

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Thursday, March 13, 2014 9:38 AM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRC; RegComments@pa.gov; eregop@pahousegop.com; environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

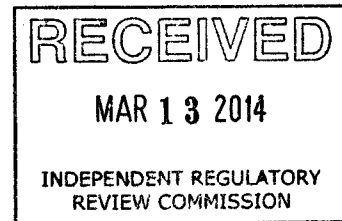


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

Robert Scarrow
 (rscarrow@haverford.edu)
 351 Mattison Ave.
 Ambler, PA 19002 US



Comments entered:

I'm glad the DEP has decided to strengthen the environmental protections in Chapter 78 of the PA Code (under the Oil and Gas act) but don't think the the proposed regulations go far enough to ensure short- and long-term protection of our the health and environment of the people of Pennsylvania. Specifically, I'd like to see ...

- prohibition of open-air frack pits so that wastewater is stored on site in a closed loop system before being treated or recycled. This will reduce the potential for unintentional runoff of contaminated water and exposure of wildlife to toxic waters.
- before drillers begin drilling, they should be required to do baseline testing (with results released to the DEP and to the public) of the surrounding water supplies, so that they cannot later wrongly claim that water contamination was probably there before they drilled. They should also be required to identify and map old abandoned wells on their site, to cap those that are improperly sealed, and to make sure they don't intersect the old wells in their new drilling.
- if water supplies are contaminated, companies should be compelled to restore them to Safe Drinking Water Act standards.

Thanks for all you are able to do to protect the people of Pennsylvania and their natural environment. I believe that through government regulation we will get not only an improved environment but also a more sustained (i.e. longer lasting) development of our natural gas resources that will yield, in the long-run, much greater economic development for the people of

Pennsylvania, and that this system will reward those in the drilling industry who are already environmentally responsible and doing the right thing now.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Hayley Book

Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
Office: 717-783-8727
Fax: 717-783-8926
RegComments@pa.gov

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Thursday, March 13, 2014 9:12 AM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRC; RegComments@pa.gov; eregop@pahousegop.com; environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

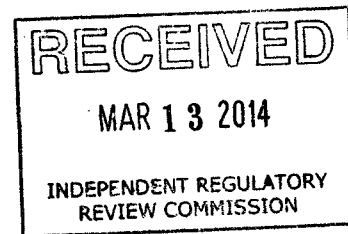


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

Peter Grimbilas
(peter@pcwfab.com)
3 Oakwood Ct
Towaco, NJ 07082 US



Comments entered:

Stop fracking, or at least apply more stringent regulations, before it's too late and park waters become polluted and national treasurers are lost.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Hayley Book

Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
Office: 717-783-8727

3042

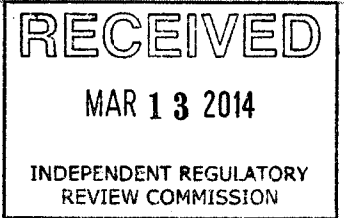
Cooper, Kathy

From: EP, RegComments <ra-epregcomments@pa.gov>
Sent: Thursday, March 13, 2014 8:28 AM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRR; EP, RegComments; eregop@pahousegop.com; environmentalcommittee@pahouse.net
Cc: EP, MS Development
Subject: FW: regulations regarding surface activities related to oil and gas well development

Good morning,

Below is a comment we received a few weeks ago that I was unable to load into our online regulatory system.

From: Robert Krause [mailto:robert.krause@live.com]
Sent: Friday, February 07, 2014 12:10 PM
To: EP, RegComments
Subject: regulations regarding surface activities related to oil and gas well development

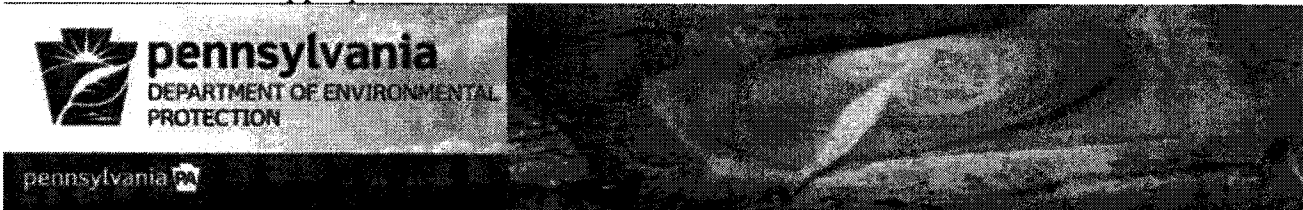


You have a gorgeous picture on the web site promoting your department.



