

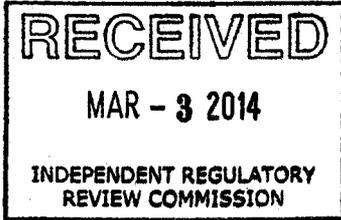
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**Summary of Comments on
Proposed Environmental and Protection Performance Standards
At Oil and Gas Well Sites (25 Pa Code, Chapter 78)**

**Respectfully submitted by
Carol J. Cutler
529 Brownstown Road, North Huntingdon, PA 15642**

**Environmental Quality Board
16th Floor, Rachel Carson State Office Building
P.O. Box 8477, Harrisburg, PA 17105-8477**

March 3, 2014



While the Environmental Quality Board's (EQB) proposed changes represent an improvement, they do not go far enough to protect the Commonwealth's public and private water sources. I call on the Department of Environmental Protection to:

Institute pre-permitting consideration of impacts on public water resources which will ensure that the right of the public to pure water outweighs the industry's right of access to a resource that is clearly not as necessary for life as clean drinking water.

Establish a consistent and comprehensive list of parameters for pre-drill water quality testing--comprehensive enough to match with what DEP uses when it investigates contamination --and make that data available to the public through an online platform that protects individual homeowners' privacy.

Apply U.S. Resource Recovery and Conservation Act standards to regulate all aspects of the storage, transport, and use of the hazardous materials generated by shale gas extraction activities.

Eliminate the onsite storage of toxic materials in open pits and require a closed-loop system for handling onsite wastes.

Clearly define "freshwater" as used in oil and gas operations.

Prohibit the onsite burial of waste pits.

Prohibit the burial or land application of drill cuttings.

Prohibit the land application of top hole water, pit water, fill, or dredged material.

Prohibit the use of brine for dust suppression, de-icing, and road stabilization.

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I am one of the 80,000 customers of the Municipal Authority of Westmoreland County whose water source is the Beaver Run Reservoir. I wish to take this opportunity to comment on the threat of contamination posed by shale gas extraction activities to this reservoir as well as to other public and private water sources in Pennsylvania.

While the Environmental Quality Board's (EQB) proposed changes represent an improvement, they do not go far enough to protect the Commonwealth's public and private water sources.

Requiring that operators consider the impact of a well site on public resources (Section 78.15 f, g) is a step in the right direction. When Consol Energy applied for permits to drill unconventional wells at the Beaver Run Reservoir site, the Municipal Authority of Westmoreland County (MAWC) did not have "the opportunity to submit comments to the Department (of Environmental Protection), including any recommendations to avoid or minimize impacts" Under the threat of a lawsuit, MAWC allowed Consol Energy to exercise mineral rights granted in a prior lease for conventional oil and gas extraction.

And judging from the photo to the right, the Pennsylvania Department of Environmental Protection (DEP) imposed few if any conditions on the placement of well pads and impoundments. Even with the proposed pre-permitting requirement, Kurt Klapkowski explained in a Webinar on the proposed standards presented in December, 2013 (referring to Section 3215(e) of 58 Pa.C.S.) that a "balancing test" must be applied "to consider



the rights of the operator to actually access the resource.” He added, “Conditions cannot be so difficult, expensive or stringent to eliminate all rights of access to the resource.”

Others have disagreed with the need to *balance* the rights of the public and the rights of the gas industry in the case of public water sources and their arguments may carry more weight now that the PA Supreme Court has handed down a decision on 58 Pa.C.S. (Act 13)--especially since the decision was based on the Environmental Rights Amendment of the Constitution of the Commonwealth of Pennsylvania which guarantees among other rights, the right of the public to pure water.

Rather than a ‘balancing test,’ I urge DEP to consider the following advice offered in 2010 in “Pre-Permitting and Site Assessment Consideration –Developing the Marcellus Shale,” by the Pennsylvania Environmental Council:

"Special consideration should be given to well operations that occur in proximity to water bodies (natural or man-made) that are utilized for drinking water (e.g. reservoirs and lakes) where even one individual adverse impact can have tremendous, perhaps irreparable, economic and social cost. Concepts used in other regulatory programs such as the Surface Mining Conservation and Reclamation Act, where areas are deemed unsuitable of extraction when in proximity to large scale water supplies, may be appropriate for oil and gas controls."

Appealing to common sense, I call on PA DEP to institute pre-permitting consideration of impacts on public water resources which will **ensure that the right of the public to pure water outweighs the industry’s right of access to a resource that is clearly not as necessary for life as clean drinking water.**

Another area where EQB’s proposed regulations fall short concerns the use of open pits on the well pads to store the waste water from the fracking process (Sections 78.56, 78.57, 78.58, and 78.59). Waste water returns to the surface contaminated with toxic chemicals, as well as buried salts and naturally occurring radioactive material and as such needs to be contained to avoid contamination of nearby water sources. To date, Consol Energy has been cited twice for leak violations where, thankfully, the toxic fluids did not enter the reservoir and the ground contaminated was removed from the reservoir site. Also, to Consol Energy’s credit, the operator is using a double layer of plastic to line pits.

