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**Chapter 78**

**Comments - Indiana County**

Good evening. My name is Joe Leighton. I am the Associate 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 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.

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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 reporting and remediating releases, borrow pits, pre-wetting, anti-icing and de-icing, general provisions for well construction and operation and records and reports.

#### 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. It is suggested that 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 look it up before being able to understand what Chapter 78 requires. This is not user friendly and does not facilitate regulatory understanding and compliance. For example, with regard to definitions, it would be better to provide the intended definition in § 78.1 or to state, "As defined in 25 Pa. Code § XXX.X," rather than refer to a statutory citation which requires more effort to locate. . 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 (b)(2), § 78.66 (c)(1), 78.68a(k), 78.69(b), and numerous other sections.

A number of sections are very detailed and prescriptive. It is suggested 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.

#### Reporting and Remediating Releases

§ 78.66 – Clarification is needed regarding Act 2 requirements for spills off containment onto pad material (impermeable according to the Department when it comes to PCSM) versus off pad onto native soils.

§ 78.66 (b)(5) – It is suggested that the language be revised to state that a responsible party (e.g. contractor) shall also be able to decontaminate equipment.

§ 78.66 (c)(3)(ii) – It is suggested that the language be revised to state, "...within 15 business days of their discovery." to be consistent with other notification provisions in this section.

#### Borrow Pits

§ 78.67 (a) – The end of this subsection requires the operator of a borrow pit to operate, maintain and reclaim the site in compliance with the environmental performance standards of non-coal mining regulations and with the erosion and sediment control regulations and “other applicable laws.” It is suggested that either these “other applicable laws” be identified or that this all-encompassing reference be deleted.

§ 78.67 (c)(2) – This subsection is very confusing. § 78.67 (c)(2) (relating to restoration of borrow pits) incorporates by reference § 78.65(d) (well site restoration requirements) which incorporates by reference § 78.64a (containment systems and practices at unconventional well sites). It seems to require the operator of a borrow pit that no longer meets the well permit/registration and bonding requirements of the Oil and Gas Act to obtain a non-coal surface mining permit unless an exemption applies (which it most likely does, see below), and they can get a 2-year extension of the restoration requirements approved. And this is all required because § 3273.1 of the law says that they do not have to comply with the non-coal mining law if they have a well permit/registration and a bond, and comply with these Chapter 78 regulations. It is strongly recommended that this process and these requirements be simplified.

#### Pre-Wetting, Anti-Icing and De-Icing

§ 78.70a (q) – This section requires that the Department be given at least a 24-hour notice prior to roadspreading. Weather events, such as freezing rain, are difficult to predict. There may be instances where the Department has years of experience with people who conduct roadspreading operations and does not need to inspect all activities. It is recommended that the pre-spreading notice be modified to allow the Department to waive this notification requirement.

§ 78.70a (e) – This section contains parameters for brine used for pre-wetting and anti-icing on roadways. Allowable Levels for Pre-wetting and for Deicing are provided in table form. It is noted that some of these parameters have no standards under 25 Chapter 93. It is suggested that parameters for which no limits have been set to meet water quality standards be deleted.

#### General Provisions for Well Construction and Operation

§ 78.73 (c) – It is suggested that DEP be the party that monitors these orphaned and abandoned wells since an operator may not have the authority to access the property to monitor them. Also, since these wells are abandoned and likely not registered with the DEP, the operator will not know whether the orphaned and abandoned wells have penetrated a formation that is to be stimulated.

§ 78.73 (d) – This section requires an operator who alters an orphan well during hydraulic fracturing to plug it. § 3203 of the Oil and Gas Act of 2012 defines

alteration as an operation which changes the physical characteristics of a well bore. While hydraulically fracturing into a nearby unknown orphaned or abandoned well may cause fluids to appear at the surface, hydraulic fracturing does not usually result in alteration of the well (i.e. changing the physical characteristics), as that term is defined in § 3203. Consequently, it is suggested that this section should be either modified to better address the situation or deleted. In addition, other issues this section should address include the radius of influence, and responsibility if there is more than one nearby operator.

#### **Well Record and Completion Report**

§ 78.122 (b) – There is no definition/interpretation of when a well is capable of production.

§ 78.122 (b)(8) – Since operators may be shutting in wells and waiting for facilities to be built, it is suggested that language is added to clarify that completion means after a well is turned in line.

#### **Logs and Additional Data**

§78.123 (c) – It is unclear whether this requirement applies to pilot holes, development wells, exploration wells, appraisal wells, etc.

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.