

Minutes, February 27, 2012, meeting of the Marcellus Shale Advisory Commission
Approved at the April 20, 2012 meeting

The Commission held its sixth meeting in the Merle S. Elliot Conference Center Room 213 at Hagerstown Community College. In attendance were Chairman David Vanko and Commission members Shawn Bender, Steven Bunker, John Fritts, Jeffrey Kupfer, Dominick Murray, James Raley, Paul Roberts, William Valentine, Nick Weber, and Harry Weiss. Also in attendance were Secretaries Robert Summers and John Griffin and staff of state agencies and members of the public.

Commissioner Vanko called the meeting to order at 9:30 am. The draft minutes of February 28, 2012 were unanimously approved without change.

The Commission expressed its gratitude to Hagerstown Community College for hosting the meeting. Commissioner Vanko gave an overview of the agenda, and introduced Catherine McCall who gave a presentation on DNR's Natural Resource Analysis to date. Copies of the presentation were made for all of the Commissioners and the presentation will be available electronically.

Questions and discussion followed the presentation. Commissioner Bender asked about the proportion of leases that were on agricultural land vs. forested land, suggesting that placement on agricultural land might avoid forest fragmentation. Commissioner Roberts asked how many total acres of leased forest were used for the analysis. The answer was 127,000, but the Department has not finished mapping all of the parcels in the Savage River State Forest. Commissioner Valentine asked if there were any data to determine how many acres of forest were impacted by wind farms in the county. That information was not considered by DNR for this analysis. Commissioner Vanko then noted that there would be a discrepancy in how long a drill rig would be maintained versus how long a wind turbine would be maintained.

Commissioner Weber asked what percent of the Savage River Watershed had been leased. Ms. McCall did not know the percentage but said there was at least one mineral lease in the watershed. Commissioner Weber asked if DNR considered brook trout a sensitive species. Ms. McCall stated that brook trout are sensitive to water quality changes. Commissioner Weber noted that Savage River is the largest intact watershed south of Maine that holds brook trout, the country's only native salmonid.

Commissioner Weiss noted that similarly sensitive areas are being developed in Pennsylvania and asked if the Department was using any Pennsylvania data to assist in analysis. Ms. McCall said that some of the work in the presentation was based on Pennsylvania and that the Department was consulting with Pennsylvania. Commissioner Weiss recommended working with the National Academy of Sciences in Philadelphia because they are doing a study on similar issues.

Commissioner Fritts expressed his concerns regarding forest interior dwelling species (FIDS) and asked whether habitat can be restored once a forest interior habitat becomes

fragmented. Ms. McCall acknowledged that reforestation is a slow process, but could not estimate how long it would take. Commissioner Fritts then asked if habitat restoration could be expedited by putting more money into it. Ms. McCall was unsure, but observed that species exist as part of a community, and some species may be lost even if the habitat is ultimately restored. Commissioner Weber asked about Tier II streams and noted that loss of shade can make the water too warm for trout. Brigid Kenney explained that Tier II streams are to be protected from degradation, but that MDE does not have regulatory programs to control every activity that can degrade Tier II streams.

Commissioner Bunker asked whether the Departments can encourage or require companies to coordinate their roads and pipelines to minimize fragmentation. Joe Gill responded that the Departments share information and are considering ways to minimize fragmentation. Commissioner Weiss noted that there is a general permit for stormwater associated with gas wells in Pennsylvania.

Commissioner Roberts noted that many people in Garrett County get their drinking water from springs; did DNR look at springs? Ms. McCall said that their data was for well locations, and that the department could compile data on springs.

Commissioner Fritts said that the presentation suggested that 90% of well sites are to be placed on “best of the best” sites, and asked how the Department could protect them. Joe Gill said that DNR will look first to establishing Best Practices to eliminate, minimize, then to ways to mitigate risks and potential hazards.

Commissioner Weber asked if there was any progress on evaluating the economic value of the ecological resources, and what the impacts from drilling may have on their value. Joe Gill responded that economic analysis would be part of Phase III of the study.

Commissioner Raley asked about the relative impact of drilling and wind turbines on forest fragmentation. Ms. McCall answered that many more acres will be impacted by gas production if 1600 wells are drilled. Commissioner Vanko asked if the Department of Natural Resources knew the leased density data in Maryland and if it was comparable to the leased density in Pennsylvania. Commissioner Weiss said that Maryland’s map looked similar to Sullivan County, Pennsylvania. Commissioner Bender noted that Garrett County already has some fragmentation but that it was possible to strategically place wells to avoid impacting critical areas. Commissioner Bunker mentioned that The Nature Conservancy is working with one company in West Virginia on strategic placement to avoid sensitive areas.

There was a brief discussion of proposed rules of the Delaware River Basin Commission, which are said to take a more holistic approach. Secretary Griffin noted that restrictions on drilling in Maryland may be calibrated to the degree of potential impact, so that perhaps no drilling would be allowed in some areas, as New York proposes to prohibit drilling in the areas that supply drinking water to New York City. Commissioner Fritts then asked if the state had ultimate authority over whether anyone could drill or not. Secretary Griffin said that remains to be seen.

Ed Larrimore, Manager of MDE's Mining Program, gave a presentation on current requirements in Maryland regulations and additional information that must be provided with the permit applicant. He noted that many of the regulations are 20 or more years old, and that the regulations must be updated to address additional topics and certain topics in more detail.

Commissioner Fritts asked about enforcement. MDE is the lead enforcement agency, and the law provides that the Department can issue an administrative order or ask a court for an injunction and a criminal penalty up to \$50,000 and the cost of damages caused by a spill, discharge, or violation.

