

Minutes, August 4, 2011, meeting of the Marcellus Shale Advisory Commission
Approved October 7, 2011

The Commission held its first meeting on August 4, 2011 at the Visitors' Center in Rocky Gap State Park in Allegany County, MD. In attendance were Chair David Vanko and Commission members Shawn Bender, Steve Bunker, George Edwards, John Fritts, Jeff Kupfer, Heather Mizeur, Dominick Murray, Jim Raley, Paul Roberts, Bill Valentine, Nick Weber, and Harry Weiss. Commission member Peggy Jamison had a prior commitment and was absent. Also in attendance were Secretary Bob Summers (Maryland Department of the Environment, "MDE") and Secretary John Griffin (Department of Natural Resources, "DNR"), as well as staff of state agencies and members of the public.

Dr. Vanko called the meeting to order at 9:35 and acknowledged Secretary Griffin, who welcomed the members on behalf of Governor O'Malley. Julie Allbrooks, Assistant Park Manager for Rocky Gap, welcomed the group and described the Park and the new Visitors' Center.

Secretary Griffin discussed the mission of DNR in relation to Marcellus shale. He mentioned that DNR was concerned about the longer-term impact of gas exploration and development on the landscape and resources, particularly on land that the State owned or on which it had easements. He stated that those who benefit from natural resources should pay the full cost of exploiting those resources. He said that the Commission should take advantage of work being done by others, especially federal and State agencies. He will distribute to each Commission member a copy of the 2011 Preliminary Revised Draft of the Supplemental Generic Environmental Impact Statement on horizontal drilling and high-volume hydraulic fracturing prepared by the New York State Department of Environmental Conservation. Lastly, he suggested that the Advisory Commission might want to schedule a field trip to see drilling sites.

Secretary Summers expressed his thanks to the Commission members for agreeing to serve. He noted that MDE is the regulatory agency that would issue permits for gas wells. He said that he looked forward to input from all the Commissioners.

Dr. Vanko then invited each Commission member to introduce himself or herself with particular attention to what they bring to the Marcellus Shale Advisory Commission. Each member did so, demonstrating that the Commission has a range and depth of expertise, experience and perspective. Members emphasized the need to take a scientific and balanced approach to protect the environment and encourage a healthy economy. One Commissioner recommended that the study focus on identifying and quantifying the risks, so we can protect against them. Several members noted the necessity of developing the Marcellus responsibly and "doing it right." Commission members noted a range and number of potential impacts, from permanent changes to the landscape, to damage to aquatic insects and trout, to temporary degradation of local air quality. Mountain Maryland has a unique sense of place and the people value and care for their forests, scenic vistas and pristine streams.

Secretary Summers presented a briefing on gas production in the Marcellus Shale and on Executive Order 01.01.2011.11. The briefing will be available on MDE's web site, <http://www.mde.state.md.us/programs/Land/mining/marcellus/Pages/index.aspx>. He noted that the initial report of the Commission is due on December 31, 2011, and should address sources of revenue and standards of liability for damages caused by gas exploration and production. No later than August 1, 2012, the Commission should report on best practices. The Commission's final report, on the remaining aspects of the study, is due no later than August 1, 2014. Secretary Summers noted that the Executive Order does not establish a moratorium: if information becomes available during the course of the study that is sufficient to demonstrate that the natural gas can be extracted from shale formations in Maryland without adverse impact to human health, natural resources, or the environment, MDE could issue permits with all appropriate safeguards in place, and after following the permitting process, which includes an opportunity for public comment.