However, you need to be more truthful in advertising.

This would be more appropriate.



Robert Krause
 PO Box 306
 White Lake, NY 12786

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Wednesday, March 12, 2014 5:00 PM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRIC;
 RegComments@pa.gov; eregop@pahousegop.com;
 environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

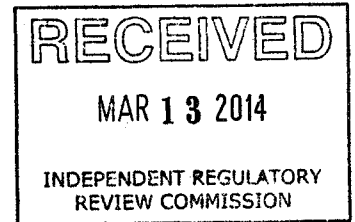


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

Lacey Goldberg
(lks187@psu.edu)
618 Ridge Avenue
State College, PA 16803 US



Comments entered:

No text comments were provided as part of this comment submittal. Please refer to attachments below.

These links provide access to the attachments provided as part of this comment. You are advised to save the attachments to your local computer or a network share when prompted by your browser.

One-page Summary: [1pagesummary.pdf](#)
Comments Attachment: [FINAL Viewshed protections for Pennsylvania.pdf](#)

Please contact me if you have any questions.

Sincerely,
Hayley Book

Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063

Ridgeline, steep slope and watershed protection for scenic, watershed and habitat conservation

- Suggested protective measures for scenic amenities, watersheds, and habitat
- Definitions of terms (ridgeline, steep slope, watersheds, etc.)
- Protection for scenic overlooks, scenic waterways, scenic roadways, ridgelines, scenic natural and cultural amenities
- Proposed methods for better designed shale related infrastructure, drilling sites, pipeline right-of-ways, roads, and other related development
- Proposed protection for steep slopes because of their importance to habitat, biodiversity, scenic views, and water quality management
- Supporting images/diagrams/photographs

Ridgeline, steep slope and viewshed protection for scenic, watershed and habitat conservation

The Pennsylvania landscape is a magnificent resource of irreplaceable value, recognized in the designation of such regions as the Pennsylvania Wilds, the Endless Mountains and the Allegheny National Forest. Residents are proud of the rural character, glistening waterways, and forests that blanket the rolling mountains. Visitors explore the continuous woodlands, navigate and fish the trout-rich waters, hunt in private forests and game lands, and hike the historic trails to see the many natural wonders of the commonwealth. Just as the air, water, and soil are protected for our physical health, the wilderness character, scenic views, rich habitat and pristine ridgelines need protection for water and wildlife resources, for protection of the landscape that fuels property values and the economic well-being of tourism—as well as the spiritual and recreational enjoyment of visitors and residents.

Scenic viewsheds, overlook areas, roadways, and ridgelines in areas affected by development, particularly those associated with the Marcellus shale industry, need protection. These include areas where well pads, accessory and storage areas, access and maintenance roads, pipeline and utility right-of-ways, and wind turbines may be placed. These areas are important to the overall character of the region and to the tourism industry that is a large part of the areas' local economies. They are closely associated with watershed headwaters and are critical elements of wildlife habitat.

Ridgeline-disrupting development should not be allowed to occur in the viewsheds of scenic overlook areas, important natural, cultural, and historical amenities, and scenic roadways, or on the ridgelines of the endless rolling mountains of the Allegheny and Appalachian ranges. Well pads, pipeline and utility right-of-ways, wind turbines and roads should be sited either completely out of view, such as on the other side of a mountain, or designed and situated to minimize or eliminate visual impacts.

