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From: RegComments@pa.gov
Sent: Thursday, March 13, 2014 6:43 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:

Trevor Penning
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 Philadelphia, PA 19104 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: [Summary.pdf](#)
 Comments Attachment: [FINALComments. Penning 03-13-14.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

Summary

We thank you for the opportunity to comment on the Proposed Rulemaking on Environmental Protection Performance Standards at Oil and Gas Sites (25 PA.Code CH. 78) offered by the Environmental Quality Board. Many facets of this proposal are well received by the **Center of Excellence of Environmental Toxicology at the University of Pennsylvania**, and we feel environmental protection can be strengthened by their implementation.

The proposed rulemaking provides a framework for Compliance Assistance that states that *"the Department has worked extensively with representatives from the regulated community and leaders from several industry organizations"* in developing the proposed amendments. Were independent experts and researchers external to industry sources also included to assess potential environmental and ecological impacts? In addition, since many of the potential impacts may have significant public health consequences, were medical and health professionals invited to provide input to assess human health impacts that may dictate a more robust regulatory response? Given the degree of uncertainty that many scientific and public health experts have expressed regarding potential adverse impacts of this extraction technology the use of a primary compliance assistance strategy seems inadequate. Taking the Pre-Cautious Principle approach, because potential impacts remain to be fully defined suggests that a comprehensive enforcement strategy for industry and a suspecting public is warranted in the final regulations. Though not as popular an approach recently with regulatory agencies, enforcement is a basic tool that has historically yielded improved public health and environmental safeguards to protect our air and water quality.

We recognize these proposed amendments are an attempt to protect public resources. Many of the proposed changes, if successfully implemented with adequate resources, reduce current risks by expanding regulatory controls. But we want these changes to address risks that require a stronger scientific foundation to be fully confirmed. We encourage the Governor and his regulatory agency to take a Pre-Cautious approach in proposing new regulations, and to adopt policies and practices that take uncertainty into account when establishing revised regulations. We also encourage the Administration to provide research funding for initiatives that will better define public health risks that seem to have fallen below the radar screen in assessing health impacts to both workers and citizens in the prime extraction areas of the state.

We thank you for the opportunity to comment on the Proposed Rulemaking on Environmental Protection Performance Standards at Oil and Gas Sites (25 PA.Code CH. 78) offered by the Environmental Quality Board. Many facets of this proposal are well received by the Center of Excellence of Environmental Toxicology at the University of Pennsylvania, and we feel environmental protection can be strengthened by their implementation. We would like to offer a number of suggestions that need to be considered to ensure the quality of the environment and related ecosystems as well as health of all PA citizens.

Our comments are as follows:

§78.15. subsection (f): the Department is required to consider the impacts to public resources when making a determination on a well permit. Jurisdictional Agencies have the opportunity to submit comments to DEP during a 15-day time frame to avoid or minimize impacts. If a jurisdictional agency (JA) believes the impact is so significant to public resources and recommends denial (and not mitigation via special conditions) of the permit, can the Department deny the action directly while leaving in place the operators appeal process? Suppose the JA needs more time to assess impacts and may require for example, Habitat Evaluation Procedures be applied to assess potential damage, will an extension be automatically granted? We recommend extension language be incorporated into the regulations. What is the threshold test between the operator's *property rights to ensure optimal development of the resources (§321(e) of 58 Pa.C.S.)* vs. protection of public resources? This standard cannot be subject to arbitrary and capricious criteria, and certainly not political influence. If protection of public resources is indeed the primary focus of this section, the regulations must include both qualitative and quantitative protocols that will be used in making this permit determination when conflicts are presented to the Department. These criteria and process steps must be incorporated into these revisions.

§78.51. Protection of Water Supplies: Act 13 . . . *specifies a restored or replaced water supplies must meet the standards in the PA Safe Drinking Water Act (35 P.S. §§ 721.1-721.17) or be comparable to the quality of the water supply before it was affected if that water was of a higher quality than those standards.*

PA Safe Drinking water Act states . . .

§ 109.201. Authority.

Under the act, the EQB will adopt MCLs and treatment technique requirements no less stringent than those promulgated under the Federal act for contaminants regulated under the Federal regulations. The Board may adopt MCLs and treatment technique requirements more stringent than those promulgated under the Federal act, and may adopt MCLs or treatment technique requirements for contaminants for which no MCL or

treatment technique requirement has been promulgated under the Federal act

109.202. State MCLs, MRDLs and treatment technique requirements.

(a) Primary MCLs.

(1) A public water system shall supply drinking water that complies with the primary MCLs adopted by the EQB under the act.

The proposed regulations indicate that remediated or replaced water supplies must meet all mandates of PA Safe Drinking Water Act. However, if a public water supply routinely provided drinking water which exceeded MCL's values prior to any drilling or landscape altering practices, these enhanced drinking water conditions must be fully maintained at the same level of measurement with all costs incurred by the operators that altered the existing quality of drinking water. In addition, water quality parameters for which no MCL's exist but which are documented by the water purveyor before drilling activities must also be maintained with all costs incurred by the operators that altered the existing quality of drinking water. Leaving this door open to discussion by operators will lead to a debate regarding treatment level requirements and unanticipated associated costs. Clearly the burden-of-proof and costs should be placed on the operator to achieve pre-existing conditions with no additional cost incurred by the supplier and users of the public water supply. Failure to achieve pre-drilling drinking water conditions may represent an increased public health risk for residents and special populations within the community.

