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Pennsylvania Department of Environmental Protection
Policy Office
400 Market Street
P.O. Box 2063
Harrisburg, PA 17105-2063

RE: Comments to Advanced Notice of Final Rulemaking - 25 PA Code Chapter 78, Subchapter C

Department of Environmental Protection Representatives:

My name is Jeff Walentosky and I am commenting as an interested citizen of the Commonwealth, regarding the advanced notice of final rulemaking for Chapter 78, Subpart C – Environmental Protection Performance Standards. I am a lifelong resident of western Pennsylvania. I've been employed as a licensed professional geologist for 25 years for a geologic and environmental consulting firm located in western Pennsylvania, which acts as an unbiased third party consultant to oil/gas industry.

Our company maintains membership with the Marcellus Shale Coalition (MSC) and the Pennsylvania Independent Oil and Gas Association (PIOGA), Pennsylvania Grade Crude Coalition (PGCC) and the Pennsylvania Independent Petroleum Producers (PIPP). As a member of PIOGA and MSC, I currently serve as the Well Construction Subcommittee Chair and Spill Policy Review Workgroup Chairperson. As part of my chairperson responsibilities, I had the privilege of attending and participating in past Oil and Gas Technical Advisory Board (TAB) workgroup public hearings on the proposed Chapter 78 revisions.

The Marcellus and Utica shales, along with other unconventional gas plays offer a tremendous opportunity to strengthen the economy of Pennsylvania and the United States. By developing a "clean" fossil fuel coming from conventional and unconventional sources, Pennsylvania can

compete again as an industrial manufacturing power. Employment through directly related and indirectly related industry is very significant and has allowed Pennsylvania to fare much better than most states during the recent economic recession. However, overregulation of this industry during challenging economic conditions has the potential to steer industry outside of Pennsylvania to similar oil/gas plays that has reasonable, yet environmentally friendly standards.

Despite receiving over 24,000 comments during the draft rulemaking phase, it is apparent that there are still significant improvements and considerations that need to be made to various portions of this Advanced Notice of Final Rulemaking (ANFR) package. Here are a few general comments I would like to offer:

General Comments

While the bifurcation of the conventional and unconventional regulations are certainly a step in the right direction, the end result of the proposed final rulemaking packages has not adequately addressed previous concerns that were provided as part of the draft comment period in 2014. This action calls into question whether or not the comments submitted as part of the draft rulemaking process were given full consideration as part of this ANFR. I feel that given the significant volume of comments produced as part of the draft rulemaking phase of Subchapter C, should have provoked further communication, which would have produced additional dialogue and clarity between the Department representatives and all stakeholders. In short, I feel the Department has been remiss on offering the public the opportunity to review the “Comment and Response Document” that the Department spent many months preparing, which should have been one of the key documents for the discussion prior to the ANFR finalization.

There continues to be question on whether the Department considered the far reaching economic impacts that will be created by these regulation packages, especially to the traditional, small conventional operator with limited available staff and resources.

The Department continues to reference forms and guidance documents for completion within many parts of the ANFR. These forms and guidance documents must be provided for review as part of this comment period.

Specific Comments

Here are just a few specific comments I would like to discuss:

Protection of water supplies (78.51 and 78a.51) – as a professional geologist, I have been involved in hundreds of water supply investigations relating to the development and use of residential, industrial and community water supplies within the Commonwealth of Pennsylvania and several nearby states. This state is one of the two in the United States that has no drilling and construction standards for new and existing residential water supplies. Past proposed legislation in Pennsylvania has not been successful in affording the residents of the Commonwealth assurance that proper water well installation practices and guidelines are followed to minimize the risk of drinking water contaminants. Without this legislation in place, it is unreasonable for the Department to expect the oil/gas industry to be obligated to restore water supplies back to applicable safe drinking water standards if the supply did not previously meet these standards or possibly an improved water quality. There is a great deal of potential for the misuse of this provision, given that there are many parts of the Commonwealth where background concentrations in groundwater do not meet associated drinking water standards. The proposed restoration standards should be made to meet “pre-drilling” or “baseline” water quality and water quantity.

