



Testimony of Jennifer Quinn, Central Pennsylvania Outreach Coordinator for PennFuture

To

Environmental Quality Board

January 16, 2014

Good evening. My name is Jen Quinn and I am the central Pennsylvania outreach coordinator in PennFuture's Harrisburg office. PennFuture is a statewide environmental organization that works to create a just future where nature, communities, and the economy thrive.

During my testimony, I will provide comments regarding proposed changes to Chapter 78 regulations, but please keep in mind that PennFuture will be submitting detailed written comments for the Board's consideration.

As a preliminary matter, I'd like the board to keep in mind the recent contamination of drinking water for 300,000 West Virginians when you consider the long-term impacts of the decisions you will be making concerning these regulations. The West Virginia drinking water crisis happened, in part, because of loose regulations and lack of government oversight, and reminds us how dependent we are on clean water for our health and our security. Now is the time to take a critical look at how to better protect our waters.

I would like to thank the Board for the work it has done in proposing regulations in Chapter 78 to help improve environmental protection. Among other things, we support requiring aboveground pipelines for transporting wastewater (Section 78.68b(b)), requiring security around storage vessels at well pads (Sections 78.56(a), 78.57(g)), requiring identification of well operators' parent and subsidiary companies (Section 78.15(c)), and requiring any restored or replaced water supply, at a minimum, meet the standards established under the Safe Drinking Water Act (Section 78.51(d)(2)).

However, there are some areas that can be improved. I will give two examples.

All fluids related to oil and gas development should be contained in engineered facilities, not "natural depressions." (Section 78.1, definition of "freshwater impoundment" and "pit," Section 78.56)

Our streams and groundwater should be secure from pollution caused by the storage of wastes and fluids associated with oil and gas production operations. The definitions of "pit" and "freshwater impoundment" raise questions about that objective because they continue to incorporate the concept of "natural topographic depressions" within the definitions. We should not even suggest that Pennsylvania will allow fluids related to oil and gas operations to be managed in "natural depressions." All facilities used to hold fluids that may contain potential water pollutants should be specifically engineered for the task.

The DEP's proposed regulations for the road-spreading of brine pose unacceptable threats to the Commonwealth's water resources – and would be unlawful. (Section 78.70a)

Section 78.70 of the DEP's proposed oil and gas regulations would authorize the road-spreading of brine from conventional wells for dust control on dirt and gravel roads. Proposed section 78.70a would authorize the road-spreading of brine for de-icing purposes. Both sections would deem any operator that spreads brine on roads to have a "permit-by-rule" for the beneficial use of residual waste as long as the operator complies with the proposed Chapter 78 regulatory scheme.

DEP's approach is troublesome for two reasons. First, because the proposed regulations do not ensure compliance with the DEP's anti-degradation program or contain adequate chain-of-custody requirements, the risks of spreading brine on roads outweigh the benefits, which are largely confined to disposal-cost savings for the industry.

The second problem with sections 78.70 and 78.70a is a legal one. All wastewaters from oil and gas operations, including brine, are residual waste under the Pennsylvania Solid Waste Management Act ("SWMA"). It follows that 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. Beneficial uses of brine may be approved only under the general permit scheme set forth in Subchapter H of Chapter 287. Thus, the permit-by-rule scheme proposed in sections 78.70 and 78.70a is not only imprudent; it would also be illegal.