

**Osage Operators Environmental Reference Manual Update Process**  
**March Stakeholder Meetings**  
**Osage Producers Association**

**March 4, 2014**  
**Osage Casino, Skiatook, Oklahoma**  
**Draft Meeting Summary**

The Osage Minerals Council and the Osage Producers Association met, along with relevant federal and state agencies, to discuss the first draft of the updated Environmental Reference Manual. The following is a summary of those discussions.

**Introductions and Opening Remarks**

Representatives from the Osage Minerals Council, the Bureau of Indian Affairs, the Environmental Protection Agency, and the Osage County Cattlemen's Association each made opening statements:

- Andrew Yates, Chairman of the Osage Minerals Council thanked all parties for attending the meeting. He noted that many parties worked together to develop the 1997 Manual and handbook and that these documents have been very useful resources over the past 17 years. Since that time, there have been many updates in operations and understanding around environmental and health issues and that now is the time to update the Manual accordingly. In addition, an updated Manual can help to create a level playing field between small and large producers and landowners.
- Eddie Streater, Deputy Regional Director, BIA Eastern Oklahoma Regional Office, thanked all parties for attending the meeting. He expressed hope that all stakeholder groups could work together to create a useful document.
- Christina Kracher, Tribal Consultation Advisor, EPA Region 6 thanked all parties for coming to the table today and putting in the time and effort to provide input to the Manual revision process. She said that the EPA is looking to create a document that maintains the practical and useful spirit with which the Manual was originally developed and that the agency appreciates the producers' on the ground expertise.
- Rob Lyon, President of the Osage Producers Association (OPA), thanked BIA and EPA for including the OPA in the Manual revision process. He said that the OPA is hoping for a fair and balanced approach that maintains the basic premise of the 1997 Manual as a reference document to help producers do their jobs better. Particularly as the rules in Osage County are becoming more complicated, the Manual and the associated Handbook can be great tools to help producers find answers.

Other meeting participants also introduced themselves. A full list of individuals in attendance can be found in Appendix A.

### **Review of the Manual Revision Process Guidelines**

Patrick Field, facilitator with the Consensus Building Institute, reviewed the process guidelines governing the Manual revision process. Reading from the guidelines, he stated:

Revision of the Manual is intended to provide guidance on how to comply with current environmental laws and regulations governing oil and gas operations within Osage County. The Manual will also provide clarification on which agencies should be contacted in the event someone has concerns regarding those gas and oil operations. The objective of the Manual is to provide clear, useful guidance and best management practices for daily responsibilities concerning gas and oil operations in Osage County.

Mr. Field also noted that the Manual is not intended to provide legal advice, the revision process is not intended to create new regulations, and that ownership and management of the mineral estate of Osage County is highly unique. He explained that the Manual update process is neither designed nor intended to seek consensus among stakeholders. Rather, EPA and BIA are soliciting comment and input from stakeholders and will decide independently on revisions. Mr. Field also reviewed the role of the facilitators to serve as neutral facilitators of the process and to create draft meeting summaries, without attribution, of each meeting, which will be sent to representatives of relevant stakeholder groups for review prior to publication. Mr. Field also summarized the timeline and future meetings in the Manual revision process. The process guidelines can be found at the following URL:

<http://bia.gov/cs/groups/xregeasternok/documents/text/idc1-025587.pdf>.

### **Purpose and Intent of the Manual**

Representatives from the Osage Minerals Council, the Bureau of Indian Affairs, the Environmental Protection Agency, and the Osage Producers' Association each explained their organization's perspective on the intent and audience of the Manual as well the revision and update process:

- EPA representatives explained that most of the revisions already proposed in the "February 2014" version of the draft revised Manual are simple logistical updates of phone numbers and other items that have changed since it was first created in 1997. In addition, EPA also added whole new sections on Spill Prevention Control and Countermeasures (SPCC) and on the Clean Air Act, which were not included in the 1997

version. They stated that the Manual is intended to be a practical, useful tool to help producers meet daily environmental obligations in the field. In addition, the handbook is a shorter version of the Manual that is intended for daily field operations. EPA will produce an updated handbook on the basis of what is included in the updated Manual.

