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Cooper, Kathy

From: EP, RegComments <ra-epregcomments@pa.gov>
Sent: Wednesday, April 02, 2014 9:14 AM
To: IRRC
Subject: FW: HESI - Comments Regarding Proposed Changes to 25 Pa. Chapter 78
Attachments: HESI - Comments Regarding Proposed Changes to Chapter 78 (3-14-14).pdf

From: Michael Meloy [<mailto:MMeloy@mankogold.com>]
Sent: Friday, March 14, 2014 5:02 PM
To: EP, RegComments
Cc: Perry, Scott (DEP); Klapkowski, Kurt E
Subject: HESI - Comments Regarding Proposed Changes to 25 Pa. Chapter 78

I am submitting to the Environmental Quality Board in electronic format comments prepared by Manko, Gold, Katcher & Fox, LLP on behalf of Halliburton Energy Services, Inc. (HESI) regarding proposed changes to 25 Pa. Code Chapter 78 that were published in the Pennsylvania Bulletin on December 14, 2013. The comments are in the form of a letter in a pdf format. My return name and address are set forth below. Please confirm receipt of these comments at your earliest convenience.

Respectfully yours,

Michael

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March 14, 2014

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VIA ELECTRONIC MAIL

The Honorable E. Christopher Abruzzo
Secretary, Pennsylvania Department of Environmental Protection
Chairperson, Pennsylvania Environmental Quality Board
Rachel Carson State Office Building,
16th Floor
400 Market Street,
Harrisburg, Pennsylvania 17101-2301

Re: Comments on Proposed Amendments to 25 Pa. Code Chapter 78 –
Pennsylvania Oil and Gas Regulations

Dear Secretary Abruzzo:

On December 14, 2013, the Pennsylvania Environmental Quality Board (“EQB”) published in the Pennsylvania Bulletin proposed amendments to Pennsylvania’s oil and gas regulations codified at 25 Pa. Code Chapter 78. *See* 43 Pa. Bull. 7377 (Dec. 14, 2013). The proposed amendments to Pennsylvania’s oil and gas regulations have been prepared by the Pennsylvania Department of Environmental Protection (“PADEP”) and are designed to implement certain provisions of the 2012 Oil and Gas Act (“Act 13”), 58 Pa.C.S.A. §§ 3201-3274. In addition, the proposed amendments to the oil and gas regulations are intended to update existing regulatory requirements to reflect changes that have taken place in Pennsylvania during the past few years in connection with the expansion of production of natural gas from the Marcellus Shale formation. The proposed amendments cover a broad spectrum of issues, focusing predominantly on the environmental protection performance standards contained in 25 Pa. Code Chapter 78, Subchapter C. Publication of the proposed regulations in the Pennsylvania Bulletin triggered a 60-day public comment period. The public comment period was subsequently extended for 30 days.

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The purpose of this letter is to provide the EQB and PADEP with comments on behalf of Halliburton Energy Services, Inc. ("HESI") regarding certain provisions contained in the proposed regulations. Specifically, the comments focus on proposed changes to requirements pertaining to the information that is to be included in the stimulation record contained in the well completion report that a well operator must submit to PADEP within 30 days after the completion of an oil or gas well. In addition, the comments address certain other provisions of the proposed regulations that focus on particular aspects of oil and gas operations.

For the convenience of the EQB and PADEP, redlined versions of proposed regulatory provisions showing suggested changes are included in particular sections of this letter that follow. In such instances, the text that has been used as a starting point is that of the proposed regulatory revisions presented for public comment with all modifications included. Recommended deletions are formatted to show the text struck through and recommended additions are shown with the text double underlined.