Area of review (78.52a and 78a.52a) – formerly abandoned and orphaned well identification - the identification procedure in this section of the proposed regulation outlines a very difficult process. As I have stated in previous discussions with Department representatives, most operators completed its “due-diligence” in order to avoid potential environmental impacts and communication with abandoned/orphaned wells. The introduction of a map finder identification tool will be helpful to the operators. However, the use of a questionnaire with adjacent property owners will likely cause some issues from the standpoint of property access issues (if wells are identified) or lack of accurate knowledge or reliance of questionable information regarding the

existence of abandoned/orphaned wells. Once again, this issue has been discussed for over two years, yet the proposed questionnaire to be used with this regulation has not been produced for review.

Reporting and remediating releases (78.66 and 78a.66) – the Department issued the Oil and Gas Spill Policy in September 2013. While there are still consistency issues, I feel the Department was heading in the right direction in 2014 to give some clarity to the policy regarding necessary testing parameters and procedures to operators and to the Department’s in-house staff members to ensure consistent understanding of the necessary measures. However, it appears that the Department will likely dismantle the current program and require all operators that experience a spill or release to enter the “voluntary” Act 2 program. In addition, as part of this proposed regulation, the Department has created submittal timeframes for oil/gas operators within this section that are not found in any current part of the Act 2 program. This certainly holds the industry to a higher standard than all other industries, which utilize the Act 2 program. Existing law fully addresses spills by this industry or any other and if consistency is still needed, revision of the policy, not the regulation, is the appropriate avenue.

Noise Mitigation (78.a41) – while I applaud the Department for addressing a nuisance issue frequently brought up by the general public, as written, these standards are very vague with little to no details that are shared regarding standards or definition in the ANFR. While the Department cites utilizing noise mitigation guidance from Alberta, Canada, the Department should be consulting with the Occupational Health and Safety Administration (OSHA) and the National Institute of Occupational Safety and Health (NIOSH) regarding available guidance, direction and potential mitigation measures. In short, the Department is reaching for guidance in the wrong places in order to address a non-environmental concern.

Public Resource Protection (78.15 and 78.a15) - there are significant concerns with this proposed section which includes water purveyors, municipalities, and school districts within the list of public resource agencies that would have authorities and responsibilities within 78.15 and 78a.15 to review and condition oil & gas permits. Of particular concern here is the fact that the term “water purveyor” includes not only public utilities or other public entities, but also many private companies or organizations that provide drinking water to a sufficient number of

individuals (25 or more individuals for 60 or more days per year) or via 15 service connections. For example, a company/facility with 25 or more employees that supplies its own drinking water would be defined as a “water purveyor” and as such, a “public resource agency” under the proposed definitions. Classifying those types of private entities as “public resource agencies” with the associated roles and responsibilities outlined in 78a.15 is inappropriate, particularly without any associated Regulatory Impact Analysis of the consequences.

In regards to the definition proposed in the Draft Final Rule for threatened and endangered species, I believe this is entirely unnecessary and inconsistent with those terms as they are already defined by the applicable statutes. The Department has no authority or jurisdiction to create different definitions or additional protection for any species and should not confuse and complicate a well-established legal framework for the protection of threatened or endangered species, as defined under state and federal law. Any definition included here must be identical to existing definitions under relevant law, none of which includes species simply “proposed” for listing as endangered and threatened.

Centralized Impoundments – 78a.59c

I personally question why the Department would insert a regulation against the use of pits and impoundments for temporary storage unless the Department provides practical and common sense storage alternatives that will encourage the reuse and recycling of flowback and produced water. The centralized storage tank proposal in 78a.57a does not provide such a common sense and cost effective alternative and will not be likely to be used by industry.

I would like to thank the PA DEP representatives for the opportunity to present my formal comments.

Sincerely,

Jeffrey P. Walentosky, P.G.
Interested Citizen