- A BIA representative said that the Manual is not intended to be a regulatory document. Instead, it is intended to help operators and others through the regulatory process associated with oil and gas development. The BIA representative said that working from the text of the 1997 Manual, as opposed to starting from scratch, will save a lot of time and energy because much of the needed content is already present in the 1997 Manual.
- A representative from the Osage Minerals Council indicated that he did not have anything to add to what EPA and BIA already said.
- An Osage Producers Association (OPA) representative said that many copies of the 1997 Manual were initially distributed but that the document then disappeared from the radar screen. As part of this process, it would be good to come up with a repository such that the Manual and Handbook are accessible to producers in coming years. For example, the Manual and Handbook could be made available at the monthly minerals meetings organized by the Osage Minerals Council. Representatives from the OMC and BIA agreed that this was a good suggestion and added that copies of the handbook and Manual could also be distributed at the time of lease sales, in partnership with the Oklahoma Department of Natural Resources, and through the BIA's websites for the Osage Nation.

### **Joint Review of the Manual**

Meeting participants discussed each section of the draft Manual as currently laid out. Specific comments are listed below.

#### *Section: I. Important Contact Information*

Meeting participants from the Bureau of Indian Affairs (BIA), Environmental Protection Agency (EPA), Osage Minerals Council (OMC), Osage Producers Association (OPA), and the Oklahoma Department of Environmental Quality (DEQ) discussed how to streamline this section to reduce the number of points of contact provided and reduce confusion about which agencies to call under different circumstances. Agency representatives agreed that current reporting protocols for adverse events, such as spills, are currently unclear and may be unnecessarily duplicative, and agreed to try to simplify the section by minimizing the number of points of contact (hopefully identifying a single point of contact), empowering that contact to sort out jurisdictional issues, and contacting other agencies as needed. Parties also agreed that any spills that impact waterways should be reported.

In response to a question from the OPA, a Minerals Council representative explained that the local EPA office has moved from Pawhuska to Tulsa but that the same officials as before are staffing the office.

*Section: II. Water Pollution Prevention: The Clean Water Act*

Parties reiterated the conclusion that, due to the complicated and case-specific nature of federal water law, operators should report any spills that impact waterways to the appropriate reporting point (which will be specified) even if they are not sure if the waterway meets the definition of a “waters of the United State.” It was noted that this determination is highly complex and case-specific. An EPA representative reported that the agency will be making significant revisions to this section due to recent changes in case law about the coverage of the Clean Water Act.

*Section: III. Injection Well Requirements*

An EPA representative explained that this section, on injection well requirements, is the most detailed section of the Manual because it follows the process-driven protections enshrined in the Safe Drinking Water Act and because EPA has jurisdiction in these matters. He noted that Section III covers reporting of injection well activity, conversion of injection wells to production wells, lease transfer procedures, mechanical integrity testing, and permit procedures and technical requirements for injection wells.

An OPA representative stated that perhaps 60% of producers in Osage County do not use computers, which would make electronic reporting and putting materials online difficult. An EPA official responded that, while the agency would not require electronic reporting, it would make it an option that is available to producers. A BIA representative added that many processes contained in the proposed regulations are electronic and, due to limited resources on the part of BIA, the agency will increasingly be moving to conduct business online. In response to a question about whether a link to EPA reporting could be included on the BIA’s main website for Osage County, a BIA representative responded that a link to the appropriate webpage at EPA could likely be included on the BIA website.

An OPA representative asked about an additional option for wells that fail a mechanical integrity test (§ III.D.6) that may be known as polymer. An OMC representative explained that a temporary exemption had been granted for that one operator, and an EPA representative said that the agency would look into this technology option further.

An OPA representative suggested that the agencies remove the sentence “An injection zone in a production area may be expected to be more permeable if it is more porous.” from § III.E.4.b(6)(b), because this statement is not necessarily geologically accurate.

An OPA representative suggested that the agencies review § III.E.6.d because he had last received approval for plugging an injection well from BIA, not from EPA, as is stated in the draft Manual.

*Section: IV. Spill Prevention Control and Countermeasures*

An EPA representative explained that the Spill Prevention Control and Countermeasures (SPCC) guidelines have been in place since the 1970s. The regulations require all operators to have an SPCC Plan on site; the plans are created by certified engineers and are designed to reduce the likelihood of spills occurring and, in the event that a spill does occur, provide a plan to clean it up.