In the discussion that followed, ideas were put forward and questions were asked, only some of which could be answered at this early stage. Grouped by topic, these were:

The Study

1. The Commission will advise the Departments of the Environment and Natural Resources on the study, recommendations and reports, but the Departments will do the heavy lifting on the study.
2. It will be a challenge for the Departments to complete this work without additional resources. The Departments have talented and dedicated staff, however, and will be able to draw on the results of work by other states, the federal government, academia and industry.
3. The Commission can issue its reports before the deadlines set in the Executive Order if the Commission completes its work ahead of schedule.
4. The social and economic impacts of gas exploration and production will likely be addressed in the third phase of the Commission's work.
5. Some Commissioners think it is imperative to gather some baseline data before any drilling starts. The Advisory Committee on the Management and Protection of the State's Water Resources¹ recommended a Statewide monitoring network of ground water and surface water. The complete network has not been established because there are insufficient funds. The Advisory Commission should recommend that the monitoring network be established.
6. Is there a way to raise revenue before production starts in order fund a baseline study? The impacts begin immediately. On the other hand, the State usually does not ask industry to do a study before starting work.
7. What would be the purpose of an industry-funded study – to fulfill the charge of the Executive Order, or to conduct a broader scientific study?

¹ This Committee is often referred to as the Wolman Committee after its Chair, Dr. M. Gordon "Reds" Wolman. Its report, *Water for Maryland's Future: What We Must Do Today* (July 1, 2008), can be found at http://www.mde.state.md.us/programs/Water/Pages/water/wolman_report.aspx.

8. There was discussion about STRONGER, the State Review of Oil and Natural Gas Environmental Regulations, Inc.² One Commissioner thought that a review by STRONGER of Maryland's current regulations would be helpful, while another Commissioner thought that such a review should not be undertaken until drilling was in process, because STRONGER generally evaluates the actual performance of the State program.

How the Commission will operate

1. The Commission will operate by consensus to the extent possible, but where there is no consensus, there may be voting so that it is clear where the Commission stands on an issue.
2. Meetings will be in Western Maryland.
3. The Commission will establish smaller workgroups only if necessary.
4. The Department of the Environment will set up an online forum for Commission members to share information and communicate between meetings.

Revenue issues

1. It has not been determined whether a severance tax, if the Commission recommends one, would apply to wells in the Marcellus, all wells that are developed through hydraulic fracturing, or to all gas wells, including conventional wells.
2. Any recommendation for taxes or fees should consider the value of the gas; the effect of taxes and fees already levied on the industry, *e.g.*, by counties; taxes and fees levied in nearby states; and whether a fee should be levied on the resource in the ground, the lease of the mineral rights, or the gas produced.
3. Allegany and Garrett Counties did estimates of the economic value of gas development based on industry assumptions. These will be made available to the Commission.
4. Summaries of the taxes levied by other gas-producing states will be made available to the Commission.
5. The Commission should look at how other states came up with their taxing structures.
6. Should decisions about revenue be made before or after the industry is established in Maryland?
7. Should the revenue raised go to the communities affected by the drilling, to the general fund, or into a fund to pay for remediation or mitigation of impacts that we cannot yet predict?
8. Does Garrett County think that its current severance tax of 5.5% of the value of the gas at the wellhead is sufficient to address local impacts?
9. Should Maryland be able to collect taxes or other revenues when leases are resold?

² This organization was established to educate regulators and the public as to the appropriate elements of a state oil and gas exploration and production waste management regulatory program, and to evaluate state programs against guidelines adopted by the Interstate Oil and Gas Compact Commission for the protection of public health, safety and the environment.

10. Permit fees should support monitoring and oversight of the permitted activities.

Liability issues

1. There are provisions in Maryland's surface mining laws that could serve as models for a liability system for gas exploration and production.
2. What is the best way to insure that drilling sites are reclaimed and damages are repaired? Bonding, insurance, and a program similar to Superfund were mentioned as possibilities.

Leasing and royalty issues

1. The public needs to be educated about leases and royalties, because some Western Maryland landowners have signed away their mineral rights for below-market rates.
2. Should Maryland set a statutory floor on royalties as Pennsylvania and some other states do?
3. It was suggested that the State could gain revenue by leasing the mineral rights under State lands. Secretary Griffin noted that leases of mineral rights owned by the State would require the approval of the Board of Public Works, which failed to establish standards several years ago. Where the State does not own the mineral rights, the State may need to provide access to the owner of the mineral rights.
4. A Commissioner noted that the leases Pennsylvania enters into for its own land contain provisions that protect the lessor and serve as a model for Maryland.

The next meeting will be the week of October 3. The Commissioners will be polled about their preferences.

Chairman Vanko adjourned the meeting at noon.