

To The Environmental Quality Board:

Comments on Proposed Rule Making: Proposed Regulations for Environmental Protection Performance Standards associated with Oil and Gas activities.

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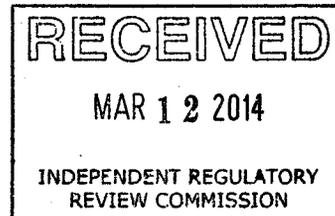
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I wish to submit the following comments regarding the proposed changes to the Chapter 78 regulations pertaining to regulation of Oil and Gas activities by the PA DEP:

§ 78.1. Definitions

Gathering pipeline—A pipeline that transports oil, liquid hydrocarbons or natural gas from individual wells to an intrastate or interstate transmission pipeline.

Comment: The definition is too vague. What is an Intrastate Transmission Pipeline? What is an Interstate Transmission Pipeline? Is a pipeline taking gas from several well pads and delivering the gas to a small power plant a gathering line or an intrastate transmission Line? Is a pipeline taking gas from a well or several wells to a local industry a Gathering Line? This is important as different agencies review applications for and inspect construction of Gathering lines and for/of Transmission lines.

§ 78.1. Definitions

Comment: Oil and Gas operations are required to obtain Submerged Lands License agreements from the State of Pennsylvania. Those Submerged lands of the Commonwealth need to be defined. For example, Submerged Lands of the Commonwealth--waters and permanently or periodically inundated lands owned by the commonwealth including beds of streams declared public highways which are owned and held in trust by the commonwealth.

§ 78.15. Application requirements

The proposed revisions to subsection (a) will require well permit applications to be submitted electronically through the Department's web site.

Comment: Will the PA DEP ensure that the public may review electronic submittals at PA DEP Regional offices?

§ 78.15. Application requirements

Subsection (f) is proposed to be added to outline a process for the Department to consider the impacts to public resources when making a determination on a well permit in accordance with requirements in the 2012 Oil and Gas Act. Subsection (f) proposes to require well permit applicants to identify when the proposed well site or access road may impact a listed public resource, notify applicable jurisdictional agencies and provide the Department and the jurisdictional agencies with a description of the functions and uses of the public resources and avoidance or mitigation measures to be taken, if any. This section also provides applicable jurisdictional agencies the opportunity to submit comments to the Department, including any recommendations to avoid or minimize impacts, during a 15-day time frame.

Comment: It should be recognized by the PA DEP that "public resources" include those lands as defined by the term, "Submerged Lands on the Commonwealth" which are Commonwealth Property under waterways designated by the PA State Legislature as Public Highways. The PA DEP has issued and continues to issue Permits to drill a nonvertical well through such Commonwealth lands and to Hydraulically fracture those lands without first determining if the applicant has either obtained a Submerged Lands License Agreement for a drilled pipe to develop a nonvertical well or determining if the applicant has obtained a valid lease to Hydraulically Fracture this Commonwealth Property.

All lands under waterways declared to be "Public Highways" are Commonwealth Property. In Lycoming County, for example, such waterways include Beaver Run, Cedar Run, Harris Run, Larry's Creek, Little Pine Creek, Loyalsock Creek, Lycoming Creek, Mill Creek, Mill Run, Muncy Creek, Otter Run, Pine Creek, Plunketts Creek, Susquehanna River, Tombs Run, Trout Run, Upper Pine Bottom Run, Wallis Run. These Commonwealth lands might consist of thousands of acres in individual counties--for example, the six waterways in Bradford County designated as "Public Highways" are very large waterways and the acreage of Commonwealth land in the beds of these waterways is estimated to be greater than 25,000 acres. At the normal lease payment of Commonwealth land of \$4,000.00 per acre, the lands under the waterways in Bradford County alone might produce 100 million dollars in revenue from leasing of these lands.

It is recommended that the regulations mandate that:

- 1) The PA DEP revoke all drilling permits issued that authorize drilling a nonvertical well through or hydraulic fracturing of commonwealth lands under waterways designated as "Public Highways".
- 2) The PA DEP shall not accept any permit application to drill a nonvertical well through or to Hydraulic Fracture lands under waterways designated as "Public Highways" until the applicant leases such lands or obtains a Submerged Lands License Agreement.

§ 78.59a. Impoundment embankments.

Embankments constructed for freshwater and centralized impoundments for oil and gas activities must meet the following requirements:

(3) The minimum top width of the embankment must be 12 feet.

(4) The inside and outside slope must have a slope no steeper than 3 horizontal to 1 vertical.

COMMENT on (3) & (4) : There are no generally accepted Engineering standards that require/mandate a top width of 12 feet nor are there any that require slopes no steeper than 3 horizontal to 1 vertical. Thousands of impoundments have been and continue to be constructed by various Government agencies and others without these construction limitations. These design standards are normally determined by a registered Professional Engineer and are not standards that should be made up by Regulation writers who are NOT Registered Engineers.

§ 78.59b. Freshwater impoundments.

(a) In addition to meeting the requirements of § 78.59a (relating to impoundment embankments), freshwater impoundments must be in compliance with this section.

(c) Freshwater impoundments shall be constructed with a synthetic impervious liner.

Comment: There is no valid reason to mandate synthetic liners be used for the storage of freshwater. If however, the PA DEP insists on calling "mine influenced water" as freshwater then liners should only be required for impoundments that will contain such polluted water. Due to normal high levels of Total Dissolved Solids it is unknown why the PA DEP would call mine influenced water, "Freshwater"

§ 78.59c. Centralized impoundments.

