



COMMENT ON THE REVISIONS TO THE DRAFT FINAL RULE – CHAPTER 78 AND 78a

May 6, 2015

The following comments are presented by the Responsible Drilling Alliance, a 501(c)(3) NGO founded in Lycoming County in 2009, and referred to herein by the acronym RDA. These comments are presented on behalf of the organization's 1200 + members.

For the past 6 years, RDA has been actively engaged in seeking the truth about the true costs and potential consequences of unconventional gas drilling. Current scientific data reveals that gas industry operations pose a threat to our air, water and ecological systems. We know this threat is impossible to remove from the equation. For this reason, potential damages must be minimized. On that premise, RDA offers the following comments on Chapter 78a proposed rulemaking:

REGARDING 78a.1 - DEFINITIONS

RDA supports the definition of "critical communities" as outlined. Act 13 required DEP to consider the impact that drilling operations would have on the public and other "critical communities", but the Act did not offer a definition of the phrase. RDA supports the definition herein, as it provides a greater measure of certainty for both DEP and the regulated community.

In RDA's focus on preserving the 28,000 acre tract of Loysock State Forest known as the Clarence Moore lands, this definition certainly becomes relevant. This largest and last remaining tract of unbroken forest in Lycoming County offers not only the respite and restoration of a wilderness experience for world-weary humans, it is also home to a number of endangered, threatened and CRITICAL communities. Prior to this rulemaking, the pitcher plants, rattlesnakes, spadefoot toads, and iconic boulders affectionately known as the "big rocks of Old Logger's Path" would not have been considered. With the definition in 78a.1, each of these, as well as other critical communities, are afforded the recognition and protection they so deserve.

REGARDING 78a.15 APPLICATION REQUIREMENTS

In section (b.1), RDA strongly supports the inclusion of the term "watercourse" in the proposed rulemaking language. In the topography of the PA Marcellus, there are hundreds of small watercourses that usually carry surface water following heavy rain and spring thaws. Nonetheless, underground water may continue to flow in these intermittent/ephemeral watercourses year round. Therefore their presence, value, and risk of contamination must be considered during the application and permitting process.

In section (f) (1) (IV) – we see again the mention of "critical communities". RDA supports this inclusion in the application requirements. We are in agreement with the proposed rulemaking in this section, lest one bulldozer destroy irreplaceable bird, mammal, reptile, amphibian, and plant habitat and millions of years of geology.

In section (f.1) regarding “limit of disturbance” notification, RDA is NOT in agreement with Roman Numeral 7 (vii) requiring notification of a permit application for a well pad within a mere 200 feet of common areas on school property or a playground. This is less than the length of a football field. It defies rationality and common sense to think that a gas well located 201 feet away does not warrant notification. The disturbance and risks of locating a gas well this close to a playground or building that our children travel to and from 5 days a week, and where they spend upwards of 30 hours weekly carries with it a much wider zone of influence. RDA supports expanded notification up to 1 mile in all directions to provide parents, teachers, coaches, administrators, students, and support staff reasonable and fair warning of what is to come.

REGARDING 78a.41: NOISE MITIGATION

RDA agrees with the necessity of mitigating the noise pollution of gas development. We find the current wording of this section limiting, as it refers only to “drilling, stimulation, and servicing activities”. We ask DEP to additionally include the term “gas operations”, which by definition set forth in this document would include compressor stations. RDA is concerned and RDA members have experienced diminished quality of life and property value when living in proximity to compressor stations. The noise of site preparation, drilling, and fracking operations is frequently egregious to nearby residents; their only solace is the somewhat temporary nature of these operations. Such is not the case for those living near compressor stations, the noise of which is 24/7. Here in Lycoming County, the zoning setback for compressor stations is a mere 25 feet. No one should be forced to live with that level of continual noise, and mitigation of that noise should be included in this proposed rulemaking.

