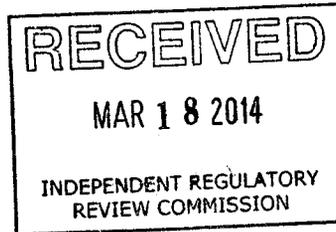




3042



Will Ratcliffe
Manager - Regulatory Affairs

March 14, 2014

Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301

Re: Comments on Proposed Amendments to 25 PA.CODE CH. 78, Environmental Protection Performance Standards at Oil and Gas Well Sites [43 Pa.B. 7377-7415]

To Whom It May Concern,

Access Midstream Partners (Access) respectfully provides the following comments on the Pennsylvania Department of Environmental Protection's (DEP) Proposed **Amendments to 25 PA.CODE CH. 78, Environmental Protection Performance Standards at Oil and Gas Well Sites [43 Pa.B. 7377-7415]**. Access has provided detailed comments on numerous proposed amendments elsewhere in this document. However, there are several issues that warrant initial discussion.

Access recommends that the title of Chapter 78 and its section titles are revised since Chapter 78 is covering Oil and Gas Operations as defined and not covering Oil and Gas Wells. Access recommends changing the title of the Chapter to "Oil and Gas Operations." Subsequently, each section would need clarified. For example, §78.15 Application Requirements would need changed to "Well Site Application Requirements." Below is a list of the section headings with suggested modifications underlined or a strikethrough applied for deletions where appropriate:

- § 78.1. Definitions
- § 78.15. Well Site Application requirements.
- § 78.51. Protection of water supplies for well site activities.
- § 78.52. Pre drilling or prealteration survey.
- § 78.53. Erosion and sediment control.
- § 78.55. Control and disposal planning; emergency response for unconventional wells.
- § 78.56. Temporary Storage in pits, tanks and other approved storage structures at well sites.
- § 78.57. Control, storage and disposal of production fluids.
- § 78.58. [Existing pits used for the control, storage and disposal of production fluids.] Onsite processing.
- § 78.59a. Impoundment embankments.
- § 78.59b. Freshwater impoundments.
- § 78.60. Well Site Discharge requirements.
- § 78.61. Disposal of oil and gas well drill cuttings.

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- § 78.62. Disposal of well site residual waste—pits.
- § 78.64a Containment systems and practices at unconventional well sites.
- § 78.65. Well site restoration.
- § 78.66. Reporting and remediating spills or releases from well sites.
- § 78.67. Borrow pits.
- § 78.68. Oil and gas gathering lines.
- § 78.68a. Horizontal directional drilling for oil and gas pipelines.
- § 78.68b. Temporary pipelines ~~for oil and gas operations~~.
- § 78.69. Water management plans for unconventional well operators.
- § 78.73. General provision for well construction and operation.
- § 78.122. Well record and completion report.
- § 78.123. Logs and additional data for oil and gas wells.

Public Resource Impacts

Section 78.15(f) proposes to equate “critical communities” with “special concern species” without an adequate basis in fact or law. That term is undefined by state or federal statute or regulation. No federal or state agencies have utilized the rulemaking process to designate any species as “special concern,” and there is no rational ecological basis for equating the term “communities” to “species.” This issue raises substantial questions about how such a list is generated, what criteria is used to determine whether there is an impact to these species, and why/how the DEP would develop specific well permit conditions to mitigate impacts to such species. To the extent the term is intended to refer to certain species on the Pennsylvania Natural Diversity Inventory (PNDI) database, such designation is not done by rulemaking. DEP is seeking to create a binding regulatory requirement in excess of its statutory authority and jurisdiction. The proposed rule creates tremendous uncertainty about a permit applicant’s obligations with regard to an ever-changing and undefined list, to which there is no public access. The provision places Pennsylvania at a serious competitive disadvantage with respect to other states. Access respectfully requests that the reference to “special concern species” be eliminated.

Section 78.15(g) replicates, in part, the language of Act 13 Section 3215(e) which recognizes an oil and gas owner’s property rights to develop the oil and gas resources. However, Section 3215(e) also requires the Environmental Quality Board (EQB) to develop criteria for the DEP to utilize in the imposition of any permit conditions to protect public resources while respecting those property rights and ensuring optimal development of those resources. The DEP has not proposed this new criteria. The rule thus fails to comply with Act 13, which requires the EQB develop such criteria through rulemaking.