We request the inclusion of a ruling that would allow for the regulation of development and land-use change within important scenic vistas, on ridgelines and steep slope (15% and greater) and in the viewsheds of important natural, cultural, and historical amenities. A ridgeline is “a visually prominent, relatively narrow strip or crest of land, which includes the highest points of elevation within a watershed, that separates one drainage basin from another.”¹ A viewshed is the area of land visible from a single point, typically locations such as private homes, scenic overlooks, and scenic highways. Examples below were drawn from rural Sullivan County, PA, and include the Canyon Vista Overlook viewshed at Worlds End State Park near Forksville; views of the Loyalsock Trail; , a near-60 mile scenic hiking trail in Lycoming and Sullivan counties, and the High Knob and Wright’s View overlooks. , protection in the form of regulations prohibiting development in these areas.

This protection can be accomplished by implementing statewide regulations that have already been modeled in other parts of the nation. While often focused on protection of scenic resources, the ridgelines and steep slopes constituting viewsheds are also critical areas for control of surface flow of storm water as well as protection of key migratory and refuge habitat. The Indiana Department of

¹ Napa Valley Viewshed Protection Program. Napa Valley, California, Ordinance No. 1278 (2006).

Transportation (INDOT) guidelines for scenic viewshed protection (*Protecting Natural Resources: Scenic Viewshed Protection*²) represent examples suitable for adoption in Pennsylvania. The Napa Valley, CA, *Viewshed Protection Ordinance*³ and its supplementary *Viewshed Protection Manual*⁴ provide comprehensive guides to what could or should be included in landscape protection.

Suggested Regulation Language:

Section 1: Definitions.

Unless otherwise specified, the terms indicated below shall have the following meaning:

“Benches” or “shelves” shall mean flat areas which could be used as a development site which are otherwise surrounded by slopes of fifteen percent or greater.

“Development” shall mean any and all earth moving or vegetation clearing procedures related to oil and gas industry including, but not limited to, well pads, machinery storage areas, water or waste product retention or storage areas, access and maintenance roads, and pipeline right-of-ways.

“Director” shall mean the director of the conservation, development and planning department and/or his designee.

“Grading” shall be defined as earthmoving activity.

“Ridgeline” shall mean a visually prominent, relatively narrow strip or crest of land, which includes the highest points of elevation within a watershed, separating one drainage basin from another.

“Slope” means the inclination of the terrain, calculated as a percentile, the change in vertical distance divided by the change in horizontal distance.

“Viewshed” shall mean all visible areas that can be seen from a designated location, feature, roadway, waterway, or recreational trail. A viewshed is an area of land, water, or other environmental element that is visible to the human eye from (a) fixed or linear vantage point(s).

Section 2: General provisions.

- A. No well pad may be located in areas where the existing slope exceeds fifteen percent as defined in Section 1.
- B. No grading may occur to create a bench for development on slopes greater than 15 percent.
- C. No development may be sited within 100 vertical feet of a ridgeline.
- D. No development may occur within the viewsheds of scenic overlooks, scenic roadways (such as community gateways, roads through state parks or wild areas, and roads identified as scenic byways), recreational trails, scenic waterways, and other locally (at the county or municipal level) identified natural, historical and cultural amenities.
- E. Determination of Adverse Affects on Ridgelines. The director shall determine whether the proposed location of development could adversely affect a ridgeline or viewshed for the purpose of administering this chapter based upon elevation of the proposed development and the location, slope, and visibility of the development in relationship to surrounding topography.
- F. Visibility Determination. If the director determines that the project cannot be viewed from any designated feature, because of its relationship to surrounding topography or existing vegetation, then the project will be cleared for further processing pursuant to the code. If the determination was made based on existing vegetation coverage, then the property owner or developer, prior to the issuance of a permit, shall be required to execute and record in

² Indiana Department of Transportation Scenic Viewshed Protection.

