

3042

RECEIVED
IRRC

2015 MAY 19 PM 2: 25

May 19, 2015

DEP Policy Office
400 Market Street
P.O. Box 2063
Harrisburg, PA 17105-2063

VIA ELECTRONIC SUBMISSION TO RegComments@pa.gov AND PADEP ONLINE REGULATORY COMMENT SYSTEM AT <http://www.ahs.dep.pa.gov/RegComments>

Re: Comments on Proposed Amendments to 25 Pa. Code Chapter 78 and 78a,
Environmental Protection Performance Standards at Oil and Gas Well Sites (45 Pa.B.
1615)

To Whom It May Concern:

I am writing this email in response to the proposed changes to Chapter 78 as a concerned oil and natural gas industry employee. There are hundreds of changes, deletions and additions of wording in the document and I stand by the thorough review that the Marcellus Shale Coalition will be providing as well as Cabot Oil & Gas Corporation's official statement on the proposed changes.

The proposed regulations are selective and targeted with respect to the unconventional oil and gas industry and are not uniform, consistent or fair relative to other industrial sectors. As such, they are far-reaching and overly-burdensome, with little to no environmental benefit.

Attached are my comments regarding the proposed regulations.

Thank you for your time,

Luke R. Marsh

Sr. EHS Specialist
Cabot Oil & Gas Corporation
Five Penn Center West, Suite 401
Pittsburgh, PA 15276
412.249.3850 (main)
412.249.4202 (direct)
724.814.0439 (cell)
luke.marsh@cabotog.com

§ 78.1 Definitions

Floodplain

Cabot Comment:

The definition of floodplain and floodway are being combined in the proposed Chapter 78a definition. The definition of a floodplain should not be different in regulations specific to the unconventional oil and gas industry it should be a consistent definition as it is across other industries in the Commonwealth.

Cabot Suggested Language:

The term as defined in §106.1 (relating to definitions).

Modular Above Ground Storage Structure

Cabot Comment:

The definition is not clear as to what may be identified as a Modular Above Ground Storage Structure. Define “final assembly” and “broken down”. Does this include typical 500-bbl frac tanks? If not, specifically state that frac tanks are not identified as “modular storage structures”.

Oil and Gas Operations

Cabot Comment:

Remove residual waste processing from definition as the Bureau of Solid Waste Management is responsible for the regulation of such activities. Further, if a residual waste processing facility only handles Oil and Gas residual waste would it be regulated by Oil and Gas Management, Solid Waste Management, or both? If both, who would be the lead permitting agency?

Is a WMGR123 permitted facility (e.g. Water Treatment/Recycling Facility) considered Oil and Gas Operations or Solid Waste Management Operations? The current understanding is that a WMRG123 permitted facility is permitted and managed by Bureau of Solid Waste Management, please provide further guidance and clarification.

Other Critical Communities

Cabot Comment:

The regulation should be limited to the current listing of threatened and endangered species as listed by the appropriate regulating agency. The term and definition is overly broad and reaches outside the language of the Act and responsibilities of the department.

The term should be removed from the definitions in Chapter 78. The clearly defined language and definitions that currently exist for threatened and endanger species should be referenced (58 Pa Code).

Well Development Pipelines

Cabot Comment:

This definition needs further clarification. Are these pipelines on or off the well pad (or both)? What constitutes a pipeline (HDPE transfer line, connection hoses, tank manifolds, pressured lines on the well pad during drilling and completions, etc.)?

§ 78a.15 (f)

Cabot Comment:

What is the definition of a Public Resource? What constitutes an impact? Are existing location exempt or would this include existing well sites?

§ 78a.15 (f) (1) (vii)

Cabot Comment:

What is a “common area on a school property”?

What is a “playground” (does the playground need to be on school property other is it any type of playground)?

§ 78a.15 (g)

Cabot Comment:

Define “probable harmful impact”? An impact is either harmful or not harmful; “probable harmful” is subjective and is dependent upon an individual’s interpretation of a specific circumstance.

§ 78a.17 (a) and (b)

Cabot Comment:

A well permit should expire two years after issuance if drilling has not commenced. Many operators are drilling multiple wells on a pad and a two year expiration will allow more operational flexibility. Permits expiring at one year only add administrative burden for both the operator and the department. Suggest changing due diligence of completion of a well to total depth within 16 months to 28 months to be consistent with the suggested 2-year expiration of permit.

§ 78a.41 Noise Mitigation

Cabot Comment:

This entire section regarding Noise Mitigation is overreaching. Currently the department does not regulate other industries in regards to noise. The heavy construction portion (site construction, drilling and hydraulic fracturing) are temporary activities and such the regulation of noise associated with those activities should be to already established municipal ordinances.