Regulatory Analysis Form

The DEP is required by the Regulatory Review Act, 71 P.S. §745.5(a) (RRA) to provide a regulatory analysis of its proposed rulemaking to the Independent Regulatory Review



Commission and the relevant standing committees of the Pennsylvania Senate and House of Representatives. The DEP's Regulatory Analysis Form (RAF), which is posted on the EQB's website along with the proposed rule and preamble, fails to satisfy the requirements of the RRA. Generally, the analysis is incomplete because the various subsections only address portions of the proposed rule, rather than the comprehensive rule package. Both the comparison to other state's regulations and the estimate of costs (as noted above) are limited in scope to only a few select provisions, failing to provide the required analysis.

Individual Comments

Comment 1: § 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.

To avoid conflicting definitions, Access suggests that the regulation should use the Federal definition for a gathering pipeline contained in 49 CFR Part 192, which is consistent with how the term is defined in Act 13, Section 3218.5. The suggested amendatory language would state that a *Gathering Pipeline* is "[a] pipeline that transports gas from a current production facility to a transmission line or main."

Comment 2: § 78.1. Definitions: *Oil and Gas Operations*

This definition should match the definition used in Act 13, Section 3301. Subpart (5) is not part of the statutory definition and in view of 78.53 below, is not needed in the definition.

Comment 3: § 78.1. Definitions:

Regulated substance—Any substance defined as a regulated substance in section 103 of Act 2 (35 P.S. §6020.103).

The definition of the term "regulated substance" is very broad and its use throughout the proposed regulation is often difficult to apply to the oil and gas industry. The term "regulated substance" was adopted in the context of Act 2 which focuses on characterization and remediation of releases causing impacts to environmental media. The term was not designed to be used in the context of affirmative regulatory obligations. Access recommends that revisions be made as suggested throughout the subsections below in order to address the DEP's particular intent of the regulatory section in which the term has been proposed.

The term may be appropriate in the spill reporting and remediation subsection 78.66, but even there, the scope of the term as defined above creates uncertainty with respect to reporting obligations in particular. Section 78.66(b) creates a two-tiered release reporting system for the oil and gas industry. The oil and gas industry is already subject to the



requirements for reporting releases pursuant to 25 Pa. Code § 91.33 that apply to all other regulated entities in Pennsylvania, as well as the numerous federal reporting requirements under CERCLA (e.g. 40 C.F.R. 302), CWA (e.g. 40 C.F.R. 112), and EPCRA (e.g. 40 C.F.R. 355) that provide specified reportable quantity thresholds

In particular, Section 78.66(b)(1) as currently proposed, would impose an obligation to report any spill or release of five (5) gallons or more of a regulated substance over a 24-hour period that is not completely contained by a containment system. This reporting obligation applies regardless of whether there is an actual or threatened impact to waters of the Commonwealth or any other impact to the environment or to public health or safety. In recognition that EQB is proposing to eliminate the existing "reportable release of brine" definition and provision, Access recommends that this additional requirement be clarified and limited to reporting brine spills over five (5) gallons outside of containment.

Please refer to the subsections below for additional comments and suggestions that explain the recommendations for terms that will serve the purpose of the regulation and provide better guidance to the regulated community.

The suggested amendatory language would state that a *Regulated Substance* is "any substance defined as a regulated substance in section 103 of Act 2 (35 P.S. §6020.103) and listed in 25 Pa. Code Chapter 250."

Comment 4: § 78.53. Erosion and sediment control.

[During and after earthmoving or soil disturbing activities, including the activities related to siting, drilling, completing, producing, servicing and plugging the well, constructing, utilizing and restoring the access road and restoring the site, the operator shall design, implement and maintain best management practices in accordance with]Any person proposing or conducting earth disturbance activities associated with oil and gas activities shall comply with Chapter 102 (relating to erosion and sediment control). [and an erosion and sediment control plan prepared under that chapter.] Best management practices for erosion and sediment control for oil and gas well [operations] activities are listed in the [Oil And Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001 (April 1997), as amended and updated] Erosion and Sediment Pollution Control Program Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008, as amended and updated, and the Oil And Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001, as amended and updated.

There is an important need to update the referenced manuals as sources of best management practices for oil and gas well activities. Recent efforts to develop model plans for erosion and sediment control, post construction stormwater management and site



restoration should be finalized. Access will continue to assist the Department with development and training for new and enhanced best management practices.

The defined term "oil and gas operations" should be used in lieu of the undefined term "oil and gas activities." All oil and gas operations should comply with Chapter 102, to the extent it applies. However, the second sentence of the proposed language regarding best management practices is not necessary, as the required practices are currently addressed in Chapter 102. As a result, the DEP's manual and guidance, which are subject to future amendment without the procedures required for regulatory development, should not be incorporated into a rule.

