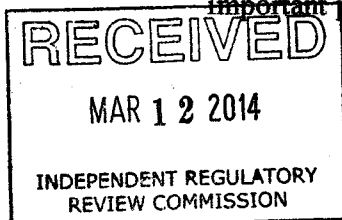


Environmental Quality Board
Proposed Amendments to Oil and Gas Regulations
Title 25, Chapter 78

Comments of the Lycoming Audubon Society
Dan Alters, Conservation Chairperson
January 13, 2014

Mr. Chairperson, members of the Environmental Quality Board and Alternates - my name is Dan Alters, chairperson of the Conservation Committee of the Lycoming Audubon Society. Our organization is a chapter of the National Audubon Society and represents members primarily in Lycoming and Clinton Counties, Pennsylvania. We have reviewed the proposed regulations under your consideration and offer the following comments.

1. On December 19, 2013, not a month ago, the Pennsylvania Supreme Court struck down key provisions of the 2012 Oil and Gas Act, also known as Act 13. In addition to key portions of the Act being declared unconstitutional, Commonwealth Court was directed to address whether remaining provisions of Act 13, to the extent they are valid, are severable. This Act is the primary basis for these proposed regulations. I submit to you that in light of the Supreme Court's determination of the unconstitutionality of Act 13, the ongoing review by Commonwealth Court, and the prospect of many months of legal wrangling that there is no current legal basis for the adoption of regulations pursuant to Act 13. I urge the Environmental Quality Board to return the proposed regulations to the Department of Environmental Protection until such time as a legal basis exists for such promulgation. I continue with specific comments on the regulations.
2. 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)
3. The definition of "seasonal high groundwater table" should be retained in the proposed regulations, because the term continues to play a key role in regulating oil and gas activities. (Section 78.1)
4. The permit applicant, not the Department of Environmental Protection (DEP), should be responsible for determining whether proposed oil and gas operations would affect threatened or endangered species. (Section 78.15(d))
5. The DEP should respond to comments received about a permit that may affect an important public resource. (Section 78.15(d))



6. The DEP should not compromise its obligation to protect the environment by balancing the citizens' constitutionally guaranteed right against private interests in oil and gas. (Section 78.15(g))
7. The DEP's duty to investigate water pollution should extend to the all oil and gas activities. (Section 78.51(c)).
8. The prohibition on construction of fluid storage areas within 100 feet of certain water bodies should be extended to all water bodies. (Section 78.59c)
9. The DEP should stop promoting the disposal of residual waste at well sites. (Section 78.62)
10. The DEP should not allow natural springs to take the place of engineered monitoring wells used to measure the effects of fluid storage areas. (Section 78.59c(g)(2))
11. The DEP should strengthen its regulatory mechanisms for ensuring that pits and impoundments are constructed in a structurally sound manner and according to regulation. (Section 78.59c(m))
12. Any disposal of waste materials at well sites should require that representative samples of the material be taken and analyzed and submitted to the agency to demonstrate that, for example, the drill cuttings are not contaminated, or that residual waste meets the regulatory standards. (Sections 78.61 and 78.62)
13. The collection and analysis of chemical samples of waste that the operator intends to dispose on site should not be discretionary; the regulations should be clear that is a mandatory obligation. This is particularly of concern where the disposal site does not need to be inspected by the agency prior to closure, and there is no long-term groundwater monitoring. (Section 78.63(19))
14. 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)
15. The DEP's revisions to Chapter 78 should establish meaningful standards for the restoration of well sites and impoundment sites. (Sections 78.65, 78.59b, and 78.59c)
16. The DEP's proposed regulations regarding bonding are inadequate, because they fail to ensure that well sites and impoundment sites will be finally restored before they are released from operators' bonds. (Subchapter G)