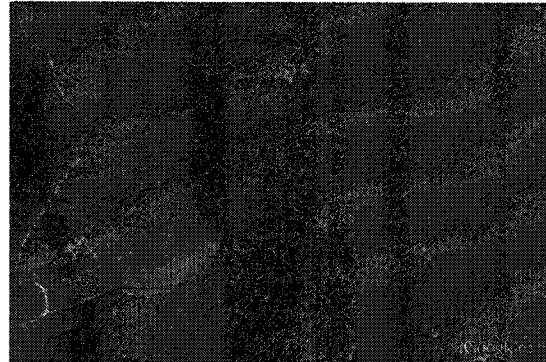
http://old.nwm.org/downloads/scenicviewshedprotection_with_sample_language.pdf

³ Napa Valley Viewshed Protection Program. Napa Valley, California, Ordinance No. 1278 (2006).

⁴ Napa Valley Viewshed Protection Manual. Napa Valley, California. (2012)

the county recorder's office a use restriction, in a form approved by county counsel, requiring the existing covering vegetation to be maintained, or replaced with equivalent vegetation, by the owner or the owner's successors, so as to prevent the project from being viewed from any designated feature.

Supporting Figures:



Unregulated Well Pad location adjacent to the Loyalsock Trail (Marked in Red)



Ridgelines prominent in the view from Canyon Vista at Worlds End State Park

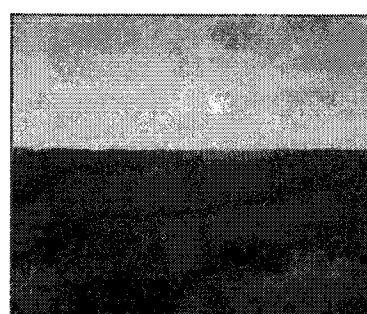
Photo Credit Casey Kreider



**Wright's View
2.3 sq mi visible**



**Canyon Vista
1.9 sq mi visible**



**High Knob Vista
9.3 sq mi visible⁵**



⁵ Nahill, C.

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Wednesday, March 12, 2014 6:15 PM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRC; RegComments@pa.gov; eregop@pahousegop.com; environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

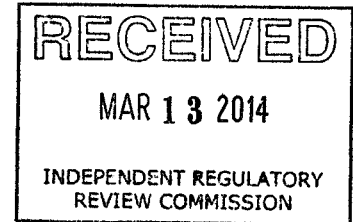


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

maryann meyer
(mapm1943@embarqmail.com)
704 unionville rd
prospect, PA 16052 US



Comments entered:

We already have very little power as to where the drilling sites are to be constructed and you want to decrease our input. Are you really thinking of the future consequences that wil affect your grandchildren and future generations?Fracking has caused many problems already.113 cases water was contaminated and 3300 incidents have resulted in fines. Think about the families behind the numbers. Would you want a water buffalo in your yard?

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Hayley Book

Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Thursday, March 13, 2014 4:01 AM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRIC;
RegComments@pa.gov; eregop@pahousegop.com;
environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

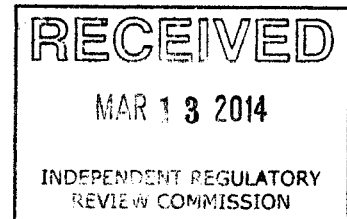


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

Orysia Dagney
(orysiat@yahoo.com)
236 Osborn Street
Philadelphia, PA 19128 US



Comments entered:

These cranes need all the help that we can give them so that our grandchildren can enjoy them. Those who wantonly kill these animals need to be prosecuted fully so that everyone knows that such behavior will not be tolerated. We owe it to those who will be following us on this amazing planet.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Hayley Book

Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

3042

Cooper, Kathy

From: RegComments@pa.gov
Sent: Thursday, March 13, 2014 4:05 AM
To: Environment-Committee@pasenate.com; apankake@pasen.gov; IRRC; RegComments@pa.gov; eregop@pahousegop.com; environmentalcommittee@pahouse.net
Cc: ra-epmsdevelopment@pa.gov
Subject: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

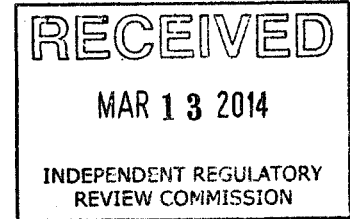


Re: Proposed Rulemaking - Environmental Protection Performance Standards at Oil and Gas Well Sites

The Environmental Quality Board (EQB) has received the following comments regarding the above-referenced proposed rulemaking.

