

Minutes, September 28, 2012, meeting of the Marcellus Shale Safe Drilling Initiative Advisory Commission

Approved January 7, 2013

The Commission held its eleventh meeting at the Continuing Education Building, Rooms 12-14 Allegany College of Maryland, 12401 Willowbrook Road SE, Cumberland. In attendance were Chairman David Vanko and Commission members James Raley, William Valentine, Peggy Jamison, Shawn Bender, Nick Weber, John Fritts, Paul Roberts, Steven Bunker, Senator George Edwards, and Harry Weiss. Also in attendance were representatives of state agencies and members of the public.

The meeting began with a welcome and introductions. At the last meeting the Advisory Council took public comments. A court reporter took notes which have been circulated for review. There were a few errors that people reported. The Chair asked if anyone had additional corrections to the comments or the minutes. There were none. The minutes were moved and voted approved.

Online public comments have been distributed and shared by email.

The Chair asked if members were familiar with a brief history of hydrologic fracking in Maryland that was developed by the Department (MDE). The two pager walks through the history beginning in 1960 when small volume vertical drilling was occurring. Commissioner Raley asked for a publication date of this paper. Brigid Kenney answered it was done in April 2012. Raley said he has seen this and actually shared it with his students and the Council on Marcellus Shale operating in Western Maryland.

Dr. Keith Eshleman began his presentation (which will be posted on MDE's website). He and his colleagues have submitted the compilation of best practices. [It was emailed to the Commission on September 6.] He summarized his findings on best practices in several states and the federal level. He was assembling an additional scientific team and gathering Maryland-specific data on geology, slope, forest areas, etc. to develop recommendations for best practices for Maryland. Over the summer he had the opportunity to go on two field trips to drilling sites. He found it very valuable to gain first hand observation. He often hears drillers will "get in and get out" of these sites, but the sites should be thought of as quasi permanent industrial sites.

Chairman Vanko pointed out that the removal of the infrastructure might be even more disturbing than leaving it there. Eshleman said he asked if they will refrack in these sites and was told they are not designed to do that. Commissioner Weiss said that he has heard the opposite.

Commissioner Roberts noted that Pennsylvania acknowledges there were too many leases and too few regulations, and that Pennsylvania is now going back to fix this. In general, a lot of protections are being put in place. Also, New York learned from Pennsylvania's experiences, and Maryland is able to learn from both. Commissioner Weiss pointed out that recently provisions that once were in considered appropriate for regulations have been moved to statutes.

Commissioner Weber asked whether the Advisory Commission will be making recommendations about practices to be in the law or regulations. Commissioner Weiss answered that the legislative workgroup that will try to develop consensus and make recommendations to the Advisory Commission. If flexibility is needed, it would make more sense to place the requirements in departmental regulations rather than putting requirements in statutes.

Commissioner Roberts noted that without good baseline data, we will not be able to detect changes that might be caused by fracking. We need air data as well as water data. Brigid Kenney pointed out that the air monitoring people will be sharing information on the findings of West Virginia's mobile lab which shows that the impact was short lived. Some data may be useful even if would not be admissible in court for technical legal reasons. Permits, if issued, could contain monitoring requirements. This is done in many states.

Commissioner Valentine asked Dr. Eshleman if he had found information on waterless fracking. Dr. Eshleman replied that there is not much information available.

Chairman Vanko asked if there are any more questions on Dr. Eshleman's report. He noted that this is very comprehensive and as we review it, we may have more questions offline that can be handled with calls and emails.

Commissioner Bunker noted that the report is very comprehensive about drilling, but what about compressors and pipelines? Might we need to find more about that?

Commissioner Weber mentioned that quantified assessment for some risks, such as releases of wastewater from trucks involved in traffic accidents, have been done. Many other risks have not been quantified and other risks might not be quantifiable. We should do as much as we can through risk analysis to lower the risk of harm, for example, to damage to surface water and other potential impacts from drilling.

There was a discussion about pipelines and who regulates them. Disclosure of the exact locations of interstate pipelines may present a security risk. Information on where individual companies want to place their gathering lines is generally not public. Federal regulations establish construction standards for intrastate pipelines, but the federal government may not perform any inspections on these. Commissioner Bender commented that pipeline standards are very strict.

Brigid Kenney explained that she is developing a matrix that a person could use to select the most important aspects of best practices. It is organized by the specific steps in the drilling process and includes the current Maryland requirements for comparison.

Commissioner Weber commented that there are also public health and safety issues, and transportations issues to consider. Brigid Kenney commented that we are aware of this and that Dr. Cliff Mitchell of DHMH will come to speak to the Commission at some point. MDE has been in conversation with DHMH. The goal of best practices is often to minimize releases of chemicals, because minimizing exposure minimizes risks to health.

Commissioner Roberts commented that enforcement in other states has been criticized. Brigid Kenney answered that the legislature authorized MDE to set a fee on gas permits in an amount sufficient to support the Department's activities, including inspection and enforcement.

Commissioner Weiss reported on the September conference call of the legislative committee of the Advisory Commission and reviewed an outline of legislative proposals. Commissioner Raley commented that the question of lease registration has come up and should be revisited.

Commissioner Weber asked for clarification about the difference between statute and a regulation. Commissioner Weiss answered that the law is passed by the legislature and enforced by the attorney general. Regulations are a description of how the law is implemented. Lisa Nissley commented that the regulatory process is year round and that changes can be made in regulations even if the legislature is not in session.

Commissioner Roberts suggested we invite Drew Cobbs to the table to discuss these issues and find common ground.

Commissioner Vanko said that we should think about sponsors for bills. Senator Edwards commented that he would like to see these be Administration bills.

The next meetings were scheduled for October 26th and November 16th. Brigid Kenney mentioned that Secretary Griffin would like some of the meetings to be closer east.

Public Comment.

Smokey Stanton of Garrett County said that most people understand that it may not be practical to have every meeting in Western Maryland. He has comments on two areas – on water quality baselines – He understands that the data gathering by trained citizen volunteers is supposed to supplement the work of MDE and DNR, not replace it. He commented that the voluntary effort may be helpful to establish a baseline and a protocol to detect changes in the water, not necessarily be pre-litigation data. A second point is that the Commission lacks a public health person and he thinks it would be smart to roll this in now rather than further delay things later.

Paul Durham of Oakland talked about potential regulatory gaps. He said it was important to clarify what falls under state jurisdiction and what is under the control of local government. The local jurisdictions may need or want additional authority from the state. This needs to be clarified so that local governments can prepare.

Billy Bishoff cautioned about being in a hurry to introduce legislation. He was told by Secretary Summers, who was acting secretary at the time, that many of the provisions in bills offered in 2011 were unnecessary because MDE already had the authority to do much of it. He said that it might be wise to wait until the BMPs are selected. Senator Edwards stated that existing law provides the authority to implement rules and regulations for drilling. We could separate the bills and do some now, save other ideas for after BMP. Still, it may be good to have things in place.

The meeting was adjourned.