HESI is a leading provider of services to the oil and gas industry and is the global leader with respect to hydraulic fracturing services. HESI operates 21 facilities in Pennsylvania including three bulk plants, three field camps, one laboratory, and five shops. HESI employs approximately 1,300 individuals in Pennsylvania, the vast majority of which reside in Pennsylvania. During 2012, HESI paid almost \$100,000,000 in wages to its employees in Pennsylvania. HESI helped pioneer the use of hydraulic fracturing in the 1940s and has been hydraulically fracturing wells in a wide variety of geographic settings and formations for over 60 years. During this time period, HESI has stimulated many hundreds of thousands of wells and has been responsible for numerous innovations in the field of hydraulic fracturing. This wealth of experience makes HESI well qualified to comment on the proposed oil and gas regulatory requirements, particularly as they relate to hydraulic fracturing stimulation practices. HESI also provides a broad range of other services to operators of oil and gas wells in Pennsylvania. Accordingly, HESI has a direct interest in many of the requirements that are included in the proposed regulations.

1. Proposed Changes to 25 Pa. Code § 78.122 (Well Records and Completion Reports)

25 Pa. Code § 78.122 sets forth requirements relating to well records and completion reports. Certain changes are proposed to the current version of 25 Pa. Code § 78.122 to incorporate new requirements contained in Act 13. With respect to the proposed revisions to Section 122(b) relating to the content of well completion reports, the revisions recognize the fact that vendors and service providers hired by well operators do not disclose to the operators certain information about the chemicals added to the stimulation fluid that is used to hydraulically fracture a well because that information is considered by the vendor or service provider to be a trade secret or confidential proprietary information. This dynamic is reflected in the current oil and gas regulations at 25 Pa. Code § 78.122(d), which recognizes the relationship among operators, vendors and service providers by allowing operators to arrange to have their vendors and service providers provide certain information directly to PADEP when necessary. HESI appreciates that the EQB has retained this concept in its proposed revisions to Chapter 78 and supports the following changes to Section 122(b):

§ 78.122. Well record and completion report.

* * *

(b) Within 30 calendar days after completion of the well, when the well is capable of production, the well operator shall arrange for the [submit] submission of a completion report to the Department on a form provided by the Department that includes the following information....

(The changes shown above are in the original version of the proposed regulations.)

In a scenario where a vendor or service provider is providing information directly to PADEP in accordance with Section 122(b), as proposed, it is the vendor or service provider that considers the information to be a trade secret or confidential proprietary information. Consistent with that framework, HESI believes that Section 122(c), as proposed, should be revised slightly to recognize that the vendor or service provider (as opposed to the operator) may be the entity designating the information submitted directly to PADEP as a trade secret or confidential proprietary information. Accordingly, HESI suggests that the following changes to the first sentence of Section 122(c), as proposed, be made:

(c) ~~When the well operator submits a stimulation record is submitted, it may designate~~ specific portions of the stimulation record may be designated as containing a trade secret or confidential proprietary information. The Department will prevent disclosure of the designated confidential information to the extent permitted under the Right-to-Know Law (65 P. S. §§ 67.101—67.3103) or other applicable State law.

These minor changes will harmonize the requirements in Section 122(c), as proposed, with the structure reflected both in Section 122(b), as proposed, and as currently exists in the oil and gas regulations.

2. Proposed Changes to 25 Pa. Code § 78.1 (Definitions)

The EQB has proposed to add a number of new definitions to 25 Pa. Code Chapter 78 and to modify or delete certain definitions that are currently found in the regulations. These definitions in turn have a ripple effect as they are used in other sections of the regulations. Two sets of issues are discussed below.

a. Definition and Use of the Term “Regulated Substance”

The EQB has proposed to add to 25 Pa. Code § 78.1 a definition for the term “regulated substance.” On its face, the definition simply incorporates the definition of that term found in the Pennsylvania Land Recycling and Environmental Remediation Standards Act (“Act 2”). The definition of a “regulated substance” under Act 2 is extremely broad and was developed in the

context of describing the framework under Act 2 for characterization and remediation of environmental media at brownfields and other locations. As such, the universe of regulated substances is wide-ranging and designed to cover a sweeping array of conditions that may be found at such locations. Moreover, regulated substances include many naturally occurring substances. Unlike the land recycling program under Act 2, more traditional regulatory programs that impose affirmative obligations generally focus on particular types or categories of materials (such as asbestos, lead, and hazardous wastes) that are more precisely defined than the universe of "regulated substances" under Act 2.