Commentor Information:

Orysia Dagney
(orysiat@yahoo.com)
236 Osborn Street
Philadelphia, PA 19128 US



Comments entered:

We cannot underestimate the importance of water as a resource. Our public lands need to be protected from fracking.

No attachments were included as part of this comment.

Please contact me if you have any questions.

Sincerely,
Hayley Book

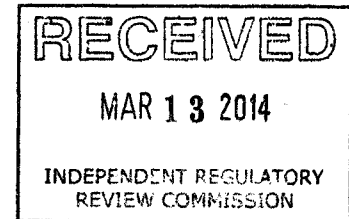
Hayley Book
Director, Office of Policy
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
Office: 717-783-8727

3042

FROM:
Edwin & Karen Atwood
694 Mohawk Avenue
Warren, Pennsylvania 16365
phone: (814) 726 - 2774
e-mail: ek.atwood@verizon.net

12 March 2014

TO:
Commonwealth of Pennsylvania
Environmental Quality Board
16th Floor, RCSOB
Post Office Box 8477
Harrisburg, Pennsylvania 17105



delivered via electronic mail: RegComments@pa.gov

PUBLIC COMMENT SUBMISSION

Comment on Proposed Regulations 25 Pa. Code Chapter 78 (Oil and Gas Wells)

We are providing comment to the Environmental Quality Board (EQB) regarding the Pennsylvania regulations governing oil and gas wells because the far-reaching impacts from oil and gas development are having indelible adverse impacts on this Commonwealth in general and our lives in particular.

It is important to note that, in the process of preparing and submitting these comments, we encountered personnel of both the EQB and the Pennsylvania Department of Environmental Protection's (DEP) Northwest Regional Office in Meadville (NWO) who were both disinterested and uncooperative in helping us find information on how to properly and promptly submit these comments. During the EQB's public hearing held 12 Feb. 2014 in the Warren County Courthouse, the EQB's spokesman repeatedly fumbled in his spoken remarks to inform those in attendance on how to electronically submit comments. On the morning of 12 March 2014, we telephoned DEP's NWO to clarify the submission process, but Mr. Gary Clark of NWO was not available. "Anita" at the NWO answered the telephone, but she stated that she did not have any answers. She suggested e-mailing our comment submission to Mr. Clark. When we asked "Anita" about who we could contact in Harrisburg to get more information, she said she had no idea and that she could not help us. We

turned to searching the internet for more information. Upon discovering EQB's phone number, (717) 787 - 4526, we called it and we were greeted by an answering machine. When we tried to navigate to another extension, EQB hung up on us. This left us with the impression that DEP and EQB desire the superficial appearance of welcoming public comment while in reality the attitudes of the personnel (and the setup of the machines) is designed to discourage/ignore people who have questions and concerns. This needs to be rectified immediately.

We are very concerned because the proposed changes do not go far enough to control the damage our communities and environment are experiencing as the gas and oil industry develops its wells, frack pits, impoundments, pipelines, and related operations across the entire state. We support the tighter controls you are proposing but they are too few and simply do not go far enough to make a difference in the harm that is being done.

This is especially true today because of the Pennsylvania Supreme Court ruling that requires government to consider how actions being taken affect the reserved environmental rights of Pennsylvania citizens and public natural resources. (Robinson Twp., Washington Cnty. v. Com., --- A.3d ---, 2013 WL 6687290, *33 (Dec. 19, 2013). We believe you must consider how these proposed regulations fulfill Article 1, Section 27 of the Pennsylvania Constitution before you act. Article I, Section 27 of the state's constitution states:

"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people"

Per our Rights under the Pennsylvania Constitution quoted above, our property rights were violated by operators who drilled only 250 feet from our home and our water well. In addition, PA DEP has determined that the operator contaminated our water well and issued an order; neither of which have been enforced. This has reduced the property value of our land and home and the quiet enjoyment of where we live on land zoned "R1 Residential" in Pleasant Township of Warren County, PA.

