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Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg
PA 17101-2301

Re: Comments on Proposed Amendments to 25 PA.CODE CH. 78, Environmental Protection Performance Standards at Oil and Gas Well Sites [43 Pa.B. 7377-7415]

To Whom It May Concern,

Chevron's Appalachian/Michigan Strategic Business Unit (AMBU) manages the company's natural gas production assets in the Marcellus Shale of Pennsylvania and West Virginia, and the Antrim Shale in northern Michigan. We are developing high-quality natural gas resources, with strong growth potential and proximity to gas markets. With more than 500 full-time employees, we are headquartered in Moon Township, Pennsylvania with offices in Smithfield, Pennsylvania and Traverse City, Michigan. In the Appalachian Basin, AMBU holds ~700,000 net acres of Marcellus Shale and ~600,000 net acres of Utica Shale.

Chevron Appalachia LLC, respectfully submits comments to the above referenced amendments. Provided below is a table that includes comments by section with regards to the 25 PA Code Ch. 78a revisions. 5 Items of the highest concern are as follows:

1. 78a.15(f) Threatened and Endangered Species - The proposed rule, with no definition for "Other Critical Communities" creates an overly broad and unworkable program for protection of threatened and endangered species.

2. 78a.41 Noise Mitigation – Noise control is already regulated by local authority through public nuisance ordinances and does not need to be further regulated. Requiring operators to develop a well pad specific program with the only stated requirement being "to minimize noise" to the Department's satisfaction introduces an arbitrary requirement that cannot be complied with and will result in uneven enforcement from site to site and operator to operator. In

addition it is recommended that this newly added section be tabled until more scientific evaluation and recommended standards are established.

3. 78a.51(d)(2) Quality – The proposed rule can require an operator to improve upon preexisting water quality conditions. In that drinking water well construction is unregulated and the pre-drill water sampling is a snapshot in time of data known to include seasonal variations, this places an unfair burden on oil and gas operators and requires decisions to be made based on incomplete data sets.

4. 78a.52a Area of Review – Chevron supports the intent of this section, but recommends that the rule limits the identification to wells that are within 1500 feet of the area of stimulation, consistent with potential impacts.

5. 78a.57a Centralized Tank Storage - Chevron supports the proper installation and use of storage tanks, but the proposed regulation is overly prescriptive with respect to construction location, containment, and notification.

Section Reference	**Proposed Language**	**Chevron Appalachia, LLC's (Chevron)Comment**
General - Authority		Due to the wide-ranging impact these revisions will have on oil and gas operations it is important for industry to know if these new provisions will apply to existing wells and previously-approved water management plans or sources. It is suggested that language be added to clarify the effective date for the new requirements in Subchapter C and that wells constructed prior to that date are grandfathered in for purposes of the new requirements.
78a.15 Application Requirements	(a) An application for a well permit shall be submitted electronically to the Department on forms provided through its web site and contain the information required by the Department to evaluate the	If DEP is going to require that all applications be submitted electronically, payment mechanisms other than using a credit card need to be incorporated in order for the system to be logistically feasible. Upon applying for a permit, we would like for the DEP's web-based system to produce an invoice format that could be printed by the applicant at the time of submittal. The format

	application	would need to include some identifier information, so it would be helpful if the online permitting software would contain some free-form fields that the applicant could populate with needed information (approval identifier, charge coding, etc.) Upon completing the web-forms and submitting the permitting package, the system would literally generate an invoice that the applicant would print at their desktop. The invoice would then be submitted into the internal Accounts Payable process where PADEP could receive payment by check or by EFT (presuming that they are set up for those types of payments.)
78a.15 f Threatened and Endangered Species Definition	The DEP now defines T&E species to not only those identified by the Federal ESA but also includes "animal and plant species proposed for listing as endangered and threatened pursuant to the ESA. In addition, the DEP has added another term: "Other Critical Communities"- which would sweep in all non-listed species. DEP added municipalities and schools as public resource agencies who can recommend protection for these species. DEP has not added any criteria or standards for the consideration of conditions to be imposed on permits for the protection of these species. This definition—which expressly includes all species that are not listed as T&E as well as various non-species resources would come into play in the well permit application process, whether applicants would be required to give notice	Presumably, one will be informed of the presence of these non-listed species and non-species resources by utilizing the Pennsylvania Natural Diversity Index ("PNDI") database and obtaining a PNDI receipt with a hit for such non-listed species and non-species resources. PNDI, however, does not use the term "critical communities," but when certain non-listed species come up in the PNDI database, a PNDI receipt indicates that "special concern" species may be impacted by the project. "Special concern" species, however, are not defined in any state or federal statute or regulation, and no agency or entity that populates the PNDI database utilizes a consistent or public standard or process for the categorization of such species. These decisions are made without public notice, input, rulemaking or peer review. Thus the proposed list of "critical communities" to be newly protected through the creation of well permit conditions, pursuant to a new process that would have agencies other than PADEP create well permit obligations, cannot create certainty or predictability for those who would obtain well permits in Pennsylvania because the definition incorporates lists of species and non-species resources that can change without notice on a daily, weekly or monthly basis. And while the term