Still, I am concerned that EQB’s proposed regulations will do little to prevent flooding, spills, and leak violations that may continue to occur at Beaver Run Reservoir and are now commonly occurring at shale gas drilling sites throughout the Commonwealth. Stating a required footage of freeboard provides little protection. Violations due to overflow of the required freeboard occur on a regular basis; companies repeatedly are charged with the same violations; and fines are limited or non-existent. DEP currently permits leakage of toxic chemicals onto residential properties and farmlands from pits, the amount of leakage permitted being determined by the depth of the fluid in the pits. I call on DEP **to stop permitting such leakage of fluid on surrounding land and to impose fines that will discourage repeat violations.**

A better remedy for the problems created by open pit storage of hazardous waste—one that I would like to see instituted at Beaver Run Reservoir -- would be to **require a closed-loop system for handling onsite wastes.** The US Department of the Interior advises of pits:

“Use of enclosed tanks and closed loop or semi-closed loop systems is environmentally preferable to the use of open pits.... Open production pits are to be strongly discouraged. Closed tanks and systems minimize waste, entry by wildlife, fugitive emissions that affect air quality, and reduce the risk of soil and groundwater contamination. In addition, the use of tanks instead of pits expedites the ability to complete interim reclamation. Costs may be reduced with the use of tanks, particularly when the pit requires solidification or netting.”

The Mountain Watershed Association’s review of oil and gas compliance reports, including inspector comments from site visits and violations issued, revealed that problems with waste pits are very common. Eliminating these pits would allow inspectors to spend more time monitoring other areas of concern and would remove the waste pit as a source of contamination. I call on DEP to **eliminate the onsite storage of toxic materials in open pits.**

One further point concerning onsite handling of waste water -- I call on DEP to **clearly define “freshwater” as used in oil and gas operations.** Water leftover from fracking and contaminated fluids being recycled for fracking (such as from mining or sewage) is often mixed with clean water for additional operations. The lack of a clear definition allows operators to avoid regulations on the use and disposal of polluted substances

In addition to waste water, there are the drill cuttings which contain heavy metals and radioactive elements that leach out after every rainfall. I am concerned that EQB’s proposed changes (Sections 78.60, 78.61, 78.62, and 78.63, and 78.70) do not address the risks posed by hazardous materials and do little to improve current regulations or ensure safe disposal. I call on DEP to:

Prohibit the burial or land application of drill cuttings. DEP proposes different conditions for disposal of drill cuttings from above and below the well casing, but neither makes the practice safe. Cuttings from deep underground may contain more pollutants, but chemical additives and contaminated fluids are also found in drill cuttings from shallower areas.

Prohibit the onsite burial of waste pits. Buried pits can leak and pollute groundwater over time, yet burial allows operators to walk away from any responsibility after completing operations.

Prohibit the land application of top hole water, pit water, fill, or dredged material. These substances can contain chemicals and sediments bound with pollutants that pose risks to water, air and soil.

Prohibit the use of brine for dust suppression, de-icing, and road stabilization. Storm water runoff carries brine into nearby waterways and wetlands. Not allowing the use of brine from shale gas wells is a positive step, but brine from conventional wells can also push salinity loads far above any naturally occurring conditions and adversely impact streams and ground water.

Operators currently escape the federal regulation of hazardous substances that other industries must follow. To protect water supplies as well as air quality, land, public health, and wildlife, I call on DEP to

apply U.S. Resource Recovery and Conservation Act standards to regulate all aspects of the storage, transport, and use of the hazardous materials generated by shale gas extraction activities.

Finally, EQB's proposals for water testing and the restoration and replacement of contaminated water supplies (Sections 78.51 and 78.52) are inadequate. Concerning water testing to determine pre-drill baseline data for water quality of private and public water sources, I call on DEP to **establish a consistent and comprehensive list of parameters--** comprehensive enough to match with what DEP uses when it investigates contamination **--and to make that data available to the public** through an online platform that protects individual homeowners' privacy.

Since 2011, MAWC has employed a third party to assess the water quality of Beaver Run Reservoir. That testing is useful only to the extent that the parameters tested for are comprehensive enough to establish the absence of pollutants produced in shale gas extraction activities. Establishing such a comprehensive list of parameters would enable MAWC customers to determine whether the quarterly assessment is worth the expense of \$235,000 to date.

In the event that Beaver Run Reservoir—and any other public or private drinking water source-- is contaminated , I call on DEP to require operators **to restore contaminated drinking water to a quality that meets Safe Drinking Water Act standards**, no matter what the quality of the water prior to drilling. If the quality of a water supply prior to drilling was above these standards, the operator must restore the water to that higher standard; otherwise, good water supplies will be degraded.

The chemical spill that contaminated the drinking water of 300,000 residents of Charleston, West Virginia tragically demonstrates what happens when a polluting industry is not adequately regulated. Will the northern half of Westmoreland County become another scene of a mass water contamination crisis to be laid at the cold feet of a regulatory agency? Must 80,000 MAWC customers rely on Consol Energy *voluntarily* to institute the enhanced standards called for in these comments to safeguard their drinking water source?

Thank you for this opportunity to comment.

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