These Chapter 78 proposed changes do not serve this inalienable right. We ask that you revise the proposed rulemaking to include consideration of how to meet this mandate. There is an enormous difference between toothless guidelines,

masquerading as regulations, which suggest a proper procedure "should" be done, and serious regulations that command a directive "must" or "shall" be done. Below we have emboldened the use of the word "must" to underscore we want to see serious, not toothless, regulation of the oil & gas well operators in Pennsylvania.

We advocate these changes to the proposed rulemaking, focusing on just a few key areas:

Sections 78.51 and .52:

Pre-drilling water testing and the replacement and cleaning up of contaminated water supplies:

- Operators **must** be required to restore contaminated drinking water to a quality that meets Safe Drinking Water Act standards, no matter what the quality of the water prior to drilling. If the quality of a water supply prior to drilling was above these standards, the operator **must** restore the water to that higher standard; otherwise, good water supplies will be degraded. *Where municipal water is available, this **must** be provided and paid for by the operator.*
- All drillers **must** be required to use a consistent list of parameters for pre-drill water testing. The parameters **must** be as comprehensive as possible, but at a minimum match what DEP uses when it conducts full contamination investigations and to ensure that complete baseline data is available.
- All drillers **must** make pre-drill data available to the public, while protecting individual homeowners' privacy, through an online platform, which DEP **must** establish immediately.

Sections 78.56, .57, .58, .59:

Open pits, impoundments and processing of drill cuttings:

- No open pits, or "frack pits" allowed on well sites; no hazardous substances in pits.
- No onsite processing of drill cuttings; because these cuttings could contain toxic and radioactive materials.
- No mixing and storage in open impoundments of "reused" or "recycled" water from fracking and drilling with clean water for use in additional operations; "freshwater" is not defined, leading to "freshwater" impoundments with regulations that do not address their hazardous contents.

Sections 78.60, .61, .62, .63 and 78.70:

Disposal of drill cuttings, "brine", and residual waste:

- No burial or land application of drill cuttings. We are creating the opportunity for thousands upon thousands of future "superfund" sites if we allow this toxic and often radioactive waste to be buried on well sites. We don't want this hidden pollution buried in our community or our backyards or farm fields and not near water supplies!
- No burial of waste pits for the same reason.
- *No spreading of brine or flowback for dust suppression, de-icing or road stabilization.* Spreading these dangerous and often radioactive fluids on roads provides a pathway for pollution of our streams and groundwater and can poison wildlife and kill vegetation, or contaminate nearby water sources.
- No land application of tophole water, pit water, fill, or dredged material from drilling and fracking. The chemicals and sediments in this material must not be allowed to emit to the air we breathe, be mixed with the soil we grow our food in and our children play in, or to mix with our drinking water and streams or accessible by our animals.

Section 78.52(a)

Orphaned and abandoned gas and oil wells:

- We agree these wells (estimated at 350,000 or more) **must** be identified before any site disturbance and recorded publicly, plugged and sealed according to state safety standards PRIOR to well site construction and testing of area water wells and intakes **must** be done by the operator to access any pollution caused by the orphaned or abandoned well(s). These wells are a serious safety hazard in Pennsylvania and there **must** be every precaution taken to find them, avoid communication between new wells and old to avoid blowouts, accidents and well casing failure. These old wells that are pollution threats **must** be plugged.

Please consider our input on these important regulatory changes.

Respectfully submitted,

/ ~ S ~ /

Edwin & Karen Atwood
694 Mohawk Avenue
Warren, Pennsylvania 16365

2042

RECEIVED
MAR 12 2014
INDEPENDENT REGULATORY
REVIEW COMMISSION

Bureau of Oil and Gas
Planning and Program Management

552 Tescier Rd
Muncy, PA 17756

Department of Environmental Protection FEB 19 2014
Rachel Carson Building
400 Market Street
Harrisburg, PA 17101

Received

February 20, 2014

Dear Sirs,

I am very much interested in protecting our environment and strongly concerned the natural gas industry and supporting industries will cause further harm. I fully support the following PennFuture recommendations to strengthen gas industry regulations.