An OPA representative inquired as to what happens once an operator reports a spill. An EPA representative responded that, if the spill is of a certain size, then EPA will send staff out to look at the situation. EPA may send staff out to oversee the response or it may let BIA handle the spill response. An OPA representative noted that he has reported spills to the National Response Center on three occasions and has had to fill out 10-12 pages of reporting about the type of spill, provide maps, etc. He stated that this reporting seems duplicative of the reporting required in the draft Manual. An EPA representative responded by explaining that the National Response Center is essentially the federal government’s 911 line for hazardous substances releases and oil spills. The Coast Guard staffs the Center and reaches out to relevant federal agencies, which then take action as needed. He added that the reporting described by the OPA representative sounds like it is reporting requested from the EPA Enforcement Division, although not every spill generates an enforcement action. The EPA representative added that, separate to this reporting for the Enforcement Division, certain types of spills will require an operator to submit SPCC plans to the EPA, as described under § IV.A.7 of the draft Manual. EPA noted that since there are so many wells with SPCCs, the agency in writing its requirements decided not to review every one since that would be an enormous resource sink.

An OPA representative suggested that the agencies reexamine §IV.4.a to clarify whether dike drains are permitted in Osage County. BIA representatives agreed to look into this.

A BIA representative noted that, earlier in the day, the Osage County Cattlemen’s Association had suggested that language be included in the Manual suggesting that producers provide a copy of SPCC plans to the landowner on whose land development is taking place and asked the

Producers Association representatives what they thought about this suggestion. An OPA representative responded that, while he is very supportive of bringing sub-par producers up to par, he does not think that the Manual should put further requirements on the “good” producers who are operating according to industry standards that would make it harder for them to do business. He added that he paid \$5,000 for his SPCC plan and he does not see why he should be required to share this with a landowner or why a landowner would need a copy of his SPCC plan. He said that many may voluntarily share their plan if they wish for good landowner relations, but that this should not be required. He said that he has good relations with all of the landowners where he operates and that they communicate as needed about issues. Other OPA representatives also agreed that they would like to keep any language about requiring sharing of SPCC plans out of the Manual and that individual landowners could request to see the SPCC plans of the producers operating on their land if they would like.

Parties also discussed the option of producers keeping their SPCC plans on file at the BIA’s Osage Agency in case any landowners would like to access them there, but EPA and OPA representatives explained that this would be logistically difficult to do because there are so many SPCC plans and they are regularly updated as production activities and facilities change on site. A member of the public suggested that the reason that landowner want copies of operators’ SPCC reports is to see how often operators are required to inspect their facilities and to ensure that operators are complying with this inspection schedule. Members of the public noted that, while there are best practice guidelines for inspection schedules, they are tailored to different sites and different types of facilities by the engineer who is hired to create a company’s SPCC plan.

An OPA representative asked about a template SPCC plan that was included in the 1997 Manual and that he did not see in the draft 2014 Manual, to which an EPA representative responded that a template SPCC Manual would be included in an appendix to the updated Manual.

#### *Section: V. Clean Air Act*

An EPA representative explained that this section is new to the 2014 draft of the Osage Operators Manual and was not included in the 1997 Manual. The section on air pollution functions somewhat differently from the other sections of the Manual since there are very few regulatory requirements placed on oil and gas facilities with regards to controlling pollution. Instead, a general duty clause to operate in an environmentally friendly manner applies to oil and gas production facilities and the EPA has laid out a host of best management practices to help flesh out the general duty clause. If it seems that an operator is generally failing to comply with these best management practices, EPA can take enforcement action, but the agency will not enforce each of these air quality provisions individually. The EPA representative also

explained that hydrogen sulfide (H<sub>2</sub>S) is not designated as a hazardous air pollutant under federal law, thereby precluding EPA from regulating it directly, but that the draft Manual includes a number of best management practices for operators. The US National Institute for Occupational Safety and Health (NIOSH) has updated the Immediately Dangerous to Life or Health (IDLH) level for hydrogen sulfide to 100 ppm from the 300 ppm that was included in the draft Manual. Finally, the draft Manual does contain references to a few specific regulations where applicable regulations exist, such as in sub-section “D” (on page 47 of the draft Manual), and these regulatory provisions allow EPA to regulate these areas specifically.

An OPA representative suggested that the sentence “H<sub>2</sub>S is a flammable, odorless gas with an odor characteristic of rotten eggs” (§ V.F) be changed to replace “odorless” with “colorless.”

An EPA representative noted that an Osage County Cattlemen’s Association representative requested that EPA and BIA try to clarify the meaning of “populated areas” in § V.F.3 pertaining to the provision of warning devices for hydrogen sulfide when production facilities are located in populated areas and asked the OPA representatives if there any industry standards that producers generally follow for this issue. OPA representatives did not suggest any specific guidance, and parties brainstormed various options, such as American Petroleum Institute best management practices, Onshore Order 6, setback requirements for wellheads from occupied structures, and the EPA’s Quad O regulations (40 CFR 60 Subpart OOOO). Parties noted that concentration of hydrogen sulfide would need to be taken into account in any warning system as would the fact that hydrogen sulfide is not found at every well site.