In the context of the proposed changes to 25 Pa. Code Chapter 78, the EQB has liberally used the term "regulated substance" in many places. In certain instances, the term "regulated substance" is appropriately used such as in the proposed version of 25 Pa. Code § 78.66(c) (addressing remediation of spills and releases). However, in many other instances, the use of the term does not appear to be warranted and may lead to unintended adverse consequences for both PADEP and the regulated community. For example, as noted above, regulated substances include many naturally occurring substances that would become subject to affirmative regulatory obligations if the proposed regulations are not modified. As a general proposition, the term "regulated substance" should not be used outside of the proposed provisions of 25 Pa. Code § 78.66(c). More precise terminology is necessary in lieu of use of the term "regulated substance." In many instances, the proposed regulations can readily be modified by using terminology that is close to what is currently included in 25 Pa. Code Chapter 78 or by simply eliminating the term "regulated substance."

As illustration of the foregoing, we offer three examples. First, the proposed version of 25 Pa. Code § 78.56 (relating to temporary storage) contains multiple references to "regulated substances." This term can be modified to read "substances" because in most instances, it is used in the context of describing what results from drilling, altering, completing, recompleting, servicing or plugging of a well. Second, in the proposed version of 25 Pa. Code § 78.61, the EQB has set forth requirements for handling drill cuttings "that are not contaminated with a regulated substance, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases." Given the breadth of the definition of a "regulated substance," naturally occurring regulated substances will invariably be found in drill cuttings. To avoid confusion while preserving the intent of the provision, the phrase in question should be revised to read: "that are not contaminated with brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases." Third, the proposed version of 25 Pa. Code § 78.64a uses the term "regulated substance" in various locations, some of which lead to presumably unintended consequences. The proposed version of 25 Pa. Code § 78.64a(c) provides that all regulated substances must be managed within a containment system. This provision provides no delineation of when containment systems are required because virtually any materials present at a well site will contain one or more regulated substances. By contrast, Section 3218.2(c) of Act 13, 58 Pa.C.S.A. § 3218.2(c), specifies that containment systems must be used whenever the following materials are stored: drilling mud, hydraulic oil, diesel fuel, drilling mud additives, hydraulic fracturing additives, and hydraulic fracturing flowback. The

same over-breadth problem presents itself in the other provisions of the proposed version of 25 Pa. Code § 78.64a where the term “regulated substance” is used.

b. Brine

The proposed version of 25 Pa. Code Chapter 78 uses the term “brine” in numerous places, including in newly defined terms “anti-icing,” “de-icing” and “pre-wetting.” However, the term itself is undefined. The use of the term in the proposed regulations indicates that “brine” consists of liquids that result from drilling, altering, completing, recompleting, operating, servicing or plugging a well rather than a liquid that is specifically manufactured or produced for use as an additive by service providers in well stimulation activities. To draw this distinction more clearly, we suggest that the following definition be added to the proposed regulations:

Brine - saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well stimulation, production of oil or gas, or plugging of a well.

3. Proposed Changes to 25 Pa. Code § 78.55 (Emergency Response Plans)

The proposed amendments to 25 Pa. Code Chapter 78 include changes to requirements for preparing and implementing pollution prevention and contingency (“PPC”) plans. As drafted, the provisions are confusing and appear to create overlapping and duplicative requirements. Specifically, while the proposed version of 25 Pa. Code § 78.55(b) requires well operators to prepare PPC plans for activities at well sites, the proposed version of 25 Pa. Code § 78.55(a) covers “oil and gas operations” and applies to any “person” conducting such operations. Operations at well sites are encompassed within “oil and gas operations” as that term is defined, thereby introducing significant uncertainty and confusion as to how the foregoing provisions are to operate in tandem. To address this problem, we recommend that 25 Pa. Code § 78.55(a) be clarified to apply only to oil and gas operations that do not take place at well sites (well sites are covered under Section 78.55(b)) and that at such locations, the person or entity in charge of the operations be responsible for preparing and implementing a PPC plan, as appropriate, to eliminate the potential for preparation of multiple, competing PPC plans by different entities. We also recommend that in conjunction with this change, the first phrase of the proposed version of 25 Pa. Code § 78.55(b) be eliminated (i.e., “In addition to the requirements in subsection (a)”).

