



Cabot Oil & Gas Corporation

North Region

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400 Market Street  
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**VIA ELECTRONIC SUBMISSION TO [RegComments@pa.gov](mailto:RegComments@pa.gov) AND PADEP's 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) – Advance Notice of Final Rulemaking**

To Whom It May Concern:

Cabot Oil and Gas Corporation (Cabot) has reviewed the proposed changes to 25 Pa. Code Chapter 78 and 78a and provides the attached comments for your consideration. In general, 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 many of the requirements yielding little to no environmental benefit.

Further, Cabot supports and incorporates by reference the comments submitted by the Marcellus Shale Coalition, in addition to those submitted by Cabot.

Sincerely,

John J. Smelko

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## **§ 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 for the unconventional oil and gas industry; rather, it should be a consistent definition relative to other industries in the Commonwealth.

Cabot Suggested Language:

The Department should use 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 regulatory 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 locations exempt or would this include existing well sites? If a new well were to be permitted on an existing well pad site, the well should be “grandfathered” and should not have to meet the setback requirements of the new, proposed Chapter 78 regulations.

Setbacks and permit conditions should not be different than those required for a member of the general public or resident of the Commonwealth.

### **§ 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. Again, setbacks and permit conditions should not be different than those required for a member of the general public or resident of the Commonwealth.

### **§ 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 drilling 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, as such, the regulation of noise associated with those activities should be left to municipalities and zoning boards.

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 analyze for analytical constituents based on specific generator knowledge. 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 meet proposed regulations without further treatment for chlorides, which would not have existed prior to the alleged impact.

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 are established to provide adequate protection.

Cabot Recommended Language:

The Department should establish a standardized “oil and gas short-list” of parameters to evaluate water supplies that could potentially be impacted by oil and gas operations, much like the “diesel short-list” in the UST Program. By way of further example, the Department currently uses their “946 suite of parameters” to evaluate potential impacts caused by the oil and gas industry.

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 for parameters of concern associated with the oil and gas industry.

#### **78a.52 (c)**

Cabot Comment:

In the environmental industry, laboratories do not typically affirm and/or validate third party environmental consultants in the performance of sampling and documentation.

#### **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 considered 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 independently from pre-drill sampling and useable data should only be determined based on proper sampling and laboratory analysis, not based on an administrative technicality. The usability and quality of the data should not be determined based on the date an API number is issued. Further, the operator may not be aware that pre-drill data collected by other parties exist and this data should not be invalidated based on submission date to the department. Moreover, 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. Some language should be inserted to the effect that an operator should make a reasonable attempt to contact a landowner, beyond which an operator should not be held responsible.

Further clarification should be provided regarding whether the requirements of this section include an operator's own wells.

**§ 78a.52a (d)**

Cabot Comment:

This report is administratively burdensome and would require significant efforts to complete. To the extent this section shall remain, the 30-day reporting requirement does not allow for operational flexibility in regards to an operator's drilling and completions schedules. Simply 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 of the knowledge of specific locations of emergency shut-off valves. With respect to the requirement to locate shut-off valves, locations are already prescribed in the proposed regulations. Furthermore, construction, drilling, and completions operations are temporary in nature and, therefore, the operator should have flexibility to locate and re-locate pipelines due to changing site conditions. It should be sufficient to provide a "typical" layout.

**§ 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:

Section (a)(3) is not sufficiently defined. What is the siting 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.

Section (a)(4) is overly burdensome. Submitting a 3-day notification to the Department for the construction of a Department-approved structure is overly burdensome and unnecessary. What is the environmental benefit? Similar comment regarding the re-notification requirement if the date of installation is extended.

### **§ 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.57 (h)**

Cabot Comment:

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

### **§ 78a.57 (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, as is the 3-day reporting requirement. It should be sufficient to maintain a copy of inspection records.

### **§ 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 3-day notification in advance is administratively burdensome and unnecessary. There is no environmental benefit to this notification.

**§ 78a.58 (e)**

Cabot Comment:

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

The processing of drill cuttings is not defined. The use of a centrifuge and solidification in preparation for reuse and/or disposal should not be considered "processing".

**§ 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 a registered P.E. or P.G."

**§ 78a.59 (a) (4)**

Cabot Comment:

The following language should be added: "unless otherwise certified or approved by a 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**

Cabot Comment:

This entire section is overly burdensome and not commensurate with the non-hazardous nature of freshwater. What other industries are regulated by the Department to this degree regarding freshwater impoundments?

**§ 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:

There is no benefit to notify the Department three days in advance of disposal of drill cuttings from a well site at an approved landfill – this requirement should be removed from the proposed regulations. 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 as to the necessity or benefit to provide notice of disposal to the landowner – this notice is duplicative, as all disposal records are 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:

The requirement for “solid wastes and other regulated substances in equipment or vehicles” to be managed within a containment system is not necessary. 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:

The timing is unclear for when containment needs to be placed. For the drilling of the conductor hole, which is typically done with an auger or air rotary rig, 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 while the primary containment can be repaired. If a regulated substance is release outside primary containment, remedial efforts will be initiated immediately. Constructing secondary containment to meet primary containment requirements on well sites where activities are temporary in nature 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, which 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”. Conducting a pressure test for two hours at 125% is an unrealistic timeframe to produce a passing test. Further, a 2-hour test following movement, repair, or alteration is unreasonable. This requirement is unduly burdensome, considering ongoing field operations. What is the reasoning behind the need for a 2-hour test?

**§ 78a.68b (i) and (m)**

Cabot Comment:

These sections are administratively overly 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 operations.

**§ 78a.69 (d)(3)**

Cabot Comment:

The 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 overly burdensome.

**§ 78a.69 (f)(2)**

Cabot Comment:

This requirement should be exempt if a source is located within the jurisdiction of the SRBC, as a request for WMP renewal cannot be submitted until an approved SRBC docket is received. An extension to the expiration of the WMP should be added to allow for appropriate time for SRBC approval and subsequent WMP submittal and approval.

**§ 78a.73 (c)**

Cabot Comment:

The meaning of “treatment pressure changes indicative of abnormal fracture propagation” is unclear. 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:

The environmental benefit and necessity of reporting the country of origin of the tubular steel products used in the construction of a well is unclear. 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.