The suggested amendatory language would state that "[a]ny person proposing or conducting earth disturbance activities associated with oil and gas operations shall comply with the requirements of 25 Pa. Code Chapter 102 (relating to erosion and sediment control)."

Comment 5: § 78.68(a). Oil and gas gathering lines.

(a) All earth disturbance activities associated with oil and gas gathering line installations and supporting facilities shall be limited to the construction right-of-way, work space areas, pipe storage yards, borrow and disposal areas, access roads and other necessary areas identified on the erosion and sediment control plan.

The DEP's proposed language in this subsection would not be necessary in light of our proposed change to Section 78.53 above. Gathering line construction is an "oil and gas operation," as defined in Act 13, and erosion and sediment control requirements for oil and gas operations are addressed in Section 78.53. Access respectfully requests that subsection 78.68(a) is deleted.

Comment 6: § 78.68(c)(1). Oil and gas gathering lines.

(c) The operator shall maintain topsoil and subsoil during excavation pursuant to the following, unless otherwise authorized by the Department:

(1) Topsoil and subsoil must remain segregated until restoration.

There are areas where topsoil and subsoil may not need segregated to ensure vegetative growth after construction. Access recommends the Department adopt the Federal Energy Regulatory Commission (FERC) guidelines for soil segregation. The suggested amendatory language would state that: **"(1) Topsoil and subsoil must remain segregated in the following areas until restoration: (i) Actively cultivated or rotated crop lands and managed pastures; (ii) Residential areas; and (iii) Hayfields.**



Comment 7: § 78.68(d). Oil and gas gathering lines.

(d) Backfilling of the gathering line trench shall be conducted in a manner that minimizes soil compaction to ensure that water infiltration rates of the soil have not been decreased.

Soil compaction above original conditions along the trench line may occur in areas of steep terrain to prohibit water penetration, as water penetration can create the potential for saturated soil and large scale sediment transport. The presumed goal of this section is to ensure vegetative growth post construction. Access requests that the measurable requirement of this section be removed as it could unnecessarily require extensive, costly pre/post construction soil compaction analysis.

The suggested amendatory language would state that “[b]ackfilling of the gathering line trench shall be conducted in a manner that minimizes soil compaction where necessary to ensure that vegetative growth can be established during restoration.”

Comment 8: § 78.68(g). Oil and gas gathering lines.

(g)The gathering line operator shall maintain the pipeline right-of-way, service roads and points of access to minimize the potential for accelerated erosion and sedimentation and to manage post construction stormwater and minimize impacts to existing riparian buffers in accordance with 25 Pa. Code Chapter 102.

The DEP's proposed language would not be necessary in light of our proposed change to Section 78.53 above. Gathering line construction is an “oil and gas operation,” as defined in Act 13, and erosion and sediment control requirements for oil and gas operations are addressed in Section 78.53. Access respectfully requests that subsection 78.68(g) is deleted.

Comment 9: § 78.68a(a). Horizontal directional drilling for oil and gas pipelines.

(a) Any horizontal directional drilling associated with pipeline construction related to oil and gas operations, including gathering and transmission pipelines, that occurs beneath any body of water or watercourse must be authorized by the Department in accordance with 25 Pa. Code Chapters 102 (relating to erosion and sediment control) and Chapter 105 (relating to dam safety and waterway management).

Inclusion of the phrase “pipeline construction related to oil and gas operations” is confusing. Pipeline construction is included in the definition of “oil and gas operation.” Access recommends that the introductory clause be clarified to read as follows: “Any horizontal directional drilling that is associated with construction of oil and gas pipelines, including gathering and transmission pipelines, that occurs beneath any body ...” Additionally, the reference to Chapter 102 would not be necessary in light of our proposed change to Section 78.53 above. Pipeline construction is an “oil and gas operation,” as defined in Act 13, and



erosion and sediment control requirements for oil and gas operations are addressed in Section 78.53.

The suggested amendatory language would state that “[a]ny horizontal directional drilling that is associated with construction of oil and gas pipelines, including gathering and transmission pipelines, that occurs beneath any body of water or watercourse must be authorized by the Department in accordance with 25 Pa. Code Chapter 105 (relating to dam safety and waterway management).”

