Oral Testimony on 25 PA Code Chapter 78 Proposed Rulemaking on Oil & Gas
Environmental Quality Board
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Thank you for the opportunity to testify in person on proposed 25 PA Code Chapter 78 Oil & Gas Rules. This testimony will reflect only some of my concerns, which will be spelled out in more detail in written comments.

First, let me express my strong support for the new provisions requiring those constructing an unconventional gas well to do a survey for orphan and abandoned wells. This is long overdue and commendable. The Oil & Gas Industry's opposition to this provision is disgraceful.

There are, however, many defects in the rules as drafted. Section §78.1, definitions: the "external" definition of *regulated substance* is a problem. What is the actual workaday operator of a well to know about just what is regulated? The word brine is a simple word that everyone can understand. Its replacement by 'regulated substance' is unfortunate. Also, although there is a definition of freshwater impoundment, there is no definition of freshwater. Is water reclaimed from acid mine drainage "fresh water"? There is no definition of unconventional formation. This is a recipe for trouble.

§78.66(b): The replacement of 5 gallons of brine by 5 gallons of "regulated substance" as the criterion for a reportable spill is very problematic. Suppose a well operator spills 300 gallons of "material", self-assesses that that material contains 1% "regulated substance", and thus under the rules is really only a spill of 3 gallons of "regulated substance" and thus not reportable. Is this allowed? There is nothing in the new rules that precludes this interpretation. This is a major loophole, which completely ***guts*** spill reporting.

§78.51(c): Exclusion of "well site construction" from the rebuttable presumption of liability for contaminating a water supply is an outrageous loophole which must be stricken. This is contrary to the intent of the statute, and the Environmental Quality Board is both exceeding its authority and making new (and profoundly unfortunate) law with this provision. Who determines whether "well site construction" or some other aspect of oil & gas operations was responsible for contaminating a water supply? What exactly is the boundary between "well site construction" and "well construction"? This provision is imply outrageous.

§78.15(g): Requiring the department to consider the impact of its permit on "***optimal***" development of the oil and gas resources is profoundly improper. This turns the department into the agent of the applicant. How is the department supposed to evaluate what is "optimal" for the applicant? The word 'optimal' must be stricken.

78.57(a): "Open top structures shall not be used to store brine and other fluids produced during operation of the well." This is commendable but "the well" should be replace by "***a*** well". Produced water from some other well should not be stored in an open-top structure either. And this provision must make it clear that a pit is an open-top structure. And hydraulic fracturing chemicals should not be put into "open-top structures" either. Altogether, pits should only be used for actual fresh water.

There are several deficiencies of the rules as they affect "other" stakeholders. Consider the plight of a surface owner who is not the owner of the gas rights. There should be a requirement that the surface owner be notified of spills. There should be a requirement that the surface owner give consent for on-site waste disposal methods. §78.56(a)(11): Determination that a pit bottom is 20 feet above seasonal high water table should be done by an accredited ***independent*** professional, as is done with pre-drilling water tests. Or consider county Emergency Management personnel. There should be a requirement that they be given a copy of the PPC plan, since they are directly affected by it.

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