

Minutes of June 10, 2013 meeting of the Marcellus Shale Safe Drilling Initiative Advisory Commission

Approved August 26, 2013

The Commission held its eighteenth meeting at the Garrett County Health Department, on June 10, 2013, beginning at 1:00 pm. In attendance were Chairman David Vanko and Commission members Senator George Edwards, Delegate Heather Mizeur, Commissioner James Raley, Commissioner William Valentine, Mayor Peggy Jamison, Steve Bunker, Jeff Kupfer, Paul Roberts, and Nick Weber. Harry Weiss attended by conference call. Also in attendance were staff of state agencies and members of the public. Another draft of the Best Practices report had been sent to Commission members on May 28, 2013. This draft, which is attached to the minutes, showed the modifications that had been made to the last draft.

Commissioner Kupfer inquired about the purpose of recommending best practices. Will they be permit conditions, regulatory requirements, merely advisory? Would some require changes to the Maryland statutes? Staff said that the current thinking is that the best practices would be regulatory. Until the practices are finalized, we cannot know for sure if statutory changes will be needed. We hope to avoid that.

Commissioner Kupfer also requested that the draft include the source for the recommendation, especially if the source were another state.

Commissioner Weber suggested moving some of the requirements of the Comprehensive Gas Development Plan (CGDP) to the individual permit. It was agreed that one goal should be to avoid duplication. Senator Edwards mentioned that permit hearings for the Casselman mine had been consolidated. Mayor Jamison suggested that the regulations make clear that information and approvals carry forward from the CGDP to the individual permit application.

Commissioner Kupfer noted that Maryland would be the first state to make a CGDP mandatory. He said that, as currently written, some pieces don't fit together or work together. If it is adopted without any significant modifications, it is highly unlikely that any company would decide to go through the process and apply to drill in Maryland. He made the following points:

- No company can prepare a comprehensive drilling plan with any level of specificity until they know whether the area is productive.
- Suppose a company wants to develop more wells or acreage than what is in the approved CGDP? Must it stop work until a new plan is approved, or can it continue to implement the approved CGDP while submitting modifications?
- If Maryland is really concerned about efficient development, the state should consider adopting some version of compulsory integration or forced pooling.
- The criteria for approval of the CGDP are still too vague for operators to have confidence in the state's review of the plan; for instance, the phrase "maximum extent practicable" is

not sufficiently defined and it is unclear how the state will balance the extra costs required to mitigate certain impacts.

- Must a company follow the drilling sequence outlined in an approved CGDP? If not, how onerous would the modification process be?
- Are some modifications so minor and ministerial (such as adding extra wells on a pad or extending the lateral length) that the regulations should say that the State “shall” approve the modification rather than “may” approve the modification?
- It is not clear how the CGDP and the individual permit relate to each other; duplication is still a concern.
- And most basically, we should all consider whether, assuming that we have strong requirements for individual well permits, a mandatory CGDP really adds anything significant to the protection of the environment?

Commissioner Weber expressed concern about the fast-tracking of permits once the CGDP is approved. Public participation should not be compromised.

Commissioner Roberts asked what percentage of watersheds in the County are considered high value. Why not protect them all by limiting the amount of impervious surface? He thinks the issue deserves further study. He notes that in leases of State forest land in Pennsylvania, the State sets limits on either the percentage of land that can be developed or the number of well pads. He thinks that the 2% limit on impervious surface should be applied to all watersheds because more than that degrades trout streams.

Mayor Jamison endorsed the idea of planning, but noted that requiring 2 years of data may deter development.

Commissioner Weiss noted that a company would have to control a large amount of acreage to achieve the maximum recovery of gas.

Commissioner Roberts stated that we need to set limits on the industrialization of rural Maryland.

Senator Edwards asked whether an exploratory well in the Marcellus could be vertical without a horizontal section. Commissioner Kupfer thought not, that a horizontal section would be necessary to gauge productivity. Senator Edwards repeated that we needed a simplified process for exploratory wells.

Commissioner Weber said that the impervious surface can't be averaged across the state. Commissioner Roberts said that he would like a 2% cap on total impervious surface, whether it is associated with wind turbines, shopping centers, etc. He urged more discussion of the concept.

Delegate Mizeur said that the policies and the tool box are crucial pieces. Dr.Conn explained that the toolbox will contain GIS data layers. She discussed briefly the work DNR is doing with Columbia Gas on a pipeline policy.