Please assure me that the regulations will be amended to better protect both public and private PA environment.

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 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)

Proposed section 78.1 deletes the definition of "seasonal high groundwater table" even though that term is still used throughout the regulations, including in sections 78.56(a)(11), 78.59b(e). This definition should be maintained to ensure clarity and consistent enforcement.

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))

Protecting the habitat and physical safety of vulnerable species is a critical part of ensuring biodiversity and the quality of our environment. The federal Endangered Species Act was designed to achieve these goals by making it unlawful for any person to harass or take a listed species, including adversely affecting the habitat of a listed species in a manner that effects a take. Similarly, state law currently imposes the obligation on operators to ensure that their activities will not adversely affect listed species or their habitat.

The proposed regulations change that obligation by only requiring gas operators to mitigate the impact of their operations on threatened or endangered species if the DEP determines that the well site location will adversely impact species or "critical habitat."

Because an operator proposing an oil or gas project stands to gain financially from the project, and is in the best position to understand the scope and potential impact of its proposal, the operator (and not the DEP) should have the burden of determining whether its project would affect listed species and their habitat.

The DEP should respond to comments received about a permit that may affect an important public resource. (Section 78.15(d))

The proposed regulations allow for a public resource agency to receive notice of, and submit comments about, a proposed well permit that would affect its resources. The regulations, however, do not require the DEP to respond to those comments. To ensure that comments are adequately considered and that public resources are fully protected, the regulations should require the DEP to respond to comments submitted by public resource agencies.

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))

The DEP is required by the Pennsylvania Constitution to protect the public's right to a clean environment. The proposed regulations provide that even though the DEP determines that a proposed well will have a probable adverse impact on a public resource, the DEP still cannot impose conditions that will prevent or mitigate that harm without first considering the impact of the condition on the individual mineral right owner's ability to "optimally" develop his or her oil and gas rights. This regulation inappropriately places the DEP, whose mission is supposed to be to protect and conserve Pennsylvania's environment, in the position of balancing protection of important public resources against individual property rights. Furthermore, it inappropriately, and potentially illegally, elevates the "optimal" development of oil and gas over the protection of important public resources against likely adverse impacts. These draft regulations do not give proper weight to the DEP's constitutional obligation to protect the environment. So long as the DEP's actions do not affect a taking of private property, the DEP should be obligated to take whatever actions are necessary to condition permits in a manner that protects important public resources.

The DEP's duty to investigate water pollution should extend to the all oil and gas activities. (Section 78.51(c)).

The Chapter 78 regulations require the DEP to investigate instances of water pollution that occur near oil and gas wells. As part of its investigation, the DEP may determine that water pollution was caused by the "well site construction, drilling, alteration or operation activities." This set of activities is much more limited than the list of activities defined as "oil and gas activities" in Act 13. To ensure maximum protection of water resources, the DEP's investigation should extend to all oil and gas activities.

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)

The current draft regulations prohibit well operators from building "centralized impoundments" for wastewaters within 100 feet of any "solid blue line stream" identified by the United States Geological Survey. Solid blue line streams flow consistently year round. This 100 foot buffer is important, but it should be extended to other streams that do not flow continuously. Although we recognize that Act 13 unwisely referred to "solid blue line streams," intermittent and ephemeral streams need to be protected as well. Some of our most vulnerable waters are intermittent portions of high quality streams. Those waters would not be adequately protected by these regulations. Furthermore, the DEP has an obligation to protect intermittent streams under the Clean Streams Law. Rather than attempt to make that decision on a case by case analysis, the DEP should extend this buffer to all Pennsylvania streams.

