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RE: Environmental Protection Performance Standards at Oil and Gas Well Sites (25 PA Code Chapters 78 and 78a) Comment Submittal

To Whom It May Concern:

CONSOL Energy Inc. (CONSOL) a leading diversified energy company headquartered in the Appalachian Basin, and CNX Gas Company LLC (CNX Gas), a wholly owned subsidiary of CONSOL appreciates the opportunity to submit comments to the Pennsylvania (PA) Department of Environmental Protection (DEP) in regard to the draft final rulemaking changes to the Environmental Protection Performance Standards at Oil and Gas Well Sites (25 PA Code Chapters 78 and 78a). CONSOL is generally in support of the separation of conventional and unconventional oil and gas regulation. CONSOL would like to submit the following general and section specific comments.

25 PA Code Chapters 78 and 78a General Comments

CONSOL believes there is a need for additional language in Chapter 78 and 78a regulating the interaction between the coal producers (Coal Operator) and oil and the natural gas exploration and production industry (Gas Operator) or the Coal Operator and Pipeline Operator. The following points of concern made as a basis for development of this additional language:

Gas Operator/Coal Operator Additions

- The Gas Operator shall be required to give the Coal Operator/Owner the option to have the well locations verified by a Mine Surveyor with respect to the coal seam prior to any siting of a well or drilling activity.
- The Gas Operator shall give the Coal Operator fourteen days' notice prior to any drilling activity that overlies the workable coal seam or is within 100 feet horizontally of a workable coal seam.
- Proof of notification will be enforced by a PADEP inspector during the Pre-Spud meeting before drilling activity begins.

- In the event the coal operator objects to the surveyed top-hole location, their differences shall be submitted to a panel consisting of one person selected from the objecting coal operator or operators, a second person selected by the Gas Operator, and a third selected by the other two. Each party shall pay the fee of the panel member and one-half fee of the third member. The panel shall convene a meeting within ten days of a request to settle the dispute.
- Once the Coal and Gas Operators come to a consensus, drilling activity may commence.
- Within 60 days of completion of drilling operations of a well, the Gas Operator shall notify the Coal Operator and allow the Mine Surveyor to confirm the final locations of the completed wells. Once the wells are surveyed by a Mine Surveyor and the well deviation surveys are provided, the well locations can be plotted on mine mapping at the Coal Operators' respective coal seam.
- A gamma survey from the surface to the coal seam only shall be provided to the Coal Operator if a survey was conducted.

Pipeline Operator/Coal Operator Additions

- The Pipeline Operator shall be required to give the Coal Operator at least fourteen days' notice prior to beginning any pipeline construction overlying the Coal Operator/Owner's workable coal seam or within 100 feet horizontally of the workable coal seam. The Pipeline Operator shall also provide any preliminary mapping to the Coal Operator during this time.
- Within 60 days of any pipeline being turned online, the Pipeline Operator shall provide as-built mapping to the Coal Operator/Owner so the pipeline's location can be plotted on mine mapping with respect to mine plans.

25 PA Code Chapters 78 and 78a Specific Section Comments

Application Requirements (§ 78.15 and § 78a.15)

- CONSOL believes the term "wildlife area" should be changed to "wild area" as defined in 17 PA § 27.4. *Wild area definition and guidelines*. The term "wildlife area" does not appear to be defined elsewhere in PA regulation and it is unclear to what specific land areas this term refers.
- CONSOL would appreciate a clearer definition of what is meant by a "common area" of school property in order to properly address any potential concerns when working near schools. CONSOL proposes that "common area" be defined as "an area of school property where children routinely gather, such as school bus loading zones, playgrounds, sports fields, and designated emergency evacuation muster areas." In addition, CONSOL proposes that regulatory language be added to provide for the allowance of a waiver or variance to be granted by the school board.

Permit Expiration and Renewal (§ 78.17 and § 78a.17)

- CONSOL is supportive of this change which allows the Operator more flexibility with minimal disruptions/impacts to business planning in an atmosphere of rapidly changing market conditions.

Noise Mitigation (§ 78a.41)

- It has been stated by the Department that the proposed requirements for § 78a.41 for a site specific noise mitigation plan are based on a similar requirements from Alberta, Canada. However, specific standards to be included have not been presented by the Department, nor has specific data been presented showing the need for this requirement. Furthermore, the Department has not justified the cost of such a blanket regulation across Pennsylvania. CONSOL has site specific data collected in Pennsylvania which shows that a noise mitigation plan requirement is unwarranted.
 - Based on data collected on individual PA unconventional well pads at more than one location during well installation activities data indicated levels only just above the OSHA time weighted average (TWA) of 85 dBA per 1910.95(c)(1), which then requires a hearing protection program and the permissible exposure limit for noise of 90 dBA as a TWA. This data is also below both the maximum continuous noise standard of 115 dBA and the impulse noise standard of 140 dB peak sound pressure level. Even so, CONSOL does utilize engineering and administrative controls as a best management practice (BMP) to ensure employee and contactor hearing safety.
 - Offsite data sets for noise sampling collected by CONSOL, in Pennsylvania at the perimeter of well pad and at distances ranging between approximately 1,180 feet and 1,640 from the perimeter of the well pad indicate noise levels well below the OSHA TWA of 85 dBA per 1910.95(c)(1) which then requires a hearing protection program. This is less sound than would be made by a hand pushed lawnmower or normal vehicular truck traffic in an urban setting.
- Based on data collected at locations in Pennsylvania and also taking into account the 500 foot setback under Act 13 for well pads from existing structures in Pennsylvania, CONSOL does not believe the Department is justified in the requirement for a site specific noise mitigation plan. CONSOL urges the department to remove this section of the proposed rule.
- The requirement for regular, continued, frequent, and comprehensive noise evaluation seems counterintuitive. As long as properly designed BMPs are maintained at the well pads then these burdensome monitoring requirements are not needed. To require continued noise monitoring for every well site is not justified for operations that are temporary in nature and at varying distances from occupied areas.