(c) Centralized impoundments may not be constructed in any portion of the following areas:

(1) In a floodplain of waters of the Commonwealth as defined in section 3215(f)(5) of the act (relating to well location restrictions).

Comment: Numerous Impoundments holding Industrial wastewater or holding sewage are located in floodplains in Pennsylvania. Locating similar structures to hold water for gas well operations in a floodplain is regulated by local floodplain ordinances and should not be regulated by PA DEP.

§ 78.59c. Centralized impoundments.

(c) Centralized impoundments may not be constructed in any portion of the following areas:

(2) In or within 100 feet measured horizontally of a wetland greater than 1 acre in size.

Comment: Why not? How is the impoundment going to adversely affect a wetland?

§ 78.59c. Centralized impoundments.

(c) Centralized impoundments may not be constructed in any portion of the following areas:

(5) Within 100 feet measured horizontally from any solid blue line stream, spring or body of water, except wetlands, identified on the most current 7.5 minute topographic quadrangle map of the United States Geological Survey.

Comment: The term, "any solid blue line" is NOT a commonly accepted term in any Engineering, Environmental, or Hydraulic Profession. Topographical maps are not always correct. Due to Flooding, Restoration activities, or unauthorized construction work, many waterways are NOT in the location noted as a "Blue Line" on a Topographical map. In addition, on many older topographical maps, small headwater waterways, which may be designated High Quality or Exceptional Value, are NOT shown as "Blue lines" on Topographical maps.

§ 78.61. Disposal of drill cuttings.

Comment: Every day, sites in Ohio and New York are taking thousands of tons of drill cuttings from gas wells drilled in Pennsylvania. Instead of having other states collect enormous amounts of money for disposal of drill cuttings, the PA DEP should make it easier for gas companies working in Pennsylvania to Dispose of drill cuttings in our state. . Pennsylvania has thousands of acres of abandoned coal strip mines that should be reclaimed using drill cuttings. No agency has indicated that drill cuttings contain any pollutants of concern that would make drill cuttings unsuitable for filling of abandoned mines. PA DEP should, at least, allow the use of drill cuttings which are mixed with coal ash from Coal refuse power plants to be used to fill abandoned mines.

§ 78.63. Disposal of residual waste—land application.

(1) The residual waste is generated by the drilling [or production] of an oil or gas well that is located on the well [side] site. Residual waste generated by hydraulic fracturing of unconventional wells and residual waste generated by processing under § 78.58 (relating to onsite processing) may not be disposed of by land application

Comment: There is no scientific reason for PA DEP to not allow land application of drill cuttings from Unconventional wells. The PA DEP should be encouraging the use of drill cuttings to reclaim abandoned strip mines.

§ 78.65. Site restoration

Comment: This paragraph should be rewritten to indicate that abandoned wells that must be plugged or that have been affected by nearby Hydraulic Fracturing must comply with this section of the regulations. At present Gas companies that work on problems they caused at Abandoned wells do whatever they feel like to restore the work site .

§ 78.65. Site restoration

(d) (1)(i) All permanent post-construction stormwater control features as identified in the PCSM plan or site restoration plan are in place consistent with § 102.8 (relating to PCSM requirements.

(d)(3)(iii) The stabilization of the well site that includes interim post-construction storm water management best management practices in compliance with § 102.8, including § 102.8(a)—(m).

102.8 (m) PCSM long-term operation and maintenance requirements.

(2) For any property containing a PCSM BMP, the permittee or co-permittee shall record an instrument with the recorder of deeds which will assure disclosure of the PCSM BMP and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the PCSM BMP, provide for necessary access related to long-term operation and maintenance for PCSM BMPs and provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees, and provide proof of filing with the notice of termination under § 102.7(b)(5) (relating to permit termination).

(5) A permittee or co-permittee that fails to transfer long-term operation and maintenance of the PCSM BMP or otherwise fails to comply with this requirement shall remain jointly and severally responsible with the landowner for long-term operation and maintenance of the PCSM BMPs located on the property.

Comment: Landowners leasing land for Gas wells have no idea that section (M) requires that : (1) their property deed must be written to indicate who will operate and maintain PCSW structures, e.g. sedimentation ponds, stormwater ditches at well pads and access roads; (2) that if the gas well operator fails to operate and maintain PCSW structures, the landowner will be required to operate and maintain such structures. The PA DEP must notify Landowners of this requirement!

§ 78.68. Oil and gas gathering lines.

Comment: PA DEP should require that all pipelines constructed in hydric soils, Acidic soils, or in a location parallel and upslope of a headwater stream have clay dams placed in the trench to ensure that ground water does not follow the pipeline and drain to a lower point. There have been pipelines constructed in Pennsylvania that have intercepted ground water feeding EV streams and conveying that water away from the stream to be discharged at a lower location thereby drying the stream. In addition, Gathering lines have been built that convey Acidic water in the pipe trench from upland areas and now discharge it at a low point in the pipeline causing a polluttional discharge in a nearby waterway.

§ 78.73. General provision for well construction and operation.

(c) Orphaned or abandoned wells identified under § 78.52a (relating to abandoned and orphaned well identification) that likely penetrate a formation intended to be stimulated shall be visually monitored during stimulation activities. The operator shall immediately notify the Department of any change to the orphaned or abandoned well being monitored and take action to prevent pollution of waters of the Commonwealth or discharges to the surface.

(d) An operator that alters an orphaned or abandoned well by hydraulic fracturing shall plug the orphaned or abandoned well.

Comment: The operator must be required to restore the area disturbed during plugging of an abandoned well altered by Hydraulic Fracturing. At present operators do whatever they feel like doing. Restoration of the site of an abandoned well should be exactly as that required for a new well being drilled.