

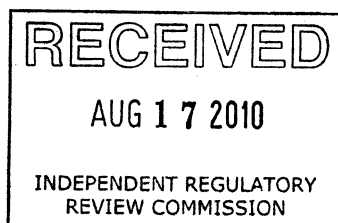
Cryptobranchus alleganiensis, the Hellbender

Allegheny Defense Project

Protecting and Restoring the Allegheny's Wild Forests and Rivers

The Allegheny Defense Project is committed to creating an inclusive environment where the individual differences among us are understood, respected, appreciated, and recognized as a source of strength for the environmental movement, and valued as qualities that enrich the world in which we live.

Environmental Quality Board,
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400 Market Street
Harrisburg, PA 17101-2301
RegComments@state.pa.us



26 July 2010

Via Participation in July 26, 2010 Hearing DEPs Southwest Regional Office, Waterfront Conference Room A and B, in Pittsburgh, PA; and via Electronic Mail

Re: Environmental Quality Board Proposed Rule Making for 25 PA. CODE CH.78 Posted in the PA Bulletin July 10, 2010

The Allegheny Defense Project (ADP) submits the following comments regarding Chapter 78.

§78.51

“Protection of water supplies. This section has been significantly amended to reflect current case law on the requirements for operators to restore or replace a water supply that has been polluted or diminished as a result of gas or oil well drilling. The proposed rulemaking does not impose new or expanded duties on well operators but does clarify their responsibilities.”

“Water supplies that are polluted or diminished shall be restored or replaced. If the existing supply did not meet safe drinking water standards, the operator shall supply a water source that is as good as the preexisting supply. If a supply exceeded safe drinking water standards, the operator need only provide a supply that meets those standards. The owner of the supply may still seek an appropriate legal remedy to obtain a supply that meets preexisting standards if so warranted.”

“An increase in operating and maintenance costs shall be provided by the operator in perpetuity. If the supply was reasonably intended to provide a greater quantity than was currently used (and was capable of doing so), the operator shall provide a supply to meet the anticipated need. Finally, if an operator is notified by an affected user of the supply that it has been impacted by drilling, the operator shall notify the Department in 10 days.”

Comment: The Pennsylvania Department of Environmental Protection (DEP) must clarify the regulations regarding bonding for the preservation or replacement of water supplies. Bonding must cover assurance that there will be a water supply permanently available to an affected property owner. If DEP concludes that it does not have the authority then a legislative initiative should be undertaken for that authority (note: bonding authority does exist for plugging wells).

In the context of Limited Liability Companies (llc) what assurance can the department give that the following means anything?: “An increase in operating and maintenance costs shall be provided by the operator in perpetuity. If the supply was reasonably intended to provide a greater quantity than was currently used (and was capable of doing so), the operator shall provide a supply to meet the anticipated need.”

§78.89

“Gas migration response. This new section requires well operators to notify the Department if the operator is notified or becomes aware of a gas migration event and to take investigative and corrective measures if so required by the Department. The section specifies that emergency responders and the Department shall be notified immediately if the level of natural gas detected is greater than 10% of the lower explosive limit of natural gas.”

Comment: This must not be limited to just natural gas migration, but must also include the byproducts of the drilling, hydro-fracturing, and production process such as methane; and to the substances created by the interaction of oil and gas development and the natural and human environment.

§78.89(c) (2)

“Conduct an immediate field survey of the operator's adjacent oil or gas wells to assess the wells for mechanical integrity, defective casing or cementing, and excess pressures within any part of the well. The initial area of assessment must include wells within 2,500 feet and expanded to a greater distance if necessary as determined by the Department.”

Comment: The DEP must address the fact of horizontal well drilling in which wells are drilled up to a mile in multiple directions from the vertical well bore. The investigation should include the entire longitudinal distance of the horizontal well and then add an additional distance for investigation (determined by the specific geology of the well location and the fracturing techniques used) that is at least 2,500 ft from the end of the horizontal well.

§78.121.

“Production reporting. This section has been amended to incorporate the requirements of the act of March 22, 2010 (P. L. 167, No. 15) (Act 15) which requires semiannual production reporting of Marcellus Shale wells. The reporting date for all wells has been changed from March 31 to February 15 to match Act 15. Marcellus operators shall also report on August 15 each year. The Department is required to post the production of Marcellus wells on its web site. To accomplish this reporting requirement, the Department is mandating electronic production reporting.”

Comment: DEP should propose legislation to remove the confidentiality requirement of production reports. Is it not simply a matter of knowing what resources are being depleted? Other States only withhold production reports for 6 months.

General

- 1) The Department of Environmental Protection (DEP) seems to take the position that neither Permit Applications or Permits be published in the PA Bulletin. There must be an affirmative obligation on the DEP to publish Applications and Permits.

2) Why would some oil and gas underground waste disposal activities (such as hydrofracturing fluids and wastewater which are not retrieved from the subsurface) not be subject to **UNDERGROUND DISPOSAL regulations § 91.51. Potential pollution resulting from underground disposal.**

(a) The Department will, except as otherwise provided in this section, consider the disposal of wastes, including stormwater runoff, into the underground as potential pollution, unless the disposal is close enough to the surface so that the wastes will be absorbed in the soil mantle and be acted upon by the bacteria naturally present in the mantle before reaching the underground or surface waters.

(b) The following underground discharges are prohibited:

(1) Discharge of inadequately treated wastes, except coal fines, into the underground workings of active or abandoned mines.

(2) Discharge of wastes into abandoned wells.

(3) Disposal of wastes into underground horizons unless the disposal is for an abatement of pollution and the applicant can show by the log of the strata penetrated and by the stratigraphic structure of the region that it is improbable that the disposal would be prejudicial to the public interest and is acceptable to the Department. Acceptances by the Department do not relieve the applicant of responsibility for any pollution of the waters of this Commonwealth which might occur. If pollution occurs, the disposal operations shall be stopped immediately.

(c) New wells constructed for waste disposal shall be subject to this section.

Thank you,

/s/ Cathy Pedler
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From: Cathy pedler [cathy.pedler@gmail.com]
Sent: Monday, August 09, 2010 10:22 AM
To: EP, RegComments
Subject: Environmental Quality Board Proposed Rule Making for 25 PA. CODE CH.78 Posted in the PA Bulletin July 10, 2010
Attachments: DEP 78 July 2010.pdf

Please find attached comments for Environmental Quality Board Proposed Rule Making for 25 PA. CODE CH.78 Posted in the PA Bulletin July 10, 2010.

Thank you,
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