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PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

January 17, 2014

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

Dear Members:

We have reviewed the Department of Environmental Protection's proposed regulation "Environmental Protection Performance Standards at Oil and Gas Sites" #7-484 (IRRC #3042) and offer the following comments.

We take exception to the answer to question 23 of the *Regulatory Analysis Form* that was completed by the department where it pertains to savings or cost for local government. The answer states that the department "does not anticipate that there will be any cost or savings to local government." We would contend that based on the requirements of Sections 78.70 and 78.70a there will be a cost. As we read the proposed regulations, a municipality that would want to use "conventional well brine" for road stabilization or pre-wetting of roads would have to gather data, develop plans, provide notification, and provide a chemical analysis of the brine. We do not have any idea of what the cost may be, but the analysis of the brine alone could outweigh the benefit of using it.

Page 3: The definition of "oil and gas operations" has been expanded from the definition that is used in Chapter 33 of the act.

Page 7, Section 78.15 (f): The term "resource agency" is used but not defined. We presume that it is to mean "a state agency, a municipality, a private entity, or some other entity?" In Section 78.15 (f) (2) the term "public resource agency" is used but again not defined. Do these two terms have the same meaning?

Page 10, Section 78.21: This section references Section 3215 of Act 13 of 2012. Section 3215 was recently struck down by the PA Supreme Court. In light of the court's decision, the proposed regulations need to be adjusted accordingly?

Also, the reference to Section 3215 appears in other places in the proposed regulations, and as such the same question applies.

Page 16, Section 78.55 (d.2): Since this section deals with control and disposal planning and emergency response, would it not be a benefit if both the municipality and county also received a copy of the PPC plan? Both entities have responsibility for emergency response and having the information beforehand would greatly improve responses.

Page 50, Section 78.66 (b) (1): Would it not benefit all if the municipality and county are also notified when the department is notified of a spill or release of a regulated substance? By notifying the municipality and county, the incident could be minimized since local officials would be in the information loop.

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Page 57, Section 78.70: This section deals with spreading of brine from conventional wells for dust control and road stabilization. We have several issues with this section.

- First, we presume that this section pertains to both public and private entities (*based on the response to question 24 of the Regulatory Analysis Form*) that would or could use conventional well brine for dust control and road stabilization.
- We contend that this section's requirements as they relate to the state and local government are excessive and would be a deterrent for public use of this brine. A question that has to be raised is whether these regulations as they pertain to conventional well brine are different from regulations pertaining to other types of brine used on unpaved roads?
- Section 78.70 (b) is confusing in that if a road is paved, there would be no reason for dust control or road stabilization.
- This section also stipulates that the application of brine to unpaved roads shall be performed in accordance with the plans approved by the department. Since PennDOT has allowed brine application on unpaved roads for years, has the department consulted with PennDOT on the appropriate rate of application, etc. for brine on unpaved roads?
- Section 78.70 (b) (7) requires the applicant to name each well and the associated geologic formation that produced the brine. This requirement may be applicable for an applicant who is a producer of the brine that is applying the brine to a private access road associated with the drilling operation, but should not be for a municipality that uses brine to maintain their public unpaved roads.
- Section 78.70 (e) (2) seems to conflict with Section 78.70 (f) in that (e) (2) states that "the rate and frequency necessary to suppress dust and stabilize the road shall not exceed the rate contained in the plan," while (f) states that "the applied rate shall be up to one-half gallon per square yard for the first application and one-third gallon per square yard thereafter." Which is it?
- Finally, this section is so convoluted that it will prevent municipalities from using conventional well brine, and as such, we must oppose these provisions.

Page 59, Section 78.70a: This section deals with pre-wetting, anti-icing and de-icing of roads. As with the last comment, PennDoT has been using pre-wetting, anti-icing, and de-icing brine for several years. Has PennDoT been consulted in drafting these regulations, and are they compatible? Again, if this section is to apply to public entities, than we oppose this section as over kill. As an example, Section 78.70a (q) mandates that the department be notified at least 24 hours before the brine is applied. Since the state and municipalities would only apply this agent prior to a storm, the 24 hour notice may not be feasible.

If you have any questions or would like to discuss our comments further, please do not hesitate to contact me.

Sincerely,



Elam M. Herr

Asst. Executive Director

Copy:

Michelle Elliott  
Scott Schalles

EMH:jcm