitted to the Department and were accepted by the Environmental Quality Board (EQB) in November 2021. The Department is currently reviewing the Bonding Petitions and will respond to the EQB regarding a recommendation for moving forward.

UPDATE ON DRAFT TECHNICAL GUIDANCE DOCUMENTS

Mr. Klapkowski reported that the “Radioactivity Monitoring as Solid Waste Processing and Disposal Facilities” Technical Guidance Document is currently undergoing internal review by the Bureau of Waste Management, Bureau of Radiation Protection and Office of Oil and Gas Management. It is anticipated that this TGD will be published as final in the *Pennsylvania Bulletin* sometime during the second quarter of 2022. Mr. Walentosky asked if this TGD will have any impact on well plugging activities. Mr. Klapkowski responded that the issue of well plugging includes a broader waste management concern as it relates to the management of drilling waste products. Mr. Klapkowski reminded TAB members that an Informational Session was scheduled on April 28 to discuss various IJA-related topics and the issue of “Waste Management” will be an issue that will be further addressed via a follow-up workgroup session.

Mr. Klapkowski invited TAB to lead the discussion on the topic of “further consideration of the Oil and Gas Spill Response TGD.” Mr. Walentosky stated that prior to the pandemic, the Department and the oil and gas industry discussed the oil and gas spill policy. There is existing guidance for conventional operators, but this guidance might change after the regulations for conventional operators is finalized. Mr. Walentosky stated that there is no similar guidance that is available to unconventional operators. Mr. Walentosky reminded the Department that a group of stakeholders had provided a “flowchart” document to the Department for consideration and he asked if the Department is willing to re-open a dialogue about this topic recognizing that a draft guidance document is fairly well-developed. Mr. Klapkowski responded that he agrees with resuming discussion but explained that there remains the matter of available resources and ongoing Department priorities that will need to be considered.

STREAMLINING OIL AND GAS DATA MANAGEMENT

Mr. Suchodolski invited input from TAB regarding suggestions the board has related to streamlining oil and gas data management. Dr. Yoxtheimer stated that based on recent discussions with industry, there is an appetite to work with the Department to streamline reporting such as for the 26R Form (a Waste-related form) reporting and annual reporting requirements. Dr. Yoxtheimer suggested that a committee of DEP, TAB, industry and academia representatives could be formed to examine short-term and long-term opportunities. Specifically, Dr. Yoxtheimer shared two examples: the electronic use of data delivery from laboratories and user interface improvements. Mr. Suchodolski responded that the Department has been considering a similar approach. Dr. Yoxtheimer volunteered to represent the board with assistance from Dr. Brantley. Mr. Klapkowski

suggested that another topic for consideration could be user experiences by third parties to pull data out of the Department's data management systems. Mr. Suchodolski and Mr. Klapkowski explained that any changes to the Department's data management systems must be coordinated with the Bureau of Information Technology and such enhancements will need to be considered along with an existing list of competing priorities. That said, having a list of suggested data management suggestions will be helpful to advance this process. Dr. Yoxtheimer and Mr. Suchodolski agreed to meet separately to talk about next steps.

CARBON CAPTURE SEQUESTRATION AND STORAGE

Mr. Klapkowski explained that under the "Energy" section of the Infrastructure Investment and Jobs Act (IIJA), there are grants available for the development of regional "clean hydrogen" hubs and "air capture" hubs.

About \$8 billion has been designated to fund the construction of four clean hydrogen hubs related to fossil fuel use, nuclear generation and renewable energy generation relating to the source of hydrogen that is generated.

About \$3.5 billion is designated to fund the construction of four air capture hubs and two of which must be located in a fuel generating community such as Pennsylvania. This would require the use of Class VI injection wells.

The Department is considering whether there is utility to request authorization to administer a well permitting program for such underground injection. Currently, the underground injection program is administered at the federal level. The advantage of seeking federal primacy would be to eliminate any duplicative administrative processes; however, the process to gain primacy is a complex and would take a long time. The Department must also consider what funding is available to support the administration of this program. Mr. Klapkowski explained that \$50 million is available in IIJA to assist states to seek authorization to administer the Class VI carbon capture sequestration and storage well program.

Walentosky commented that the Department might struggle to locate staff with the necessary skills and talent to administer a carbon capture program. Dr. Brantley suggested that the Department should work with the public to provide awareness and training opportunities related to carbon sequestration. Mr. Klapkowski responded that the Office of Oil and Gas Management is collaborating with the DEP Energy Office on these energy related matters.

PROJECTED PERMITTING AND DRILLING ACTIVITY FOR 2022

Mr. Klapkowski reported several statistics from the most recent Workload Report that was published on April 15, 2022. As of April 15, DEP received 80 conventional permits and 229 unconventional permits. When projecting these numbers through the end of calendar year 2022, the Department anticipates receiving a little less than 300

conventional permits and a little more than 800 unconventional permits. These numbers of permits would translate to about \$10.2 million collected by the Department in permit fees.