Protection of Water Supplies (§ 78.51 and § 78a.51)

- Proposed regulatory changes would require industry to restore impacted water supplies to higher quality standards than PA Safe Drinking Water Act (SDWA) if it was of higher quality standards prior to impacts.
 - CONSOL holds strong to the position of accountability here and agrees that if drinking water is impacted by industry practices then industry should provide for replacement with quality equivalent to the water quality pre-impact.
- Pennsylvania has no drilling and construction standards for new and existing residential water supplies. Without these protections in place, it is unreasonable for the Department to expect industry to be liable for the restoration of water supplies back to PA SDWA standards if the supply did not previously meet these standards.
 - Given that water resources in many parts of the Pennsylvania do not meet associated drinking water standards; the proposed restoration standards should be made to meet “pre-drilling” or “baseline” water conditions.

Centralized Tank Storage (§ 78a.57a)

- The Department should specifically reference the relevant OG-71 or other permit that needs to be obtained under this section for centralized tank storage.
- The Department should also specify that the centralized tank storage site should be restored 9 months after the last well is turn-in-line (TIL) ready for production. There is the potential for multiple unconventional wells on a single pad. The addition of each well to a pad compounds the time to have the well TIL ready. This also extends the timeframe for restoration of a well site area well past the total depth of drilling, lengthening the need for onsite processing areas, freshwater impoundments, and/or centralized tank storage areas.
 - Following completion of the well site construction phase after the ESCGP-2 permit is obtained, the vertical and horizontal drilling phase of well installation can take up to approximately 1 month per well on the pad. All wells have to be drilled prior to the next phase of well completion (hydraulic fracturing phase). The completion phase can take up to 3 months depending on the number of wells on the pad and the number of stages in which the individual wells are to be fractured. This varies per well and pad. Next, the flow back phase of well installation can take up to approximately 1 month depending on the number of wells on the pad. The final phase of well installation is drilling out the plugs (drill-outs) and can take up to 1 month depending on the number of wells on the pad. These are all individual phases of unconventional well installation prior to production. In all post drilling (vertical and horizontal) well installation phases can add up to approximately five

months before the well is turn-in-line ready. Therefore, CONSOL feels that the nine (9) month period to restore areas associated with the installation of the well should begin when the well is turn-in-line ready and should not be measured from the completion of drilling to total depth of the last well on the pad. This would allow for one proper reclamation season following the end of completion activities which is more in line with typical post drilling development activities.

Existing Pits used for the Control, Storage and Disposal of Production Fluids. Onsite Processing (§ 78.58 and § 78a.58)

- CONSOL agrees with the Department's intention to be notified or acquire pre-approvals for certain non-routine activities that may occur on a well site. This may include new treatment technologies. However, there are certain routine activities that occur as part of fluid reuse and recycling. Impoundment maintenance and reclamation that is considered routine should not require additional notification or pre-approval. CONSOL suggests that language requiring notification to the Department three days prior to these routine activities is removed, which includes, but may not be limited to aeration, filtration, dilution, and sludge/sediment removal.
- CONSOL also requests an opportunity to preview and comment on any proposed plan for the electronic notification submittal process.

Freshwater Impoundments (§ 78.59b and § 78a.59b)

- The Department should specify that freshwater impoundments be restored 9 months after the well is "turn in line (TIL) ready", not after "drilling" of the last well. Changing this language would make this section more consistent with industry practices taking into consideration the time required to complete all phases of well construction and development (also see previous section § 78a.57a comments).

Centralized Impoundments (§ 78.59c and § 78a.59c)

- CONSOL respects and shares the Department's concern as they relate to management and integrity of centralized impoundments. Protection of water resources and our ability to lessen demand on water resources are driving factors in our operations. The ability to utilize this infrastructure plays a vital role in our ability to achieve greater than 90% reuse of produced fluids and flowback as part of our fluid recycling initiative. Our ability to consistently achieve these types of reuse percentages year after year greatly lessens the demand on freshwater and other water resources of the Commonwealth.
- CONSOL appreciates the Department's consideration to allow for continued use of these facilities by providing for a mechanism to allow for permitting and operation of this important infrastructure through Bureau of Waste Management.