In addition, it is important to note that the need to have PPC plans is specifically addressed in 25 Pa. Code §§ 91.34 and 102.5(l). Accordingly, the proposed versions of both 25 Pa. Code §§ 78.55(a) and 78.55(b) should contain cross references to those provisions and indicate that PPC plans must be prepared “in accordance with” and “to the extent required by” those provisions.

Recommended changes to the proposed version of 25 Pa. Code §§ 78.55(a) and (b) to address the foregoing issues are set forth below:

- (a) *Preparation and implementation of plan for oil and gas operations.* Persons conducting oil and gas operations at a location other than a well site shall prepare

and implement site specific PPC plans in accordance with and to the extent required by 25 Pa. Code according to §§ 91.34 and 102.5(l) (relating to activities utilizing pollutants; and permit requirements). The person in charge of the operations at the location shall be responsible for preparing and implementing the PPC plan for the location.

(b) *Preparation and implementation of plan for well sites.* ~~In addition to the requirements in subsection (a),~~ The well operator shall prepare and develop a site specific PPC plan in accordance with and to the extent required by 25 Pa. Code §§ 91.34 and 102.5(l) (relating to activities utilizing pollutants; and permit requirements) prior to storing, using, generating or transporting regulated substances to, on or from a well site from the drilling, alteration, production, plugging or other activity associated with oil and gas wells.

4. Proposed Changes to 25 Pa. Code § 78.58

The proposed version of 25 Pa. Code § 78.58 addresses processing activities that may take place in conjunction with oil and gas operations. As such, the provision will play a critical role in the ability of the oil and gas industry to maximize the potential for recycling and reuse of materials associated with oil and gas operations. In certain instances, such materials can be reused or recycled "as is." In other instances, however, some level of processing is necessary before the materials can be reused.

Regulations that encourage the beneficial reuse of fluids and drill cuttings in an efficient, environmentally-responsible, and cost-effective manner that is practicable to implement in the field should be a shared objective of both the EQB and the regulated community. Section 3273.1(a) of Act 13, 58 Pa.C.S.A. § 3273.1(a), circumscribes the applicability of requirements under the Solid Waste Management Act ("SWMA") that might otherwise hinder the recycling and beneficial use of materials from oil and gas operations. This provision was lifted largely unchanged from the Oil and Gas Act of 1984 and reflects a long-standing legislatively-endorsed approach for streamlining the regulatory process relating to the disposal, processing and storage of residual wastes at oil and gas well sites by placing those activities within the purview of the oil and gas program rather than under the SWMA. Specifically, Section 3273.1(a) of Act 13 provides that requirements for permits and bonds under the SWMA are deemed to be satisfied for "any pit, impoundment, method, or facility employed for the disposal, processing or storage of residual wastes generated by the drilling of an oil or gas well or from the production of wells which is located on the well site" if the well site is permitted and bonded under Act 13, and the requirements of Act 13 and regulations thereunder are met.

While the proposed version of 25 Pa. Code § 78.58 contains certain positive features, it falls short of the framework envisioned in Act 13. As drafted, 25 Pa. Code § 78.58(a) authorizes the processing of fluids at the well site where they are generated or at the well site where they will be beneficially used, provided that such processing is approved by PADEP on a case-by-case basis. Under the proposed version of 25 Pa. Code § 78.58(b), the mixing of fluids with freshwater, aerating fluids, and filtering solids from fluids are activities that do not require prior

approval from PADEP. Both of these provisions are good steps but do not fulfill the vision that the General Assembly had in mind for streamlining the interface between the oil and gas program and requirements under the SWMA. This is particularly evident under the proposed version of 25 Pa. Code § 78.58(d) which states that except as provided in Sections 78.58(a) and (b), all processing of residual waste must be done in accordance with the SWMA, regardless of whether the processing takes place at a well site.