The department has not identified a metric and standard at which to regulate noise, which would lead to inconsistent implementation across the commonwealth.

Assessing the impacts on indoor noise levels is inconsistent with existing municipal noise ordinances which are normally set at the fence or property line.

§ 78a.51 (d) (2) Quality

Cabot Comment:

Pre-drill sampling programs only analyze for specific generator knowledge based constituents. Sampling for constituents listed in the Safe Drinking Water Act would be burdensome and unnecessary. For example water obtained from a water purveyor would be chlorinated and therefore would not be applicable without treatment for chlorides that did not exist in pre-pollutional quality.

The pre-drill parameter suite should only be based on potential industry marker parameters. Typically only one pre-drill sample is collected to determine baseline conditions; however this does not take into account natural variability in natural parameters such as metals. Safe Drinking Water Act criteria are risk based and established to provide adequate protection.

Cabot Recommended Language:

The quality of a restored or replaced water supply will be deemed adequate if it meets the standards established under the PA Safe Drinking Water Act.

78a.52 (c)

Cabot Comment:

Industry standard does not support the lab supporting and or validating the sampling protocol and documentation performed by third party consultants.

78a.52 (d)

Cabot Comment:

Samples should be submitted within 10 days of receipt of laboratory analysis not within 10 days of assignment of the API number. Samples properly collected prior to drilling a well but submitted to the department after well API is assigned should be viable samples. Samples are often collected both prior to and after generation of the API number and may be associated with multiple well pads. The assignment of an API number occurs independent from pre-drill sampling and useable data should only be determined based on proper sampling and lab analysis. The usability and quality of the data should not be determined based on the date an API number is issued. The operator may not be aware that pre-drill data collected by other parties exists and this data should not be invalidated based on submission date to the department. Furthermore the MSC pre-drill database, which has been supported by the department, should provide additional usability and accessibility of the data by both industry and the department.

§ 78a.52a (a)

Cabot Comment:

The operator may not have access to landowner data 1,000-ft from the horizontal well bore. Further clarification should be provided regarding whether this includes an operator's own wells.

§ 78a.52a (d)

Cabot Comment:

This report is administratively burdensome and would require significant efforts to complete. This reporting requirement does not allow for operational flexibility in regards to an operators

drilling and completions schedules. Reporting and communicating with the department should suffice prior to spud.

§ 78a.55 (i) (5) (i) (I)

Cabot Comment:

Further clarification is required regarding the definition of a “temporary pipeline”. The section references 78a. 68b. which refers to “well development pipelines” not “temporary pipelines”. Site Specific Emergency Response Plans are completed well in advance to the knowledge of the location of emergency shut-off valves. Based on the requirements for locating shut-off valves their location is already prescribed, furthermore these operations are temporary and operator should have flexibility to locate and re-locate pipelines due to changing site conditions.

§ 78a.56 (a) (2)

Cabot Comment:

Will specific manufacturer names and model numbers be included on the list or will the list only be inclusive of general tank types/styles?

§ 78a.56 (a) (3) and (4)

Cabot Comment:

What is the sitting approval process for the installation of a Modular Above Ground Storage Structure? The operator may not know the exact sitting location on the well pad or tank pad; this would not allow for locational adjustments in the field.

Submitting notification to the department for the construction of a department approved structure is overly burdensome and unnecessary.

§ 78a.56 (a) (7)

Cabot Comment:

Remove this section as it is a duplication of 78a.56 (a) (6). The language included in 78a.56 (a) (6) is the appropriate language.

78a.56 (h)

Cabot Comment:

The language in the section should be consistent and similar to the language in 78a.56 (a) (6).

§ 78a.56 (i)

Cabot Comment:

Inspection programs and operator specific forms of record keeping are already in place, having to duplicate this information on department specific forms is administratively burdensome and unnecessary.

§ 78a.57 (a)

Cabot Comment:

There is no current definition of a centralized tank storage facility. If the department is referring to a centralized tank storage facility that simultaneously stores residual waste from multiple oil and gas facilities, there is currently a permitting method to conduct these operations (WMGR123 permit). This section should be removed from Chapter 78a, as a residual waste storage facility is managed by the Bureau of Solid Waste Management not the Bureau of Oil and Gas Management.

§ 78a.58 (d)

Cabot Comment:

Onsite processing activities are currently conducted under a Request for Approval of Alternative Waste Management Practices (OG0071) at which time it is required to notify the department of the time frames at which such activities are to be conducted, therefore an additional notification 3-days in advance is administratively burdensome and unnecessary.