#### *Section: VI. Resource Conservation and Recovery Act*

An EPA representative explained that oil and gas exploration and production operations are mostly exempt from the Resource Conservation and Recovery Act (RCRA) and that the language in the draft Manual largely details those exemptions. The language has been slightly updated from the 1997 Manual.

#### *Section: VII. Naturally Occurring Radioactive Material*

An EPA representative briefly explained that this section contains recommended practices for protecting employee-health from possible exposure to naturally occurring radioactive material.

#### *Section: VIII. Migratory Birds*

An EPA representative explained that this section of the draft Manual provides information about the coverage of the Federal Migratory Bird Treaty Act and suggestions about practices that operators can employ to comply with the Act. The representative added that the Osage County Cattlemen’s Association has suggested that the section be expanded to encompass the

Endangered Species Act and any other applicable state and federal laws, to which an OPA representative responded that producers do not generally run into any issues with wildlife.

### **Additional Suggestions and Discussion**

OPA representatives suggested that a section be added to the Manual related to the Emergency Planning and Community Right-to-Know Act. Under Sections 311-312, Title II, Tier 3, operators are required to provide information to emergency response entities such that they are informed about the types of fluids that may be on site that they would have to deal with in case of an emergency, such as a tornado. An EPA representative suggested that EPA could work with the Oklahoma Department of Environmental Quality to compose a first draft of this section for the Manual.

Participants noted that the Cattlemen's Association had requested that best management practices around drilling and production be incorporated into the Manual, to which OPA representatives responded that details on production practices seem to be diverging from the scope of the Manual, which is focused on environmental practices. OPA representatives added that BIA will not permit a production well if it does not meet regulations and that there are already processes and structures in place that would address the concerns of the landowners around operational issues. Discussion participants discussed different mechanisms to try to meet the Cattlemen's Association's concerns, including creating a different document that would explain the production process and applicable regulations or a statement in the Manual referring readers to the applicable section of the Code of Federal Regulations for further reference.

Meeting participants also agreed that a section on remediation and restoration of soil contaminated by produced fluids that was included in the 1997 Handbook, but not the 1997 Manual, should be included in the revised Manual.

At the request of an OPA representative, the Consensus Building Institute agreed to provide copies of any written comments received from the Cattlemen's Association to both the OPA and the OMC.

### **Public Comment**

*Participation from members of the public was included in discussions throughout the course of the meeting.*

### **Adjournment**

The meeting was adjourned at 4:30 pm.

## **Action Items**

### *EPA:*

- Look into additional option for wells that fail a mechanical integrity test (§ III.D.6) that may be known as polymer.
- Include footnotes in printed versions of draft Operators Manual.

### *All government agencies:*

- Clarify roles and responsibilities between agencies around various issues that are likely to arise.
- Prepare the next draft of the Manual given comments to date from all parties.

### *Consensus Building Institute:*

- Create a meeting summary for review by EPA, BIA, OMC, and OPA and for finalization under CBI's auspices.

**Attachment A: Attendance**

**FEDERAL AGENCY OFFICIALS AND OTHER STAFF**

<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>
Ray-Hodge	Vanessa	Department of Interior, Office of the Solicitor
Loftin	Rhonda	Bureau of Indian Affairs
Streater	Eddie	Bureau of Indian Affairs
Kracher	Christina	Environmental Protection Agency, Region 6
Lane	Willie	Environmental Protection Agency, Region 6
Ruhl	Chris	Environmental Protection Agency, Region 6
Field	Patrick	Consensus Building Institute
Kansal	Tushar	Consensus Building Institute

**OSAGE MINERALS COUNCIL MEMBERS**

<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>
Abbott	Sonny	Osage Minerals Council
Boone	Cynthia	Osage Minerals Council
Core	Melvin	Osage Minerals Council
Crum	Galen	Osage Minerals Council
Red Eagle	Myron	Osage Minerals Council
Whitehorn	Dudley	Osage Minerals Council
Yates	Andrew	Osage Minerals Council

**OSAGE COUNTY CATTLEMEN’S ASSOCIATION REPRESENTATIVES**

<b>Last Name</b>	<b>First Name</b>	<b>Organization</b>
Clemishire	Chris	Osage Producers Association
Graham	Marcy	Osage Producers Association
Lyon	Rob	Osage Producers Association