Delegate Mizeur also questioned whether this really is the gold standard in instances where no other state does it? She wants more time to review the issues.

Commissioner Kupfer stated that he cannot support the CGDP because it would be too resource-intensive.

Commissioner Weber stated that Trout Unlimited opposes trenching across streams for pipeline installation and favors horizontal drilling under streams where they must be crossed. He also noted that a 600 foot setback would not be enough to protect a sensitive stream like Red Run.

The fourth column should be deleted from Table 1-1.

Commissioner Roberts cited the Dominion case and said that a 1,000 foot setback from drinking water wells is not enough – it should be 2,000 feet. Chairman Vanko observed that he thought Commissioner Roberts was conflating surface effects with the effects at depth. Commissioner Roberts responded that the setback should be the same for public and private wells. Delegate Mizeur agreed and said that the setback for either should be 2,000 feet. Commissioner Kupfer said he thought some of the setbacks are excessive. Commissioner Valentine gave his opinion that the proposed separation from the vertical borehole is fine.

Chairman Vanko noted that one possible problem is that the annulus of the vertical borehole could transmit methane. Senator Edwards noted that casing and cement are key to protecting groundwater, and that monitoring and enforcement are essential. Chairman Vanko noted that it may be appropriate to build in some redundant protections.

Commissioner Valentine asked whether capped wells would have to be tested. Chairman Vanko suggested that capped wells should be tested periodically to gauge their integrity.

Commissioner Weber wants more aquifer testing and monitoring wells.

Commissioner Bunker noted that on pages 18-19 of the draft, the State failed to identify its preference.

Commissioner Kupfer asked if the procedure for individual well permits could be shortened. Delegate Mizeur noted that it should be a goal to streamline the process. She asked that the timelines and the relationship between the approval of the CGDP and individual well permit be clarified.

Commissioner Weber suggested that the Safety Data Sheets be provided to local emergency responders.

Commissioner Kupfer said that the discussion of water recycling on page 33 was confusing – would it be mandatory or not? He said that 90% recycling may not work for operators who are not net water users. He also noted that it may not be appropriate to mandate that all tanks should be closed.

It was noted that on page 31 of the draft, the reference to encouraging alternative methods of well development should be broadened beyond waterless fracturing.

Commissioner Weber noted that he thought the recommendations for gathering lines were too vague. Invasive species control should include washing the intake structure before using it in Maryland.

There was a discussion of wastewater: should it be treated like a residual waste as it is in Pennsylvania, or as a RCRA-related hazardous waste? Commissioner Weber suggested that there be a manifest system for the transportation of wastes. Ms. Kenney noted that Maryland uses manifests only for certain types of waste, including hazardous waste. She thought manifests might be required for used oil. [She was mistaken, manifests are not required for used oil, but are required for hazardous and infectious wastes.]

Commissioner Weber also noted that an Environmental Impact Statement is required before the State can lease mineral rights on state land. Maryland Natural Resources Code Section 5-1702. He asked if the State will be developing a policy on leasing of State lands, and staff answered yes.

A public comment period followed.

James “Smokey” Stanton, speaking on his own behalf and not for the Youghiogheny River Watershed Association, asked for clarification of what would be in the CGDP and what would be in the application for an individual permit and how they relate. He wants a schedule and he wants the citizens to get “two bites at the apple.”

Tom Craven , on behalf of the Deep Creek Lake Property Owners’ Association, said that too little attention has been paid to the groundwater that could be affected by drilling or fracturing, especially if there were an accident. He said that all aquifers should be mapped so that we would know what would be affected if something went wrong. Chairman Vanko responded briefly, saying that the need for this information was also a focus of the Wolman Commission study from several years ago.. Commissioner Roberts asked about the status of the Wolman Commission study.

Eric Robison of Citizen Shale referenced Section VI.E.4.of the draft report and requested that special rules be made for fracturing fluids that are not water-based, especially those that are petroleum-based. He also said that the company will eventually need to run electricity to the pad,

so the State should require them to do it before drilling. Lastly, he asked for a response to a letter Citizen Shale had written to Chairman Vanko dated May 1, 2013.

Aaron Mintzes of Earthworks Action requested that drill pads be designated “hotspots” under the stormwater regulations and that no trade secrets be recognized.

Nadine Grabinia noted the need for a public hearing about any CGDP, and public notification of those meetings. She also suggested that the report describe all the existing setbacks as well as the proposed setbacks.