

3042



RECEIVED  
IRRC

2016 APR 19 AM 8:33

April 18, 2016

Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

**Regulation #7-484: Environmental Protection Performance Standards at Oil and Gas Well Sites**

Dear Commissioners:

I am providing comment on behalf of the Sierra Club, Pennsylvania Chapter. The Sierra Club's 24,000 Pennsylvania members include hunters, anglers, birders, plant lovers, hikers, and ordinary residents who enjoy the outdoors. Nationally and locally, the Sierra Club has been a leader in conservation practices and environmental protection. Pennsylvania is endowed with wonderful natural wildlife, aquatic life, and plant species and we should make the extra effort to protect them

A review of the history of the regulations before you is important. DEP began work on revising oil and gas regulations in 2010. In April of 2011, DEP initiated discussions with the Oil and Gas Technical Advisory Board (TAB) on those concepts. In February of 2012 the Oil and Gas Act was amended by the Pennsylvania Legislature (Act 13 of 2012). Act 13 amended the 1984 Oil and Gas Act. Act 13 also directed the Environmental Quality Board (EQB) to adopt new rules for certain activities at well sites. DEP incorporated these new rules into the rulemaking under development. The Environmental Quality Board (EQB) adopted the proposed rulemaking on Aug. 27, 2013. On Dec. 14, 2013, a 90-day public comment period commenced, which included nine public hearings across the state. The comment period closed on March 14, 2014 after receiving comments from over 23,213 commentators.

Comments received from conventional oil and gas operators during the initial comment period indicated that conventional operations and unconventional operations should have separate regulations because conventional operators stated that they were confused by the new rules. They claimed that DEP did not clearly distinguish which requirements applied to conventional operators and which applied to unconventional operators.

During the pendency of this rulemaking process, the General Assembly also passed Act 126 of 2014. As a result of the passage of the Act 126, all regulations promulgated under 58 Pa.C.S. (relating to oil and gas) were required to "differentiate" between conventional oil and gas wells and unconventional gas wells. The Department determined that the current rulemaking process would continue, but that the regulations would be bifurcated (separated into two distinct chapters) on final-form rulemaking.

In response, on September 25, 2015, DEP presented to TAB two separate chapters of the regulation: Chapter 78 which apply only to conventional operations and Chapter 78a applied to unconventional operations.

On April 4, 2015, DEP published notice in the Pennsylvania Bulletin (45 Pa.B. 1615) announcing an Advanced Notice of Final Rulemaking (ANFR) procedure. DEP asked for additional comments on the draft-final rulemaking for 30 days. On April 18, 2015, DEP published notice in the Pennsylvania Bulletin (45 Pa.B. 1951) announcing three public hearings and extending the ANFR public comment period by an additional 15 days. During this additional public comment period, 2,482 comments were received from 4,914 commentators.

Some comments argue that the intent and spirit of Act 126 of 2014 was meant to create two separate rulemaking proceedings which could not run concurrently. In fact, the proposed regulations create two sets of regulations which clearly distinguish regulations applicable to conventional oil and gas operations and regulations applicable to unconventional oil and gas operations. DEP provided separate requirements for conventional oil and gas operations in Chapter 78 and requirements for unconventional oil and gas operations in Chapter 78a.

Under Act 126 amendments to the Fiscal Code, regulations promulgated under 58 Pa.C.S. (relating to oil and gas) are required to "differentiate between conventional oil and gas wells and unconventional gas wells." The text of Act 126 did not require DEP to restart the rulemaking for what is now Chapter 78. Chapters 78 and 78a are written specifically for oil and gas operations in Pennsylvania.

Changes in law resulting from the passage of Act 13 of 2012 as well as environmental protection problems identified in the Department's current regulatory program necessitate up-to-date, common sense revisions. These revisions include specifying spill reporting and remediation requirements and the identification of abandoned and active wells prior to hydraulic fracturing. Cleaning up spills in a timely manner to public health and safety standards is necessary to ensure that ground and surface water is protected. Similarly, identifying drinking water wells that could be impacted during the hydraulic fracturing process is also necessary to protect Pennsylvanians. These regulatory revisions are necessary and appropriately tailored.

While Sierra Club members commented that the regulations did not go far enough to protect the public health and safety, we believe that these regulations are an important first step in controlling the environmental consequences of oil and gas operations. The final form rulemaking clearly separates the requirements for conventional and unconventional operations into two chapters. The addition of Chapter 78a for unconventional operations and DEP's determination to limit existing Chapter 78 to conventional operations necessarily clearly differentiate between the requirements for conventional and unconventional operations.



There are many provisions that differ between Chapter 78 and Chapter 78a. The differences between Chapter 78 and Chapter 78a reflect the differences between conventional and unconventional operations. In Chapter 78 conventional operators have the continued ability to utilize pits during well drilling, completion and servicing and the ability to dispose of drill cuttings and residual waste at the well site without first needing to obtain a permit from the Department. We do not agree that the continued use of open pits protects the environment, but we acknowledge that this provision applies only to conventional operations. Chapter 78a contains a number of requirements that apply only to unconventional operations, including containment of regulated substances, oil and gas gathering pipelines, well development pipelines and water management plans. DEP imposes these additional protections due to the large scale operations of the unconventional industry.

We believe that these regulations are properly promulgated. The regulations have been reviewed for legality and form by the DEP Office of Chief Counsel, the Environmental Quality Board's counsel, the Office of General Counsel, and the Office of the Attorney General. We do not believe there is any legal impediment to your approval.

Respectfully submitted,

Thomas Y. Au  
Conservation Chair  
Sierra Club, Pennsylvania Chapter

