

DMME Gas and Oil Regulatory Advisory Panel Meeting  
Wednesday, June 4, 2014  
10:00 a.m.  
State Capitol House Room 3  
1000 Bank Street  
Richmond, VA

## Meeting Summary

### Panel Members Present:

Kevin Elkins – General Manager of CNX Gas Virginia Operations, representing VGOA  
Nikki Rovner – The Nature Conservancy  
Bruce Prather – Consulting Geologist, representing the Virginia Gas and Oil Board  
Eric Gregory – County Attorney for King George County  
Ernie Aschenbach – Department of Game and Inland Fisheries  
Scott Kudlas – Department of Environmental Quality  
Ann Neal Cosby – Attorney, Sands Anderson representing Caroline County  
Rick Cooper – DMME Director of the Division of Gas and Oil

### Panel Members Absent:

Roger Deel, citizen member from Dickenson County

### Staff Members Present:

Michael Skiffington, DMME Program Support Manager  
Conrad Spangler, DMME Director

Michael Skiffington called the first meeting of the DMME Gas and Oil Regulatory Advisory Panel to order at 10:10 a.m. Attendees introduced themselves. He provided an overview of the Department of Mines, Minerals and Energy, specific performance measures charged to the Division of Gas and Oil, and fracking in Virginia. He also reviewed the process and steps of DMME's regulatory action.

DMME initiated regulatory action to review its requirements for filling last fall. The three areas identified for review in the Notification of Intent for Regulatory Action (NOIRA) that was published in the Virginia Register of Regulations on January 13, 2014, included chemical disclosure requirements, current industry best practices, and determination if additional requirements are necessary for drilling in different regions of the Commonwealth. During the 30-day comment period that followed, DMME received over 200 comments through the TownHall website, emails and letters. In accordance with the current executive order governing the regulatory process, DMME must submit its proposed regulations within 180 days of the close of the public comment period which is August 12, 2014. The panel is charged to assist DMME in making recommendations for regulatory actions to the Virginia gas and oil program.

Members inquired about the provision in the regulatory process that would allow the panel to request a waiver/extension to the 180 days if needed. While the goal is to complete the panel's work within the designated timeframe, if it is determined that an extension is required, the request would be handled by DMME through the Regulatory Town Hall website.

## Chemical Disclosure Discussion

Background materials and information regarding chemical disclosure were provided to the panel members in advance of this meeting. Mr. Skiffington summarized the comments DMME received during the public comment period and then led discussion on the Draft Disclosure Document [provided for discussion purposes only].

4VAC25-150-10 – Definitions: the addition of the definitions for chemical disclosure registry, hydraulic fracturing, hydraulic fracturing fluid, stimulate, and trade secret

- Suggestion to look at the definition of ‘detention basin’ (storm water management facility) at a future meeting

4VAC25-150-360 – Drilling, completion and other reports: Included for reference only, what’s required under the current regulation

4VAC25-150-365 – Disclosure of well stimulation fluids: A new section indicating that in addition to all the other reports that are specified, operators must complete the chemical disclosure registry form and upload the form on the Chemical Disclosure Registry

FracFocus [<http://fracfocus.org/>], the national hydraulic fracturing chemical registry managed by the Ground Water Protection and the Interstate Oil and Gas Compact Commission, was created to provide public access to report chemicals used for hydraulic fracturing within their area.

The panel requested that review and discussion of the standard FracFocus.org form that companies complete is included in a future meeting. Two documents about FracFocus will be provided by panel members Nikki Rovner and Eric Gregory for distribution to panel members by Mr. Skiffington.

Report prepared by an advisory committee to the U.S. Secretary of Energy, suggesting that it might be possible to disclose all of the chemicals in a way that doesn’t describe how they’re used in combination

Harvard Law School April 23, 2013, Study, “Legal Fractures and Chemical Disclosure Laws: Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool”

Mr. Gregory reported that a major concern of fire and EMS responders at the local level is the disclosure of all ingredients ahead of time that could be used to tailor emergency responses if the need arises, recognizing the need to protect a company’s proprietary information and not impinge on its ability to compete fairly. The draft discussion document is basically a compilation of what other states have in place and includes a section that trade secrets would be disclosed but remain confidential to the health providers as necessary to treat a health emergency.

The consensus of the panel was to enhance the discussion document to go beyond the disclosure at the completion (post construction) to include disclosure requirements in with the permit application process. Kevin Elkins plans to meet with some of the service companies to find out what their issues are regarding disclosure of recipes/ingredients. Mr. Skiffington and Scott Kudlas will look at DEQ’s trade secret policies. This information will be incorporated into the next Draft Discussion Document and circulated to the panel in advance of the next meeting.

## **Public Comments**

Public comments were received from Peter Glubiak (attorney in private practice), Linda Burchfiel (Sierra Club), Greg Buppert (Southern Environmental Law Center), and Linda Muller (Rappahannock River Sierra Club).

Mr. Glubiak spoke of the need to take into consideration the differences in wells and geology between the Taylorsville Basin and Southwest Virginia when developing procedures. Ms. Burchfiel indicated she believed full public disclosure of specific chemicals should be required, including trade secrets. She also stated that risk analyses should be conducted prior to drilling, and Virginia should be developing its wind and solar resources. Mr. Buppert indicated that the petition submitted by the Virginia Oil and Gas Association did not mention trade secret protection, so therefore DMME should not consider any trade secret protection. He also stated that Virginia needs to be better prepared for horizontal drilling technologies. Ms. Muller stated Virginia should not depend on FracFocus for its disclosure rules and the state should maintain the data itself. Ms. Muller also recommended the panel carefully review the Harvard Law School's study on FracFocus.

## **Next Meetings**

The panel will meet on Wednesday, July 2, 2014, in Richmond, and on July 23, 2014, in Abingdon, locations to be announced later.

The meeting adjourned at 11:50 a.m.