To address these concerns, we recommend that the proposed version of 25 Pa. Code § 78.58(a) be expanded to include processing of solids, including drill cuttings, that occurs at the well site where they are generated. We also recommend that the universe of activities identified in the proposed version of 25 Pa. Code § 78.58(b) be expanded to include the physical removal of free phase hydrocarbons, the addition of biocides to fluids that will be reused, and other activity that PADEP has evaluated and determined to be appropriate as indicated by a posting on its website. If these changes are made, the proposed version of 25 Pa. Code § 78.58(c) can be eliminated as redundant. In any event, the proposed version of 25 Pa. Code § 78.58(d) should be removed because it is inconsistent with the streamlined approach reflected in Section 3273.1(a) of Act 13.

The Marcellus Shale Coalition ("MSC") in its comments on behalf of the oil and gas industry relating to the proposed version of 25 Pa. Code § 78.58(a) has recommended that the proposed regulations be modified to include two separate permits-by-rule for activities that would otherwise require, in PADEP's view, a permit under the SWMA. We support this proposal.

5. Proposed Changes to 25 Pa. Code § 78.66 (Reporting and Remediating Releases)

The proposed version of 25 Pa. Code § 78.66 is largely new and sets forth requirements for the oil and gas industry with respect to (1) notice requirements in the event of a spill or release and (2) investigation and remediation requirements to address a spill or release. Both of these topics are addressed below.

a. Notice Requirements for Spills and Releases

Pennsylvania has a robust framework of existing notification requirements that apply in the event a spill or release occurs. These notification requirements exist under both federal and state law. Notwithstanding this framework of requirements, the proposed version of 25 Pa. Code § 78.66(b)(1) creates a unique 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 various federal release reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Water Act ("CWA") and the Emergency Planning and Community Right-to-Know Act ("EPCRA"). In addition, Section 78.66(b) as currently proposed imposes separately on the oil and gas industry the obligation to report any spill or release of 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 any actual or threatened impact to waters of the Commonwealth or any other impact to the environment or to public health and safety. It appears that the EQB

intended that this additional reporting obligation would replace requirements currently contained in 25 Pa. Code Chapter 78 to report certain releases of brine. Given the fact that the oil and gas industry is already subject to the reporting requirements that apply to every other member of the regulated community in Pennsylvania, any additional reporting requirements should be narrowly tailored and limited to releases of five gallons or more of brine that reach an area outside of a containment system. We have therefore proposed modifications to 25 Pa. Code § 78.66(b)(1) as set forth below which are designed to reflect the general reporting requirements that exist under 25 Pa. Code § 91.33 as they are and additional reporting requirements for spills or releases of brine that would be unique to the oil and gas industry.

The proposed version of 25 Pa. Code § 78.66(b)(2) addresses the manner in which spills and releases are to be reported (assuming that a reporting obligation has been triggered). For example, the proposed provisions require that a description of the "contamination" of surface water, groundwater or soil and an estimated weight or volume of "each regulated substance" spilled or released be provided as part of the initial notification process. This type of information may be difficult to ascertain and often must be gathered or developed as part of the response actions that are undertaken. While the provision only requires that such information be provided "to the extent known," we have suggested a few limited modifications to the provision to improve its implementability.

The proposed version of 25 Pa. Code § 78.66(b)(3) discusses near term actions to respond to a spill or release. Minor wording changes to improve the clarity of this section are proposed below.