	to public resource agencies responsible for managing the locations of these critical communities.	"critical communities" is not defined in Act 13 or elsewhere, its meaning should be considered in the context in which it was used—alongside of "rare and endangered" flora and fauna. "Rare" and "endangered" are terms that do have definitions and a process for categorization by the Pennsylvania agencies tasked with the protection of species, such as the Department of Conservation and Natural Resource, the Pennsylvania Game Commission, and the Pennsylvania Fish and Boat Commission. But by protecting all non-listed species, and adding such categories as "tentatively undetermined" and "candidate" to its proposed definition, PADEP has departed far from the General Assembly's use of the word "critical" communities in Act 13. The use of the term "critical" communities indicates that such communities are in dire need of protection, comparable to the status of threatened or endangered species. Threatened and endangered species, however, are only listed after thorough review, public notice and rulemaking procedures, and generally accepted scientific review. PADEP's definition of "critical communities" would elevate all non-listed species, as well as various non-species resources, to levels of protection comparable to those for threatened or endangered species without any public input or science to justify such protection. Further, having inserted a definition of "critical habitat" (borrowed from the PNDI Policy) in subpart (2) of its proposed definition of "critical communities," PADEP would read Act 13 as creating an obligation for PADEP to consider the "habitats" of "critical habitats." The context and language of Act 13 Section 3215 (c)(4) simply do not support a definition of "critical communities" that would include either critical habitats or non-species resources, such as those listed in subparts (2) and (3) of the new definition in the draft final rules. Request that the Department Clarify at what stage

		is the species to be considered "proposed"? The listing has multiple steps. Also the USFWS recently has proposed several species for listing then withdrawn that proposal. So the listing does not always turn into a listing. Finally, Act 13 expressly requires EQB to develop criteria by regulation for PADEP to use if it imposes permit conditions based on impacts to any public resources, including habitats of critical communities. Such criteria must ensure the "optimal development of oil and gas resources" and respect "property rights of oil and gas owners." The draft final rules, however, do not create any criteria for the PADEP to utilize in conditioning well permits to protect against harmful impacts to public resources, further compounding the uncertainties created by the proposed definition of "critical communities."
78a.15(i)	New Section – Proposed	Recommend that the Department perform Concurrent review of any permits and PNDI clearances. Recommend that the Department determine first whether there are adequate agency resources to handle the increased number of inquiries that will be made by industry for PNDI clearances.
78a.17 Permit Expiration and Renewal	(a) A Permitee may request an extension of the 16-month expiration from the department.	We request that the DEP provide guidance or at least clarity on acceptable extension criteria and timeframes past 16 months.
78a.41 Noise Mitigation	(a) Prior to preparation and construction of the well site or access road, the operator shall prepare and implement a site specific noise mitigation plan to minimize noise during drilling, stimulation, and servicing activities.	There is no standard or limit to the agency's discretion on this issue. In addition, it would require an assessment of background noise in the area of the well site AND regular, frequent and comprehensive site inspections to evaluate the effectiveness of any noise mitigation measures. The proposed regulation would increase cost at every well site and could be used as a basis for suspension of activities at a well site upon

	(c) If the department determines during drilling, stimulation, and servicing activities that the plan is inadequate to minimize noise, the Department may order the operator to suspend operations and to modify the plan and obtain Department approval.	landowner complaints to the Department. This section is very arbitrary in its lack of objective standards to be used by the agency in assessing noise levels and asserting its right to suspend oil and gas activities based on noise issues. If this section were to ultimately take effect, Chevron believes that questions regarding preemption of local noise control ordinances needs to be specifically addressed in the Comment Response Document. As the Department is aware, noise control is already regulated through local municipal nuisance ordinances. We are unaware of the specific statutory authority upon which DEP relies to trump local nuisance ordinances, especially in such a subjective manner, which singles out a particular industry for noise mitigation regulatory oversight. We believe citing the specific statutory authority likewise should be specifically annotated in the Comment Response Document. API is in the process of finalizing general guidance on noise mitigation as a part of new Recommended Practice. First, the Department should develop, with the input of stakeholders, a manual of best management practices (BMPs) for noise mitigation and example descriptions of situations under which they could be applied. Once finalized, this guidance could serve as the starting point for discussions within the stakeholder group recommended above. Second, as these provisions were not included in the rulemaking process prior to March 2015, the proposed regulation and all associated guidance (technical or otherwise) should be developed and vetted through the appropriate rulemaking process and include opportunity for public comment. Third, the Department should develop and implement an educational outreach program to assist DEP field staff and operators to recognize