Mr. Klapkowski also reported that the number of conventional wells drilled year-to-date in 2022 (i.e., as of April 15) are up, however, this number is a bit misleading since there were only 38 conventional wells drilled in total as of April 15. The number of unconventional wells drilled is trending downward.

INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA) UPDATE

Mr. Klapkowski reminded board members that the Department is hosting an IIJA Information Session on Thursday, April 28 at 3:00 pm to discuss IIJA and the steps that DEP is taking to apply for federal funding and how it intends to partner with other entities to carry out the provisions of the Act. The IIJA plugging and plugging support contractor survey is also available and can be accessed on the DEP website.

Mr. Klapkowski explained that IIJA includes funding for plugging of oil and gas wells by federal agencies, tribes, and states. The funding program is administered by the Department of the Interior (DOI) and consists of four separate grant categories.

Up to \$25 million is available to Pennsylvania via the Initial Grant. The deadline for the Department to submit the “Initial Grant” application to the DOI is Friday, May 13, 2022. These funds are expected to be distributed to DEP by the DOI within 30 days of receipt of the application, so the \$25 million funding should be received by DEP about June 13. The Department has one year from the date of receipt to obligate these grant funds.

On December 23, 2021, the Department submitted a Notice of Intent (NOI) to the DOI to apply for the “Formula Grant”. The Formula Grant award is based on three criteria including the amount of job losses in the oil and gas industry from the period beginning on March 1, 2020 and ending on November 15, 2021, the number of documented orphaned wells in Pennsylvania and the projected cost to plug or reclaim these orphaned wells, reclaim adjacent land, or decommission or remove associated pipelines, facilities, and infrastructure. The Department could potentially receive up to about \$330 million out of the \$2 billion that is available for this grant. This money can be spent over a ten-year period if obligated by five years after receipt.

On January 31, 2022, the DOI released the amount of funding that states are eligible to apply for in phase one which includes the \$25 million in Initial Grant funding and about one quarter of the total Formula Grant money. Pennsylvania was informed that it is eligible to receive \$79,178,000 in the phase one of the Formula Grant and is projected to receive \$226,448,000 in phase two of the Formula Grant round; however, the \$226,448,000 is not guaranteed. The amount of funding that Pennsylvania receives in the phase two of the Formula Grant will depend on a number of criteria including the number of documented oil and gas orphan and abandoned wells on record at the time of the application date. The DOI has not published draft grant guidance related to the Formula Grant.

There are two types of performance grants that are included in the IJA funding. The first is the “Regulatory Improvement” grant that is comprised of two \$20 million grants for a total of \$40 million for state improvement in well plugging and financial assurance regulations. The DOI has not yet published draft grant guidance related to the Performance Grant; therefore, it is not clear how much of this grant funding DEP will be eligible to apply for. The Department intends to seek the full \$40 million in this grant funding, but there is no guarantee it will receive the full \$40 million.

The second is the “Matching Grant” that can be up to \$30 million over a maximum of 10 years matching every dollar Pennsylvania spends annually in excess of average annual plugging expenditures from 2010-2019. The DOI has not published draft grant guidance related to the Performance Grant; therefore, it is not certain how much of this grant funding DEP will be eligible to apply for. The Department intends to seek the full \$30 million in this grant funding; however, the ultimate amount of funding awarded will depend on how much “match money” the Department/commonwealth is able to contribute. There is no guarantee it will receive the full \$30 million.

NEW BUSINESS

Mr. Walentosky reminded the Department that TAB is interested in receiving a presentation from Dr. Burgos and Dr. Warner from the Pennsylvania State University (PSU) regarding the Roadspreading of Brine study and the Efficacy Study, respectively. He stated that these topics would also be of interest to members of the Pennsylvania Grade Crude Development Advisory Council (CDAC) and that perhaps a joint meeting would be worthwhile. Mr. Klapkowski stated that the Roadspreading of Brine study is not final, and he is not aware when the study will be finalized. Mr. Klapkowski suggested that a joint meeting with both TAB and CDAC probably makes sense due to the interest of both the board and council.

Dr. Brantley commented that given the ongoing media interest in the topics of the road spreading of brine and the efficacy study, that it would be good to discuss these topics. Mr. Klapkowski reminded the board that currently the road spreading of brine waste is not allowed under current regulations; however, the beneficial use of brine is sometimes authorized by the Bureau of Waste Management under the co-product determination program. The Bureau of Waste Management is currently examining the current co-product determinations that involve the use of brine for road spreading.

ADJOURNMENT

Dr. Yoxtheimer requested a motion to adjourn the meeting. Mr. Walentosky made a motion and Mr. Baldassare seconded. The motion passed unanimously, and the meeting was adjourned at about 2:15 pm.