The proposed version of 25 Pa. Code § 78.66(b)(4) addresses authority that PADEP has to facilitate emergency response measures. Specifically, the proposed provision appears to vest PADEP with certain discretionary powers to approve temporary emergency storage or transportation methods. It is unclear why processing or treatment is not included in this list given that emergency processing or treatment activities may be part of a response action. While the proposed provisions offer a modicum of regulatory flexibility to facilitate emergency response actions, they do not go far enough. Specifically, the regulations should be clear that permits and other forms of formal authorization are not to be required where to do so would delay timely implementation of response actions. In that regard, Pennsylvania's regulations contain similar provisions to facilitate emergency response actions under other regulatory programs. See, e.g., 25 Pa. Code § 287.101(d).

Finally, the proposed version of 25 Pa. Code § 78.66(b)(5) sets forth requirements relating to decontamination of equipment used in responding to a spill or release. On its face, this provision requires that all equipment, including storage containers, processing equipment, trucks and loaders, be decontaminated in all instances following a response to a spill or release. Decontamination of equipment may be necessary if the equipment is going to be used for other purposes where cross-contamination could be an issue. However, a bright line mandate as proposed goes too far. For example, if spilled diesel fuel is recovered and placed in a tank that is dedicated to holding diesel fuel, there would be little reason to empty and decontaminate the tank before putting more diesel fuel in the tank. To address this issue, suggested revisions to the

provision are set forth below. In addition, the second sentence of the proposed version of 25 Pa. Code § 78.66(b)(5) describing how contaminated wash water, waste solutions and residues are to be managed is unnecessary.

Recommended changes to the proposed version of 25 Pa. Code § 78.66(b) to address the foregoing issues are set forth below:

(b) Reporting releases -

(1) An operator or responsible party shall report the following spills and releases ~~of regulated substances~~ to the Department in accordance with paragraph (2):

(i) A spill or release ~~of a regulated substance resulting in or causing or threatening a danger of~~ pollution of the waters of this Commonwealth- as required by 25 Pa. Code § 91.33 (relating to incidents causing or threatening pollution); or

(ii) A spill or release of 5 gallons or more of ~~a regulated substance~~ brine over a 24-hour period that is not completely contained by a containment system.

(2) In addition to the notification requirements of 25 Pa. Code § 91.33, the operator or responsible party shall contact the appropriate regional Department office by telephone or call the Department's statewide toll free number 1-800-541-2050 as soon as practicable, but no later than 2 hours after discovering the spill or release. To the extent known, the following information shall be provided:

(i) The name of the person reporting the incident and telephone number where that person can be reached.

(ii) The name, address and telephone number of the responsible party.

(iii) The date and time of the incident or when it was discovered.

(iv) The location of the incident, including directions to the site, GPS coordinates or the 911 address, if available.

(v) A brief description of the nature of the incident and its cause, what potential impacts to public health and safety or the environment may exist, including any available information concerning ~~the contamination of~~ impacts to surface water, groundwater or soil.

(vi) The estimated weight or volume of ~~each regulated the~~ substance spilled or released.

(vii) The nature of any injuries.

(viii) Remedial actions planned, initiated or completed.

(3) Upon the occurrence of any spill or release, the operator or responsible party shall take ~~necessary corrective actions~~ appropriate action to:

(i) Prevent the ~~released~~ regulated substance from reaching the waters of the Commonwealth.

(ii) Prevent damage to property.

(iii) Prevent impacts to downstream users of waters of the Commonwealth.

(4) The Department ~~may immediately approve temporary emergency storage or transportation~~ shall not require a permit or other formal authorization for temporary remediation methods necessary to prevent or mitigate harm to the public health, safety or the environment. Storage, Processing, treatment or storage may be at the site of the incident or at a site approved by the Department, an alternative appropriate site. The operator or responsible party shall promptly notify the Department if processing, treatment or storage will take place at a location that is not the site of the incident.