The DEP should stop promoting the disposal of residual waste at well sites. (Section 78.62)

The draft regulations would allow well operators to dispose of residual waste in pits on well sites as long as they comply with certain minimal requirements. Because waste generated at oil and gas sites is exempt from the hazardous waste regulations, the result is that hazardous waste can be managed as residual waste and disposed at well sites with a single synthetic liner and no long-term groundwater monitoring. These minimal protections are inadequate.

As the DEP knows, many well-site disposal pits have leaked in recent years, contaminating surface and groundwater and dotting the Pennsylvania countryside with brownfield sites. Given the high risks of these mini-landfills, and the fact that their one and only advantage is fewer truck trips to landfills (and reduced cost for operators), the DEP should prohibit well site disposal of residual waste entirely. To the extent that the

DEP continues to allow this method of waste disposal it should, at a minimum, require long-term groundwater monitoring and public notice of existing and future disposal sites.

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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))

The rulemaking proposes to allow engineer certifications that pits and impoundments have been correctly constructed in lieu of DEP inspections. If the DEP is not itself capable of ensuring proper construction of facilities such as centralized impoundments, these certifications should be submitted under penalty of law for unsworn falsification to authorities (18 P.S. § 4904) so that any intentional falsification can be prosecuted criminally. The DEP should also mandate better self-monitoring by requiring that photographs or video be taken of the finished construction so that there is evidence of the site construction that can be reviewed after the fact.

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)

If waste is disposed at well sites, a sample of the material should be taken and analyzed. This sample should be sent to the agency to demonstrate that drill cuttings are not contaminated, and that any residual waste does not exceed legal limits. The regulations do not currently require that the operator use any scientific methodology to demonstrate compliance.

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))

Collection and analysis of chemical waste samples that are intended to be disposed of onsite needs to be a mandatory requirement. The draft regulations leave this to the discretion of the operator, which should not be permitted. This is particularly important where a disposal site does not need to be inspected by the agency prior to closure, and there is no provision for long term monitoring of ground water.

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.

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)

Act 13 requires two stages of restoration for well sites. On the one hand, section 3216(c) requires partial restoration after the conclusion of drilling and fracturing operations. On the other hand, section 3216(d) requires final restoration after the last well on the site has been plugged. The DEP is proposing to implement these sections in proposed regulation 78.65, which provides that a well site will be considered restored if it is returned to its "approximate original conditions, including preconstruction contours," and if it "can support the original land uses to the extent practicable." Similar language appears in the DEP's proposed regulations for freshwater impoundments (78.59b) and centralized wastewater impoundments (78.59c), which also contain restoration requirements.

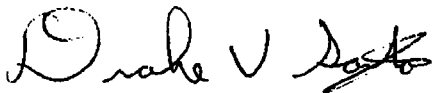
A return to original conditions, contours, and uses is a laudable goal for the restoration of well sites (both post-drilling and post-plugging) and impoundment sites. Currently, though, the DEP's general restoration standards are practically unenforceable because the DEP's regulations (i) fail to require environmental baseline site assessments, (ii) fail to require site-specific standards and criteria for restoration, (iii) fail to require environmental professionals to sign off on site restorations, and (iv) establish no process whereby the DEP can finally approve or disapprove restoration. The DEP should require site-specific baseline assessments and restoration plans for all well sites and impoundment sites, require professional certification that restoration goals have been met, and require DEP approval before a site can be considered to be restored.

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)

Under Act 13, an operator can obtain one blanket bond in the amount of \$600,000 that covers all of an operator's well sites in the Commonwealth. Despite the extremely low amount of this bonding requirement (and of all of Act 13's bonding requirements), the bond is supposed to secure all of the operator's legal duties regarding water supply replacement, restoration and well-plugging.

The DEP may not have the power to require higher amounts for bonds than the Act 13 amounts, but it can and should establish a process to ensure that operators are not released from liability for particular well sites until those sites are properly restored. The DEP's proposed revised bonding regulations (set forth in Subchapter G of Chapter 78) fail to do this. They condition release from liability only on the filing of a certificate of plugging. Release from liability should also be conditioned on the adequate final restoration of the well site after the last well on the site has been plugged.

Respectfully submitted,



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