§ 78a.58 (e)

Cabot Comment:

Depending upon contractor availability an operator may not know the exact cuttings process in advance to the commencement of such activity as these processes can be contractor specific. At what point of the well permitting process can this form be submitted? What would be the approval timeframe for this request?

§ 78a.59 (a) (1)

Cabot Comment:

The following language should be added: “unless competent bedrock occurs at depths less than 2-feet.”

§ 78a.59 (a) (2)

Cabot Comment:

The following language should be added: “or materials used to drain springs that are certified or approved by registered P.E. or P.G.”

§ 78a.59 (a) (4)

Cabot Comment:

The following language should be added: “unless otherwise certified or approved by registered P.E. or P.G.”

§ 78a.59 (a) (5)

Cabot Comment:

A minimum sample rate of 1 to 1,000 cubic yards of fill is overly restrictive based on the materials utilized. A minimum sample rate of 1 to 3,000 cubic yards is more reasonable.

§ 78a.59 (a) (8) (i)

Cabot Comment:

The following language should be added: “or other equivalent method.”

§ 78a.59 (a) (8) (iii) and (iv)

Cabot Comment:

If you satisfy the requirements of (iv) then the requirements in (iii) should not be required.

§ 78a.59b (b)

Cabot Comment:

Provide further clarification regarding the meaning of “Proper Construction”.

§ 78a.59b (d)

Cabot Comment:

Provide definition of “synthetic impervious liner”.

§ 78a.59b (f)

Cabot Comment:

“Pit bottom” should be replaced with “impoundment bottom”.

§ 78a.59b (i)

Cabot Comment:

The operator should not be responsible to collect samples from the fresh water sources they are utilizing to fill the impoundment. The water quality of a fresh water source is outside the control of the operator, as the operator cannot be responsible for the quality of such source.

§ 78a.61(e)

Cabot Comment:

It is unclear the necessity or benefit to notify the department three days in advance of disposal of drill cuttings from a well site at an approved landfill. The current regulation to profile and obtain prior PADEP approval to dispose of cuttings is protective of the environment, additional notification is duplicative and creates undue burden without benefit. Further, it is unclear the necessity or benefit to provide notice of disposal to the landowner, this notice is duplicative as all disposal record is publically available through the PADEP OGRE database. Neither of these provisions is consistent with the requirements for any other industry within the Commonwealth.

§ 78a.64a (b)

Cabot Comment:

It is unclear the requirement for “solid wastes and other regulated substances in equipment or vehicles” to be managed within a containment system. Once these substances are loaded within the vehicle or equipment, containment is neither customary nor necessary.

The control of materials, once loaded onto a vehicle, are outside the control of the operator and are governed separately by federal and PA DOT regulations. Further, fuel stored within vehicle fuel tanks is likewise governed by federal and PA DOT regulations and is outside the regulatory authority of PADEP. Containment requirements should be limited to the transfer activities of these substances only.

§ 78a.64a (d)(1)

Cabot Comment:

It is unclear the point at which containment needs to be placed. For the drilling of the conductor hole, this is typically done with an auger or air rotary rig where no regulated substances are introduced and containment is not necessary. It is recommended that the language be amended to state that containment provisions only apply in those instances where regulated substances are brought onto or are generated at the well site.

§ 78a.64a (d)(2)

Cabot Comment:

The containment system coefficient of permeability listed represents the best possibly achievable under ideal circumstances and is consistent with that associated with primary containment. For secondary containment, by definition, it is not designed to afford the same level of protection as the primary containment but rather to protect the environment in the interim period the primary containment can be repaired. If a regulated substance is released outside primary containment, remedial efforts will be initiated immediately and constructing secondary containment, that for well site activities is temporary in nature, to meet primary containment requirements is not necessary and overly burdensome. Further, for well sites where containment is continually exposed to ongoing activities, maintaining this level of containment is technically infeasible.

§ 78a.64a (e)

Cabot Comment:

It is unclear what is meant by the sentence "A well site liner that is not used in conjunction with other containment systems does not constitute secondary containment for the purpose of this subsection." Please clarify.

§ 78a.64a (f)

Cabot Comment:

The definition of subsurface containment is not well defined. Typically, the impermeable membrane used for secondary containment is placed above ground surface and covered with a protective fabric (geotextile) and/or protective matting. In these cases, inspection of the liner itself is not possible and could be construed as a subsurface application under this section. The definition of subsurface should be clearly defined in this section to preclude standard installation practices above ground surface where the liner is covered for protective purposes.

§ 78a.64a (f)(4)

Cabot Comment:

It is unclear why a subsurface containment system cannot be used to store regulated substances if containment practices specified within the regulations are followed and containment can be demonstrated to be intact.