(5) After responding to a spill or release, the operator shall decontaminate equipment ~~used to handle the regulated substance~~, including storage containers, processing equipment, trucks and loaders, where necessary and appropriate, before returning the equipment to service. ~~Contaminated wash water, waste solutions and residues generated from washing or decontaminating equipment shall be managed as residual waste.~~

b. Remediation Requirements for Spills or Releases

The proposed version of 25 Pa. Code § 78.66(c) addresses the manner in which spills and releases are to be remediated. The EQB has included a streamlined approach for remediating small spills and releases (i.e., spills and releases of less than 42 gallons at a well site that do not impact or threaten to pollute waters of the Commonwealth) and two different options for spills and releases that cannot be addressed using the streamlined approach for small spills and releases. The proposed regulations represent a very significant positive step. However, additional changes are necessary to enable the proposed regulations to effectuate the stated objectives for the proposed provisions.

With respect to the requirements for remediating a small spill or release, the proposed version of 25 Pa. Code § 78.66(c)(1) provides that the operator or responsible party must notify PADEP of its intent to invoke the provisions contained therein at the time the spill or release is reported. It

is unclear whether an operator or responsible party may make such a determination later after it has gathered additional information or the decision about a remediation approach must be made at the time of the initial notice (which is to be within two hours of discovering the release). We believe that the proposed version of 25 Pa. Code § 78.66(c)(1) should be clarified to allow an operator or responsible party to select the approach under that provision at a time after the initial notice is made, provided that the predicates for using the approach are met (e.g., the spill or release is less than 42 gallons). In addition, it is unclear what is intended by the last sentence of the proposed version of 25 Pa. Code § 78.66(c)(1) which cross references sampling protocols for petroleum release sites that are attaining the statewide health standard under Act 2 and a full site characterization has not been performed. The thrust of the proposed provision is to allow physical removal of soils impacted by small releases at a well site that do not impact or threaten to pollute waters of the Commonwealth. The last sentence of the provision appears to engraft upon those requirements the entire attainment demonstration process for the statewide health standard under Act 2, thereby significantly undercutting the objective of streamlining the remediation process for small spills and releases. For this reason, we request that the sentence be removed.

The proposed version of 25 Pa. Code § 78.66(c)(3) is designed to afford the oil and gas industry a simplified, expedited process for properly responding to spills and releases that do not qualify as "small" without invoking all of the procedural components of Act 2 where liability protection under Act 2 was not desired. While there are a number of positive features to this provision, there are also many drafting issues that should be addressed to improve the clarity and workability of the provision. The provision contains numerous interlocking provisions that do not fully take into account the manner in which characterization and remediation activities may be conducted. Moreover, the restrictive timetables that are set forth in the provision will make the provision difficult to use.

A key substantive deficiency of the proposed version of 25 Pa. Code § 78.66(c)(3) is that the provision authorizes remediating spills and releases using either the background or statewide health standard under Act 2 but not the site-specific approach under Act 2. Because all three cleanup standards under Act 2 are designed to be protective of public health and the environment and may be used in combination, there is no reason not to include the site-specific standard as an option under the provision.

Recommended changes to the proposed version of 25 Pa. Code § 78.66(c) to address the foregoing issues are set forth below:

(c) *Remediating releases* - Remediation of an area affected by a spill or release is required. The operator or responsible party must remediate a release in accordance with one of the following:

(1) Spills or releases to the ground of less than 42 gallons at a well site that do not impact or threaten to pollute ~~of~~ waters of the Commonwealth may be remediated by removing the soil visibly impacted by the release and properly managing the impacted soil in accordance with the Department's waste management regulations. The operator or responsible party shall notify the Department of its intent to remediate a spill or release in accordance with this

paragraph at the time ~~the~~ a report of the spill or release is made or thereafter when such a determination is made. ~~Completion of the cleanup should be documented through the process outlined in 25 Pa.Code § 250.707(b)(1)(iii)(B) (relating to statistical tests).~~

(2) For spills or releases to the ground of more than 42 gallons or that impact or threaten pollution of waters of the Commonwealth, the operator or responsible person may satisfy the requirements of this subsection by demonstrating attainment of one or more of the standards established by Act 2 and 25 Pa.Code Chapter 250 (relating to administration of land recycling program).