- Future operations rely heavily on the planned infrastructure that has already been designed and submitted for permit approval to the Department. CONSOL would appreciate consideration for a mechanism for expedited permitting process for centralized impoundments that were received by the Department and for which the Department has reviewed for completeness prior to the date of the §78a proposed regulations. This would provide relief to operators from costly project delays or cancellations.

Site Restoration (§ 78.65 and § 78a.65)

- The Department should specify that a well site be restored 9 months after the well is “turn-inline (TIL) ready”, not after “drilling” of the last well. Changing this language would make this section more consistent with industry practices taking into consideration the time required to complete all phases of well construction and development (also see previous section § 78a.57a comments).
- CONSOL supports the option to request a restoration period extension from the Department for up to 2 years.

Reporting and Remediating Spills and Releases (§ 78.66 and § 78a.66)

- CONSOL feels that the Department’s 2013 *Policy Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads* and the DEP memo from October 3, 2014 entitled *Program Clarification: Common Constituents for Oil and Gas Related Spills and Releases* policy provide an efficient and effective procedure for addressing spills and releases. CONSOL urges the Department to retain the effective portion of the Alternative remediation option and incorporate clarifications relating to the leachability of brine from the 2014 memo in this section of the proposed regulatory changes.
- Also, any requirement for publication of submission to the Department of a Notice of Intent to Remediate (NIT) and municipal notification of submission to the Department of a Final Report would slow down and complicate cleanup of a release on a well pad. CONSOL requests that the Department waive these requirements under Act 2 as part of the regulatory changes.

Horizontal Directional Drilling for Oil and Gas Pipelines (§ 78a.68a)

- Horizontal directional drilling activities (horizontal bores for pipeline installation) are regulated per Chapter 102 (Erosion/Sediment Pollution Control Program) and Chapter 105 (Waterways and Wetlands Permitting). CONSOL believes this activity is already appropriately regulated by Pennsylvania DEP via these chapters and does not require this additional language in Chapter 78. CONSOL requests that this section be removed from regulation.

Well Development Pipelines for Oil and Gas Operations (§ 78a.68b)

- CONSOL commonly employs a practice of conversion of buried well development water pipelines into gas gathering lines (or vice versa) in order to limit additional impacts to the environment, eliminating additional earth disturbance, timber clearing, stream and road crossings, etc. In these instances, the lines that are repurposed undergo hydrostatic or pneumatic testing and meet industry standards for gathering and water service pipelines.
- CONSOL requests that the Department develop an approval process which would provide for a waiver or variance from the restrictions found under § 78a.68b for the installation of buried well development pipelines and conversion of these pipelines into gathering pipelines, provided that:
 - Where well development pipelines are to be repurposed in situ for use as gathering pipelines, they be made to comply with minimum requirements for gathering pipelines under Pennsylvania Public Utility Commission and USDOT Pipeline and Hazardous Materials Safety Administration.
 - In instances where burying pipelines is appropriate and approved by the Department, CONSOL suggests that the operator be required to notify Pennsylvania's One-Call System prior to conducting ground disturbance activities.
- CONSOL believes that with proper management and by adhering to requirements for installation and testing of gathering and pipelines, this practice can be implemented in a manner that is beneficial to the operator and the surface property owner, while limiting additional impacts from construction activities to the environment.

General Provision for Well Construction and Operation (§ 78.73 and § 78a.73)

- CONSOL would like to suggest a definition of "visually monitored" is needed in this section and the required interval for visual monitoring should be clearly defined in the language with regards to "orphaned" or "abandoned" wells. CONSOL proposes that "visually monitored" be defined as "visual observation of the abandoned or orphaned well identified as part of the area of review survey at the start of stimulation activities and once daily until the conclusion of those activities."
- Additionally, if attempts are made to contact and notify operators of active and inactive wells and the operator does not respond or confirm that they have been notified, CONSOL feels there should be an avenue to continue with well stimulation after the prescribed 72 hour period has elapsed.

Production Reporting (§ 78.121 and § 78a.121)

- Produced fluids and flowback fluids that are re-used or recycled for well development should not be defined as waste until the point at which they are no longer used for well development and are transported to a treatment or disposal facility. Total volumes of produced fluids that are re-used or recycled for well development should only be reported in a single report. In part, this information is again requested in § 78a.122 as part of the Well Record and Completion Report.
- The requirement to include information on the amount and type of waste produced and the method of waste disposal or reuse is duplicative and should not be required. This information is already reported to the Department through Form U and Form 26R submittals.

Well Record and Completion Report (§ 78a.122)

- The requirement to include information on the amount and type of waste produced and the method of waste disposal or reuse is duplicative and should not be required under § 78a.121. Total volume of reused/recycled fluids can be reported as part of the Well Record and Completion Report, but should be eliminated from other waste, production reports (§ 78.121 and § 78a.121) to eliminate duplicative reporting.

CONSOL supports environmental protection standards for oil and gas well sites and the Department's efforts to ensure the protection of our environment. We also appreciate the opportunity to comment on 25 PA Code Chapters 78 and 78a, and look forward to working with the Department to ensure continued development and protection of Pennsylvania's natural resources. If you have any questions, comments, or would like to discuss further, please do not hesitate to contact me.

Regards,



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