Commissioner Roberts asked if the Department had a map of gathering lines currently in the state, or if there was an agency that had such a map. The Department does not have a map, and is not aware of any state requirement that companies disclose the locations. Commissioner Roberts asked why ponds might be used for vertical wells. Mr. Larrimore said they might be used to contain drilling water or cuttings. Mr. Larrimore thought that the trend in the industry was to use tanks and containers rather than ponds.

Commissioner Kupfer asked about the completeness of the applications Maryland had received to date. Mr. Larrimore said that MDE had requested additional information from all the applicants and that the applicants had been informed that the Advisory Commission would make recommendations regarding additional regulatory requirements.

Commissioner Roberts asked about the interface between State and county requirements. Mr. Larrimore said that MDE has a good relationship with Garrett County.

Joe Gill and Brigid Kenney presented an overview of all the bills introduced into the 2012 Legislative Session that relate to Marcellus Shale. Commissioner Vanko announced that the Commission was not being asked to render an opinion on these bills.

The first set of bills that were discussed related to the recording of leases. SB 471 and its cross-file HB 403; SB 472 and its cross-file HB 402; SB 773 and its cross-file HB 732, and HB 1040 all relate to land records of mineral rights. HB 1072 relates to a state level recordation tax and transfer tax on documents conveying an interest in gas, oil and other minerals. HB 1172 directs MDE to establish and maintain a registry of gas leases.

Joe Gill went over SB 768, which imposes a 2.5% severance tax on natural gas produced from Maryland wells. HB 907 places a 15% severance tax on natural gas produced from certain Maryland wells but exempts some wells.

Commissioner Kupfer asked if MDE and DNR could indicate their position on each bill as they went along the overview process. Secretary Summers responded that the Departments does not take a public position until the hearing on the bill. It was noted that hearing dates can change, and that anyone interested should check the General Assembly website to confirm the hearing date. Brigid Kenney reminded the

Commissioners that they are free to testify at bill hearings, and that they can identify themselves as Commission members, provided they add that they are not speaking on behalf of the Commission.

Joe Gill discussed SB 798 and its cross-file HB 1204, which remove the cap for performance bonds for gas or oil wells, and replace it with a minimum amount for the performance bond that can be adjusted by regulation. The bills would also assess a \$10 per acre per year fee for two years on leased land. The money would be used to fund the studies required by the Executive Order.

Brigid Kenney discussed liability bills. SB 636 and its cross-file HB 1123 establish a presumptive impact area. The presumptive impact area is a one half of a mile radius around the vertical portion of the well. The bill would establish a rebuttable presumption that damage that occurred within that area within 365 days of drilling or fracking activity was caused by the drilling.

HB 296 prohibits a person from shipping or transporting into the State, or storing, treating, discharging, or disposing of in the State, flow back or other wastewater resulting from hydraulic fracturing activities occurring in another state. It was noted that this bill may be unconstitutional and that the sponsor plans to introduce a curative amendment.

HB 1170 would require a natural gas drilling permit holder to keep and maintain records relating to drilling for each individual well, update them weekly and make them publicly accessible on the permit holder's website.

Joe Gill discussed HB 1033 under which leasing agents would be required to provide, in writing, notice of the landowner's rights, such as the rights to seek legal counsel and negotiate oil or gas lease terms. HB 1034 would provide that a person may not enter into an oil or gas lease unless (1) a copy of a portion of a U.S. Securities and Exchange Commission Form 10-K is provided to the lessor and (2) certain specific risks to landowners are stated conspicuously in the language of the lease. SB 770 and its cross-file HB 744 would require landmen to register.

Commissioner Fritts asked what the difference was between SB 768 and HB 907. Other than the different tax rates, there are differences in who collects the funds and what they can be used for. Commissioner Kupfer mentioned that the State tax would be in addition to the taxes levied by the counties. Commissioner Weber asked what the state could do with the first \$25 million under SB 768. Joe Gill responded that the language in the bill was not entirely clear.

Commissioner Vanko mentioned that Commissioner Valentine had to leave early and wanted to express his disapproval of HB 1072, stating that these taxes should be levied by the county, not the State. Commissioner Raley agreed, stating that the bill was overreaching.

The meeting was then opened up to public comment. Peter James, candidate in the Republican primary for the 6th Congressional District stated that it would be helpful to quantify the impacts as transitory or permanent. He also said that the desires of the citizens should be considered. The first priority for use of the gas should be to help the counties where it is produced. He expressed concern for property rights.

Julie Albowicz, staff to Senator Mikulski, mentioned that Senators Mikulski and Cardin have been following Marcellus Shale developments and that Congress might act.

Nadine Grabania discussed the need to assess the value of ecological services provided by intact forest and wetlands. She also mentioned that locating wells away from important ecological areas may have the undesirable effect of putting wells closer to residences.

Drew Cobbs of the Maryland Petroleum Council stated that a 15% severance tax would discourage any gas development in Maryland. Commissioner Vanko mentioned that the Commission did not take a position on the proper severance tax rate. It was suggested that the Advisory Commission should make more specific recommendations and take the lead on drafting legislation. Commissioner Roberts suggested that we need a more methodical approach to determine the correct tax rate.

Someone in the audience asked whether blowouts have to be reported. Brigid Kenney replied that the regulations require that MDE be notified as soon as possible but in any event within two hours of the blowout. Commissioner Weiss mentioned that some remote drilling sites in Pennsylvania do not have adequate cell phone service. Commissioner Vanko said that perhaps a test for communication services should be considered at well sites. There would also be a need for local coordination. Perhaps a communications plan should be required.

The meeting was adjourned at 12:15 pm. The next Commission meeting date, time and place are to be determined.