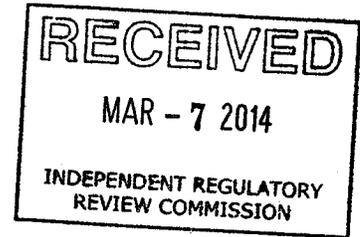


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TESTIMONY OF STEPHANIE C. WISSMAN

EXECUTIVE DIRECTOR

ASSOCIATED PETROLEUM INDUSTRIES OF PENNSYLVANIA

PROPOSED CHAPTER 78 RULEMAKING

JANUARY 16, 2014

GOOD HOPE MIDDLE SCHOOL AUDITORIUM

MECHANICSBURG, PA

Good evening. My name is Stephanie C. Wissman, executive director of the Associated Petroleum Industries of Pennsylvania (API-PA). API-PA is pleased to offer comments on the Notice of Proposed Rulemaking, Proposed Amendments to Pa. Code § 78 (Relating to Oil and Gas Wells) as published in the Pa. Bulletin on December 14, 2013.

API-PA is a division of the American Petroleum Institute (API), a national trade association that represents all segments of America's technology-driven oil and natural gas industry. Its more than 580 members – including large integrated companies, exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms – provide most of the nation's energy and are backed by a growing grassroots movement of over 15 million Americans. The industry also supports 9.8 million U.S. jobs and 8 percent of the U.S. economy, delivers \$85 million a day in revenue to our federal government, and, since 2000, has invested over \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. Many of our members have a direct interest in this notice of proposed rulemaking.

API is also a standard setting organization. For 89 years, API has led the development of petroleum and petrochemical equipment and operating standards. These standards represent the industry's collective wisdom on everything from drill bits to environmental protection and embrace proven, sound, engineering and operating practices and safe, interchangeable equipment and materials for delivery of this important resource to our nation. API maintains more than 650 standards and recommended practices. Many of these are incorporated into state and federal regulations; and increasingly, they're being adopted by the International Organization for Standardization. API encourages and participates in the development of state regulations that are protective of the public, the environment and the industry workforce. In this context, API offers the following comments and looks forward to continuing to work with DEP in the development of these Chapter 78 regulations.

Although wells have been hydraulically fractured for more than 60 years, thanks to industry innovation and technological advancements, shale formations across the country that were previously "stranded resources" are now productive due to the combination of horizontal drilling and hydraulic fracturing. Shale formations including the Marcellus have produced 1.4 trillion cubic feet of natural gas during the first 6 months of 2013, supporting national energy security. Pennsylvania's contribution in this success story is demonstrated by the fact that Pennsylvania supplied 8.8% of the nation's demand for natural gas in 2012. This renaissance has not taken place in a vacuum. All aspects of the oil and natural gas industry have been and continue to be highly regulated. Since the outset of increased activity in PA, DEP and other regulatory agencies have put into place additional regulatory requirements that reflect the technological changes that have taken place in the industry. Over the last several years, DEP has put into place more stringent regulations relating to well construction and casing. Act 9 of 2012, and the corresponding regulations already incorporated into Chapter 78, require emergency response safety measures at unconventional drill sites. Act 13 of 2012 provided for enhanced water protections, well setbacks and casing standards. Other regulatory measures include enhanced general permits for air and more stringent exemption criteria, discharge changes

prohibiting municipal wastewater treatment plants from accepting oil and gas waste fluids, and increased recycling of produced water.

The State Review of Oil & Natural Gas Environmental Regulations (STRONGER), a national non-profit organization charged with assessing states' oil and gas regulations, reviewed Pennsylvania's oil and gas regulatory program in May 2013 at the request of the DEP. STRONGER released their report in September 2013 finding that Pennsylvania's program "is, over all, well-managed, professional and meeting its program objectives." Key excerpts from the report include:

-The review team commends DEP for increasing its staff levels to address additional permitting, inspection and enforcement activities related to increased unconventional gas well development. Over the past four years, as unconventional gas well development has increased in Pennsylvania, the Office of Oil and Gas Management has increased its staff from 64 to 202 employees.

-DEP is commended for initiating a comprehensive evaluation of radiation levels specifically associated with unconventional gas development. This TENORM study is the first of its kind in the nation.

-DEP is commended for its hydraulic fracturing program. Standards for well casing and cementing require that the operator conduct those activities to control the well at all times; prevent migration of gas or other fluids into sources of fresh groundwater; and prevent pollution of fresh groundwater.