It is clear that DEP has the authority and experience to address the full spectrum of noise control. Precedent for such regulatory power has been established via 283.108 governing resources recovery and other processing facilities, 281.17 – which regulates composting facilities, and 289.136 which addresses noise mitigation at residual waste disposal impoundments.

RDA asks that the language of 78a.41 be expanded to include noise mitigation at compressor stations, odorizing stations and all gas operations where noise is a factor.

REGARDING 78a.51 – PROTECTION OF WATER SUPPLIES

The EQB proposes a change to 78a.51(d)(2) to clarify that if a water supply was of a higher quality than required by Pennsylvania’s Safe Drinking Water Act Standards, and that water supply is polluted, that water supply must be restored or replaced to meet the pre-pollution water quality. RDA fully supports this change. Given the fact that the industry continually tells us that gas development does not pollute water, and many of our elected officials echo that claim, publicly stating in campaign rhetoric that no drinking water supplies have been contaminated by “fracking”, this regulation should not be burdensome to the industry, nor should they have just cause to push back against its inclusion in the proposed rulemaking. It is a simple, common-sense regulation.

REGARDING 78a.53 – EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

RDA strongly supports the addition of *stormwater management* to the language of the proposed rulemaking as well as the additional specifications and requirements that language carries. In drilling operations, erosion and sediment control are short-term concerns. In post-construction standards, stormwater management must be considered for decades to come.

REGARDING 78.a57a – CENTRALIZED TANK STORAGE

In section (b) RDA fully supports 100% of the wording in this section

In section (d) RDA supports bonding.

In short, tanks do leak. Right here in Lycoming County we had a major leak, resulting in serious pollution after a spill of thousands of gallons of potentially hazardous fluids.

The need for bonding, insurance and restrictions is common practice in other arenas, and regulatory power in such matters fully established in both OSHA and RCRA regulations. Because of potential risk, DEP must be given the full scope of regulatory powers outlined in this section.

REGARDING 78.a 65: SITE RESTORATION

RDA appreciates and supports DEP's efforts to strengthen requirements for post-drilling restoration plans. RDA is NOT in agreement with the omission of regulations regarding site restoration for post well plugging. DEP has not developed adequate standards or criterion to ensure that restoration of well sites will restore what is referred to as "ecological services". By omitting this crucial aspect of restoration, DEP remains focused primarily on storm water requirements. The inclusion of ecological services could and should require DEP to adopt technical guidance for post-plugging restoration plans. Currently, DCNR and Penn State University are working in the Tiadaghton State Forest studying best management practices for restoration of ecological services. RDA requests that ecological services be included in this section of the proposed rulemaking.

REGARDING 78a.66 –REPORTING AND REMEDIATING SPILLS AND RELEASES

RDA supports a change in the language of this proposed rule, one which expands the notification requirements to landowners. In order to protect their livestock, agricultural products, pets, and family, RDA contends that landowners and neighbors on adjoining properties have a right to be informed of any and all spills and releases that occur. As the regulation is currently written, any spill less than 42 gallons need not be reported. RDA believes a majority of property owners would want to be informed of a 41-gallon spill of frack fluid, drill cuttings, diesel fuel, hydrochloric acid, or any number of the hundreds of chemicals and potentially hazardous substances involved in oil and gas operations. There is both subjectivity and uncertainty in the regulation as written. The industry is left to deem whether or not a spill or release "causes or threatens pollution to the waters of the commonwealth". That determination is best left to DEP. Regulate in favor of the landowner and his neighbors - broaden the language to include notification to property owners and adjoining neighbors of any and all spills and releases. No exceptions.

IN CONCLUSION

RDA wishes to thank DEP for the opportunity to express these concerns and proposals regarding the draft final rule.

RDA Board of Directors

James Slotterback, President

Robert Cross, vice president

Barbara Jarmoska, treasurer

Jennifer Slotterback, secretary

Mark Szybist

Roscoe McCloskey

Dianne Peeling