§78.52a. Abandoned and Orphaned Well Identification.

We applaud this section of the proposed regulations. This category of wells represents a significant risk to both the environment and citizens of the State. The proposed regulations should also include an extensive monitoring effort for abandoned and orphaned wells to benchmark potential risks from the outset. Unless pre-drilling data is gathered, assessing environmental damage caused by subsequent drilling will be impossible to categorize. The greatest benefit from this amendment is achieved if pre-emptive data is gathered and made available to the DEP and local municipalities.

§ 78.55. Control and Disposal Planning; Emergency Response for Unconventional Well Sites.

Emergency Response Planning frequently becomes the focus of attention only after the emergency occurs. In the aftermath of The Deepwater Horizon oil spill, the post mortem was accompanied by intergovernmental blame across all levels of governance. If we have learned anything from recent environmental accidents, strengthening the requirements surrounding emergency response planning are essential to safeguarding public resources and environmental health. The Preparedness, Prevention and Contingency (PPC) plans warrant more attention than just to meet the format of the DEP guidelines, No.400-2200-001. The regulations must indicate that all PPC plans are reviewed and approved by the appropriate DEP official and have incorporated municipal and local authorities into the planning process.

§78.57. Control, Storage and Disposal of Production Fluids

These amendments do offer better choices for storage and disposal of production fluids, but language is not clear regarding the use of advanced leak detection systems, secondary capture strategies, and significant bonding practices to promote deterrence and improved operation and maintenance to achieve full compliance was the hazardous waste program, under RCRA Subtitle C, 40 CFR- Parts 260-282.

§ 78.59b. Freshwater Impoundments

The use of mine-influenced water (MIW) is an interesting concept that has some apparent environmental advantages. PADEP's White Paper (2013) outlines their rationale in great detail, but leaves several issues still to be determined. The DEP factsheet referenced below details that Acid Mine Drainage (AMD) is the primary cause of §303(d) water quality impairments in the State. Therefore the use and storage of MIW might pose potential significant risks to State waters.

WATERSHED MANAGEMENT AND TMDLs

Acid mine drainage (AMD) from abandoned surface and underground coalmines is a leading source of impairment to Pennsylvania waters. AMD can seriously degrade the aquatic habitat and the quality of water supplies because of toxicity, corrosion, incrustation and other effects from dissolved constituents. The Total Maximum Daily Load (TMDL) analysis of AMD streams uses a statistical method of determining the in-stream allowable loading rate at the point of interest in the stream. Discharges that are permitted or have a responsible party are point sources, and make up the wasteload allocation portion of the TMDL. Nonpoint sources are all other sources and constitute the load allocation. AMD impaired watersheds are evaluated for aluminum, iron, manganese and pH using statistics and Monte Carlo (probability) simulations to model existing conditions, to determine required reductions and to calculate allowable concentrations. When the reductions are met, the water quality standards will be met.

Two issues remain to be addressed regarding the storage of MIW in freshwater impoundments. Does the pumping of water from abandoned mine pools create a point source discharge requiring MIW to be treated to discharge standards mandated by the PA Clean Streams Law before storage is permitted? If so, is the State-offering operators extended liability via the Environmental Good Samaritan Act should the practice result in significant unforeseen environmental damage? We have seen the criticism of the federal Energy Policy Act of 2005 that offers the energy sector reduced liability with respect to many current environmental laws. This law has not been well received by the environmental community, because it suggests a policy of permissiveness when environmental risks are increased without regulatory controls in place. Does this proposal imply, if and when accidents occur, that PA taxpayers bear the burden of clean-up costs if AMD discharges contaminate Waters of the State? These proposed provisions with respect to MIW storage in freshwater impoundments clash with the core concept of "protection of public resources" that these amendments are promoting if loopholes are encouraged with at-risk practices.

Compliance Assistance Plan

The proposed rulemaking also provides a framework for Compliance Assistance that states that *"the Department has worked extensively with representatives from the regulated community and leaders from several industry organizations"* in developing the proposed amendments. Were independent experts and researchers external to industry sources also included to assess potential environmental and ecological impacts? In addition, since many of the potential impacts may have significant public health consequences, were medical and health professionals invited to provide input to assess human health impacts that may dictate a more robust regulatory response? Given the degree of uncertainty that many scientific and public health experts have expressed regarding potential adverse impacts of this extraction technology the use of a primary compliance assistance strategy seems inadequate. Taking the Pre-Cautious Principle approach, because potential impacts remain to be fully defined, suggests that a comprehensive enforcement strategy for industry and a suspecting public is warranted in the final regulations. Though not as popular an approach recently with regulatory agencies, enforcement is a basic tool that has historically yielded improved public health and environmental safeguards to protect our air and water quality.

Summary Comment

We recognize these proposed amendments are an attempt to protect public resources. Many of the proposed changes, if successfully implemented with adequate resources, reduce current risks by expanding regulatory controls. But we want these changes to address risks that require a stronger scientific foundation to be fully confirmed. We encourage the Governor and his regulatory agency to take a Pre-Cautious approach in proposing new regulations, and to adopt policies and practices that take uncertainty into account when establishing revised regulations. We also encourage the Administration to provide research funding for initiatives that will better define public health risks that seem to have fallen below the radar screen in assessing health impacts to both workers and citizens in the prime extraction areas of the state.