API-PA supports strong environmental safeguards and stewardship, and commends DEP on their regulatory oversight program; however we do have concerns with several provisions contained in the proposed rulemaking that we plan to outline in detail in our formal written comments to the Department. In the interest of time, I will highlight some general comments that we have and also provide comments on some of the provisions contained in the proposed rulemaking that address permits and transfers, predrilling or pre-alteration surveys, abandoned and orphaned well identification, control and disposal planning; emergency response for unconventional well sites and oil and gas gathering lines.

### General

Due to the wide-ranging impact these revisions will have on oil and gas operations it is important for industry to know if these new provisions will apply to existing wells and previously approved water management plans or sources. We suggest language be added to clarify the effective date for the new requirements in Subchapter C and that wells constructed prior to that date are grandfathered in for purposes of the new requirements.

There are a number of definitions and sections of text that refer the reader to other statutes or regulations. This causes the reader to search elsewhere to find that other statute or regulation and review it before being able to understand what Chapter 78 requires. This is not user friendly and does not facilitate regulatory understanding and compliance. For example, it

would be better to state, "As defined in 25 Pa. Code § XXX.X," and repeat the definition or section. This should be done for the definitions of body of water, PCSM plan, process or processing, regulated substance, watercourse, water purveyor, and wetland. It should also be done for §78.51(d)(2), § 78.57(f), §78.65 (d)(1)(v), § 78.66 (a)(2), §78.66 (c)(1), 78.68a(k), 78.69(b) and numerous other sections.

Separately, a number of sections are very detailed and prescriptive. We suggest that these sections be given some flexibility to allow for the use of alternate methods as approved by the Department. These sections include § 78.59a. Impoundments and Embankments, § 78.59b. Freshwater Impoundments, § 78.59c. Centralized Impoundments, § 78.60. Discharge Requirements, § 78.61. Disposal of Drill Cuttings, § 78.62. Disposal of Residual Waste – Pits, § 78.63. Disposal of Residual Waste – Land Application, § 78.64a. Containment Systems and Practices at Unconventional Well Sites, § 78.65. Site Restoration, § 78.66. Reporting and Remediating Releases, § 78.68. Oil and Gas Gathering Lines, § 78.68a Horizontal Directional Drilling for Oil and Gas Pipelines, § 78.68b. Temporary Pipelines for Oil and Gas Operations § 78.70. Road-Spreading of Brine for Dust Control and Road Stabilization, and § 78.70a. Pre-Wetting, Anti-Icing and De-Icing. There may be additional sections where it would be advantageous to both the Department and the operator to apply the same concept.

#### Permits and Transfers

§ 78.15 (d) – While there is no problem using PNDI for identification of the habitats of threatened or endangered species, there is a structural problem with giving a policy the force of regulation. The use of PNDI for screening sites is a policy application that can be changed without going through the regulatory review process. Citing it as the way to comply gives it the force of regulation. The recent example of the PA Game Commission wanting to list various bats dying from the white nose virus symptoms can have significant, undesired impacts. This is a slippery slope. It is recommended that the use of PNDI be designated as an option for identifying these habitats.

#### Predrilling or Pre-Alteration Survey

§ 78.52 (d) – This section states that the operator "...shall provide a copy of the results...within 10-business days of receipt of the results". It is suggested that the language be revised to allow for the submittal of the results to the Department within 30-days after the spud date of the first well on the pad to allow for all the pre-drill samples to be as a single package.

#### Abandoned and Orphaned Well Identification

§ 78.52a (a) – It is suggested that language is added to include a 6 month effective date to allow for wells already permitted but not yet completed.

**§ 78.52a (b)(3) – It is suggested that the language be revised so that the forms are part of the permit applications sent to landowners.**

**In addition, how long are operators going to be required to wait on property owners to complete and return the “questionnaire”?**

**Control and Disposal Planning; Emergency Response for Unconventional Well Sites**

**§ 78.55 (f) – This section requires the well operator to provide the PPC plan to, in addition to the Department, the Pennsylvania Fish and Boat Commission or the landowner upon request. This is unreasonable. The Fish and Boat Commission and the landowner have no jurisdiction to access PPC plans. The Department should not by regulation give them authority they do not have otherwise, or be placed in a situation by those parties that would require the Department to take enforcement action for violations of this section. It is strongly recommended that these proposed changes be deleted.**

**Oil and Gas Gathering Lines**

**§ 78.68(h) – The PA Public Utility Commission was granted jurisdiction over 49 CFR Parts 192 and 195. To avoid conflicting expectations and rules, the Department should defer to the DOT and PUC to regulate compliance with these sections of the federal code.**

**Thank you for the opportunity to testify this evening. API-PA and its member companies stand ready to continue to work with DEP on striking a balance between environmental protection and economic development.**