Comment 10: § 78.68a(b). Horizontal directional drilling for oil and gas pipelines.
(b)Prior to commencement of any horizontal directional drilling activity, the directional drilling operator shall develop a PPC plan pursuant to 25 Pa. Code § 102.5(f) (relating to permit requirements). The PPC plan shall include a site specific contingency plan that describes the measures to be taken to control, contain and collect any discharge of drilling fluids and minimize impacts to waters of the Commonwealth. The PPC plan must be present on site during drilling operations and made available to the Department upon request.

This provision is redundant of the DEP’s proposed Section 78.55(a), which would apply to all “oil and gas operations,” as defined. Additionally, the directional drilling operator is not the appropriate individual to develop a PPC plan, since the developer of the gathering line is already required to develop the plan pursuant to Section 78.55(a). Accordingly, Access believes that Subsection 78.68a(b) is not necessary. Access respectfully requests that subsection 78.68a(b) is deleted.

Comment 11: § 78.68a(e). Horizontal directional drilling for oil and gas pipelines.
(e)Materials staging areas shall be outside of a floodway, as that term is defined in 25 Pa. Code Chapter 105, of any watercourse or greater than 50 feet from any body of water.

Access recommends that the language be clarified to reflect that the referenced materials staging areas are for horizontal directional drilling operations.

Requiring that all materials be staged outside the floodway or greater than fifty (50) feet from a water body can be very difficult to achieve and may result in additional environmental impacts due to increased hauling distances. Access requests that language be added to allow for an alternative approach to be considered and approved, depending on site-specific circumstances.

The suggested amendatory language would state that “[u]nless an alternative plan is approved by the Department, materials staging areas for horizontal directional drilling operations shall be outside of a floodway, as defined in 25 Pa. Code Chapter 105, of any watercourse or greater than 50 feet from any body of water.”



Comment 12: § 78.68a(g). Horizontal directional drilling for oil and gas pipelines.
(g) Horizontal directional drilling operations shall be monitored for pressure and loss of drilling fluid returns. Bodies of water and watercourses over and adjacent to horizontal directional drilling operations shall also be monitored for any signs of drilling fluid discharges. Monitoring shall be in accordance with the PPC Plan.

Monitoring for pressure and loss of fluid returns can vary and require frequent modifications. Loss of fluid and/or pressure does not always yield an inadvertent return, thus monitoring requirements should not be memorialized in a PPC plan. Access suggests clarifying this statement to ensure that monitoring for discharges be established, but not monitoring for pressure and fluid loss.

The suggested amendatory language would state that “[h]orizontal directional drilling operations shall be monitored for pressure and loss of drilling fluid returns. Bodies of water and watercourses over and adjacent to horizontal directional drilling operations shall be monitored for any signs of drilling fluid discharges. Monitoring for signs of drilling fluid discharge shall be in accordance with the PPC Plan.”

Comment 13: § 78.68a(i). Horizontal directional drilling for oil and gas pipelines.
(i) When a drilling fluid discharge or loss of drilling fluid circulation is discovered, the loss or discharge shall be immediately reported to the Department, and the operator shall request an emergency permit under 105.64 (relating to emergency permits), if necessary.

It isn't practical or reasonable for industry to report all “loss of drilling fluid circulation,” particularly when the fluid does not come to the surface. The suggested amendatory language would state that “[w]hen a drilling fluid discharge is discovered, the operator shall request an emergency permit pursuant to 25 Pa. Code § 105.64 if necessary.”

Comment 14: § 78.68a(k). Horizontal directional drilling for oil and gas pipelines.
(k) Horizontal directional drilling fluid returns and drilling fluid discharges shall be contained, stored and recycled or disposed of in accordance with Part I, Subpart D, Article IX (relating to residual waste management).

Access supports the beneficial reuse of drilling fluid, and requests that provisions for such be included in the proposed subsection.

The suggested amendatory language would state that “[h]orizontal directional drilling fluid returns and drilling fluid discharges shall be contained, stored and recycled or disposed or beneficially reused in accordance with Part I, Subpart D, Article IX (relating to residual waste management).”



Access Midstream Partners appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's Proposed **Amendments to 25 PA.CODE CH. 78, Environmental Protection Performance Standards at Oil and Gas Well Sites [43 Pa.B. 7377-7415]**. Access maintains a commitment to environmental excellence by protecting the environment and all natural resources as required by regulation. Please do not hesitate to contact me should you have any questions at 607-742-2291.

Regards,

A handwritten signature in black ink, appearing to read "P. R. Pichardo III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

P. Robert Pichardo III
Specialist - Regulatory

Signed for:

Will Ratcliffe
Manager - Regulatory Affairs