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Cooper, Kathy

**From:** RegComments@pa.gov  
**Sent:** Monday, February 10, 2014 2:34 PM  
**To:** Environment-Committee@pasenate.com; apankake@pasen.gov; IRRC; RegComments@pa.gov; eregop@pahousegop.com; environmentalcommittee@pahouse.net  
**Cc:** ra-epmsdevelopment@pa.gov  
**Subject:** Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites



**Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites**

**The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.**

Commentor Information:

Phyllis Mundy  
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Comments entered:

Comments on Proposed Act 13 Regulations  
 State Representative Phyllis Mundy  
 February 10, 2014

I appreciate the opportunity to offer comments on proposed regulations for Act 13 of 2012, which amended Title 58 of the PA Consolidated Statutes, widely known as the Oil and Gas Act. Today I would like to offer input on several aspects of the proposed regulations:

- Disposal and storage of drilling fluids and waste
- Conservation of environmental resources
- Responsibilities of the Department of Environmental Protection

With regard to disposal and storage of drilling fluids and waste, the proposed regulations make many missteps. To begin, I firmly believe that all fluids related to oil and gas development should be contained in engineered facilities, not in "natural depressions" as the regulations' definitions of "pit" and "freshwater impoundment" seem to allow (Sections 78.1 and 78.56). All facilities used to hold fluids that may contain potential water pollutants should be specifically engineered for the task.

In addition, the draft regulations prohibit well operators from building "centralized impoundments" for wastewaters within 100 feet of any "solid blue line stream" identified by the United States Geological Survey (78.59c). Solid blue line streams flow consistently year round.

While this 100-foot buffer is important, it should also be extended to intermittent and ephemeral streams, which do not flow continuously. Some of our most vulnerable waters are intermittent portions of high-quality streams, and these streams would not be adequately protected under the proposed regulations.

DEP should also stop promoting the disposal of residual waste at well sites (Section 78.62). The draft regulations would allow well operators to dispose of residual waste in pits on well sites as long as they comply with certain minimal requirements. It is my understanding that many well-site disposal pits have leaked in recent years, contaminating surface and groundwater and dotting the Pennsylvania countryside with brownfield sites. Along these same lines, I believe that DEP should strengthen its regulatory mechanisms for ensuring that pits and impoundments are constructed in a structurally sound manner and according to regulation (Section 78.59c(m)).

My last comment with regard to disposal and storage of drilling waste is that any disposal of waste materials at well sites should require that representative samples of the material be taken and analyzed and submitted to the agency to demonstrate that the drill cuttings are not contaminated, or that residual waste meets the regulatory standards (Sections 78.61 and 78.62). The collection and analysis of chemical samples of waste that the operator intends to dispose on site should not be discretionary; the regulations should be clear that is a mandatory obligation (Section 78.63(19)).

The regulations before us today are also lacking in very basic protections for our environmental resources. For example, DEP's proposed road-spreading of brine poses unacceptable threats to the Commonwealth's water resources and would be unlawful (Section 78.70a). Under the Pennsylvania Solid Waste Management Act (SWMA), all wastewaters from oil and gas operations, including brine, are residual waste. Any beneficial use of brine, including dust suppression and de-icing, is subject to regulation under the DEP's SWMA regulations at 25 Pa. Code Chapter 287. These regulations do not currently allow permits-by-rule for road-spreading or any other beneficial use of brine.

Additionally, the draft regulations fall short on establishing meaningful standards for the restoration of well sites and impoundment sites (Sections 78.65, 78.59b, and 78.59c). Currently, DEP's general restoration standards are practically unenforceable because regulations fail to require environmental baseline site assessments or site-specific standards and criteria for restoration. Environmental professionals do not have to sign off on site restorations, and no process has been established whereby DEP can finally approve or disapprove restoration.

DEP should require site-specific baseline assessments and restoration plans for all well sites and impoundment sites; require professional certification that restoration goals have been met; and require DEP approval before a site can be considered to be restored.

In the same vein, DEP's proposed regulations regarding bonding are inadequate, because they fail to ensure that well sites and impoundment sites will be finally restored before they are released from operators' bonds (Subchapter G). DEP should establish a process to ensure that operators are not released from liability for particular well sites until those sites are properly restored.

Moving on to responsibilities of DEP, I believe that DEP should be required to respond to comments received about a permit that may affect an important public resource (Section 78.15(d)). While the proposed regulations allow for a public resource agency to receive notice of, and submit comments about, a proposed well permit that would affect its resources, the regulations do not, however, require DEP to respond to those comments.

Secondly, these draft regulations do not give proper weight to the DEP's constitutional obligation to protect the environment (Section 78.15(g)). The proposed regulations provide that even though DEP determines that a proposed well will have a probable adverse impact on a public resource, DEP still cannot impose conditions that will prevent or mitigate that harm without first considering the impact of the condition on the individual mineral right owner's ability to optimally develop his or her oil and gas rights. This regulation inappropriately places DEP, whose mission is supposed to be to protect and conserve Pennsylvania's environment, in the position of balancing protection of important public resources against individual property rights. That is unacceptable.

In addition, DEP's duty to investigate water pollution should extend to the all oil and gas activities (Section 78.51(c)). The proposed regulations require the DEP to investigate instances of water pollution that occur near oil and gas wells. As part of its investigation, DEP may determine that water pollution was caused by the "well site construction, drilling, alteration or operation activities." This set of activities is far more limited than the list of activities defined as "oil and gas activities" in Act 13. To ensure maximum protection of water resources, DEP's investigation should extend to all oil and gas activities.

Finally, I have noted that it is the permit applicant, not DEP, who should be responsible for determining whether proposed oil and gas operations would affect threatened or endangered species (Section 78.15(d)). Because an operator proposing an oil or gas project stands to gain financially from the project, and is in the best position to understand the scope and potential impact of its proposal, the operator (and not DEP) should have the burden of determining whether its project would affect listed species and their habitat.

In closing, the proposed regulations for Act 13 are riddled with many issues that we still have the opportunity to address. Irresponsible disposal and storage of drilling fluids and waste, inadequate conservation of environmental resources, and the misguided mission of the Department are all issues I ask the Environmental Quality Board to resolve during its deliberations.

Thank you for your consideration.

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No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,  
Hayley Book

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