(3) For releases of more than 42 gallons or that impact or threaten pollution of waters of the Commonwealth, as an alternative to the requirements in subsection (2), above, the operator or responsible party may remediate a spill or release using the Act 2 background or Statewide health or site-specific standard under Act 2, or a combination of such standards, in the following manner:

(i) Within 15 business days ~~of after~~ the spill or release is reported, the operator or responsible party shall provide an initial written report to the Department that includes, to the extent that the information is available, the following:

- (A) The ~~regulated~~ substance involved,
- (B) The location where the spill or release occurred,
- (C) The environmental media affected,
- (D) Impacts to water supplies, ~~buildings or utilities~~ if any, and
- (E) Interim remedial actions planned, initiated or completed.

(ii) The initial report shall also include a summary of the actions the operator or responsible party intends to take at the site to address the spill or release such as a ~~schedule plan~~ for site characterization, to the extent known, and the anticipated timeframes within which it expects to take those actions.

~~(iii)~~ After submission of the initial report, ~~any new impacts impacted environmental media (such as groundwater) not previously reported that are identified or discovered during ongoing interim remedial actions or site characterization shall also be reported in writing to the Department within 15 calendar days of after their discovery.~~

~~(iii)~~ (iv) Within 180 calendar days ~~of after~~ the spill or release is initially reported or such later date as may be approved by the Department, the operator or responsible party ~~must~~ shall perform a site characterization to determine the extent and magnitude of the contamination and shall submit

a site characterization report to the appropriate Department Regional Office describing the findings. The site characterization report shall include a description of any interim remedial actions taken. For a background standard remediation, the site characterization report shall contain information ~~required by described in~~ 25 Pa. Code § 250.204(b)-(e) (relating to final report). For a Statewide health standard remediation, the site characterization report shall contain information ~~required by described in~~ 25 Pa. Code § 250.312(a) (relating to final report). For a site-specific standard remediation, the site characterization report shall contain information described in 25 Pa. Code § 250.408 (relating to remedial investigation report) and may contain an evaluation of risk.

~~(iv) This report may be a final remedial action report if the interim remedial actions meets all of~~

(v) The site characterization report required under subsection (iv), above, may serve as a final remedial action report if the remedial actions conducted prior to submission of the site characterization report meet the requirements of an Act 2 to attain the background or, Statewide health, or site-specific standard remediation or combination thereof. Remediation conducted under this section shall not be required to meet the notice and review provisions of these standards except as described in this section under Act 2 except the notice and review provisions.

~~(v)~~ (vi) If the site characterization report required under subsection (iv), above, indicates that the interim remedial actions taken did not adequately remediate the release so as to attain the background, Statewide health or site-specific standard or combination thereof under Act 2, the operator or responsible party shall must develop and submit a remedial action plan to the appropriate Regional Office of the Department for approval. The plan is due within 45 calendar days of after submission of the site characterization report and any supplements thereto to the Department. Remedial The remedial action plans should contain the elements outlined described in 25 Pa. Code § 245.311(a) (relating to remedial action plan). The Department shall review and approve or disapprove the remedial action plan within 60 days after its receipt.

~~(vii)~~ (vii) Once the remedial action plan is implemented, the operator or responsible party must shall submit a final report to the appropriate Department Regional Office for approval. The Department will shall review the final report to ensure that the remediation has met all the requirements of the background or, Statewide health, or site-specific standard or combination thereof under Act 2, except the notice and review provisions.

(viii) Relief from liability pursuant to Act 2 will not be available to the responsible party, property owner or person participating in the cleanup.

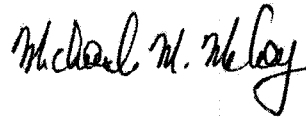
(ix) Remediation conducted under this section shall not be required to meet the notice and review provisions under Act 2.

~~(vii)~~(x) An operator or responsible party remediating a release pursuant to this paragraph may elect to utilize Act 2 at any time.

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We very much appreciate the opportunity to provide these comments on behalf of HESI regarding the proposed regulations and would welcome the opportunity to discuss the proposed regulations in more detail with PADEP and the EQB.

Respectfully submitted,



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Enclosures

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