§ 78a.64a (h)

Cabot Comment:

Define "Department approved leak detection system".

§ 78a.64a (j)

Cabot Comment:

For all phases of operation, it is not technically feasible to ensure that all inspection reports and maintenance records be available at the well site. This should be amended to state that all inspection reports and maintenance records shall be available upon request by the Department.

§ 78a.65 (a)

Cabot Comment:

There are two sections labeled **78a.65 (a)** – the numbering should be corrected.

§ 78a.65 (c)(3)(ii)

Cabot Comment:

It is unclear what is meant by this section. If a request has been made for an extension of well site restoration, a demonstration that all of the portions of the well site not occupied by production facilities be returned to approximate original conditions is counter to the request. This language should be removed.

§ 78a.66 (b)(1)(ii)

Cabot Comment:

The language is ambiguous and should be amended to state that reporting should be made only if greater than 5 gallons was released outside containment.

§ 78a.66 (b)(2)(vii)

Cabot Comment:

As this section is related to the reporting of environmental releases it is unclear the appropriateness of the provision to “report the nature of any injuries”. This language should be removed as injuries are regulated by other governing bodies.

§ 78a.66 (b)(4)

Cabot Comment:

The language in this section to sample water supplies “for which there is a potential for pollution” is overly broad without a process as to how pollution or a potential for pollution is to be determined. This language should be removed and replaced with “water supplies will be sampled if it can be reasonably shown that the potential for impact exists based on hydrogeology and sound scientific practices”

§ 78a.66 (c)(2)

Cabot Comment:

The language that the operator or other responsible party must demonstrate attainment of the standards referenced under Act 2 is overly prescriptive and does not take into account other programs, such as Clean Streams, may be more appropriate and ensure protection of the environment. This language should be removed and remanded back to “may satisfy the requirements of the subsection by demonstrating attainment of one or more of the standards established under Act 2 and Chapter 250”

§ 78a.66 (c)(2)(i)(D)

Cabot Comment:

The reference to “threatened pollution” of water supplies is overly broad without a process as to how threatened pollution is to be determined. This language should be removed.

§ 78a.66 (c)(2)(ii – v)

Cabot Comment:

The schedule provided in this section is not consistent with Act 2 and should be amended to follow that set forth in Chapter 250. Additionally, while similar, the language presented here regarding a “remedial action plan” be submitted is applicable to Chapter 245; this should be corrected to reference “cleanup plan” required in Chapter 250.

§ 78a.68b (g)

Cabot Comment:

125% of the anticipated maximum pressure is not clearly defined, it should state “anticipated maximum operating pressure”. 2 hours at 125% is an unrealistic timeframe to produce a passing test. Further, a 2-hour test following movement, repair or alteration is unreasonable. What is the reasoning behind the need for a 2-hour test?

§ 78a.68b (i) and (m)

Cabot Comment:

These sections are administratively over burdensome. Currently operators have the responsibility to self-report leaks to the department and remediate as appropriate. Nothing further should be required for temporary activities such as drilling and completions.

§ 78a.69 (d)(3)

Cabot Comment:

This requirement to provide quarterly reports of daily withdrawal volumes, in-stream flow measurements and/or water source purchases is duplicative of information already provided to the SRBC and the Department on other forms and is administratively over burdensome.

§ 78a.69 (f)(2)

Cabot Comment:

This requirement should be exempt if a source is located in the SRBC as you cannot submit for WMP renewal until you have received your approved SRBC docket. An extension to the expiration of the WMP should be added to allow for appropriate time for SRBC approval and subsequent WMP submittal.

§ 78a.73 (c)

Cabot Comment:

It is unclear the meaning of “treatment pressure changes indicative of abnormal fracture propagation”. This language is vague and without further quantitative metrics cannot be applied impartially across operators for well stimulation evaluation and subsequent action. This language is subjective and should be removed in its current form.

§ 78a.121 (b)

Cabot Comment:

Monthly waste reporting is unduly burdensome, does not provide information that increases protection of the environment and singles out the Oil and Gas industry unfairly as no other industry is required to provide this information. This provision should be remanded to the semi-annual reporting currently in effect, which in itself is still more restrictive than reporting requirements for other industries.

§ 78a.122 (a)(11)

Cabot Comment:

It is unclear the necessity of reporting the country of origin of the tubular steel products used in the construction of a well. This could unfairly limit competition between tubular steel product manufacturers and unfairly increase price constraints on operators. This section should be amended to state that products used by operators will meet current API specifications.

§ 78a.122 (b)(9)

Cabot Comment:

Language should be added stating that if an operator only stores freshwater from one source in an impoundment that they be exempt from such reporting requirement.