		situations where the BMPs should be applied. Lastly, only after the program is shown to be necessary and effective should it be included in the regulations.
78a.51(b) Protection of Water Supplies	A Landowner, water purveyor or affected person suffering pollution or diminution of a water supply as a result of well site construction, well drilling, altering or operating activities may so notify the department and request that an investigation be conducted	DEP has expanded the reach of the presumption under Act 13 (3218 (b)) to include "well site construction." Arguably, this is beyond the statutory language of Act 13 which only refers to "drilling, alteration, or operation." This change is potentially significant in that prior landowner water claims were able to be defended on the basis of timing of construction vs. drilling in connection with the alleged onset of the impacts to their water. The proposed regulation does not apply the presumption of Act 13 to pollution resulting from construction; however, it appears that the investigation requirements and supplying temporary water may be required based on allegations associated with "construction" activities. Clarification on this issue should be made.
78a.51(d)(2) Quality	The quality of a restored or replaced water supply will be deemed adequate if it meets the standards established under the Pennsylvania Safe Drinking Water Act.	A restored or replaced water supply would need to meet the better of pre-drill conditions or Pa Safe Drinking Water Standards. Because pre-drill samples are only a snapshot in time, it is possible that in some cases, an operator would need to improve the quality of a water supply as compared to its quality before drilling operations. In other cases, the landowner results could end up with diminished water quality depending on the time of year the samples are taken. Additionally the state of Pennsylvania does not have potable Water well construction requirements / standards in place. There may be many cases in which water purveyors are utilizing a water source that doesn't meet safe drinking water standards. Requiring an operator to improve upon preexisting conditions is to penalize a party and is not

		consistent with due process.
78a.52a – Area of Review	The operator shall identify the surface and bottom hole locations of active, inactive, orphaned and abandoned wells having well bore paths within 1000 feet measured horizontally from the vertical well bore and 1000 feet measured from the surface above the entire length of a horizontal well bore in accordance with subsection (b).	Identification of wells in some proximity from the vertical well bore is easy to understand; however the need for identification of all wells along the lateral is unclear. As has been discussed with DEP numerous times in the past, other wells that do not penetrate formations within 1,500 feet of the lateral are not affected by drilling or stimulation of the well, and communication does not occur. The time and resources needed to identify and monitor these wells with no associated resulting environmental benefit is not justified. Identification of wells along the lateral that do not penetrate within 1,500 feet of the lateral does not contribute to environmental protection from the proposed drilling or stimulation activities, and only serves to supplement the DEP orphaned and abandoned well database. Consequently, it is recommended that the requirement for identification of wells along the horizontal portion of the well bore be revised to limit that identification and monitoring to wells that penetrate to within 1,500 feet of the lateral.
78a.55 – Control and Disposal Planning; Emergency Response	(b) – "...prior to storing, using, generating or transporting regulated substances to, on or from a well site..."	It is suggested that this section be revised to only require a general discussion of what substances are anticipated to be found at the well site since an operator may not know the specific chemical abstract of regulated substances that may be onsite prior to use.

	(f)Copies. A copy of the well operator's PPC plan shall be provided to the Department, the Fish and Boat Commission or the landowner upon request and shall be available at the well site during drilling and completion activities for review.	The Department should not by regulation give the other mentioned agencies authority they do not have otherwise, or be placed in a situation by those parties that would require the Department to take enforcement action for violations of this section. It is strongly recommended that the proposal to provide copies of the PPC plan to the Fish and Boat Commission and the landowner be deleted.
78a.56 – Temporary Containment	(a)(1) – "...shall be constructed and maintained with sufficient capacity to contain all [pollutional] regulated substances which are used or produced during drilling, altering, completing, recompleting, servicing and plugging the well.:	The same comment as 78.55(b) applies to this section. It is suggested that the language be revised to state "...which are used **[or anticipated to be]** produced..."
	(a)(4) - The owner or operator shall notify the Department at least 3 business days before the commencement of construction of these containment structures.	Once the Modular Aboveground Storage Structure has been approved for use with the Department and the location of the structure is shown on ESCGP-2 approved documents why is it necessary to create a new notification 3 days prior to commencement of construction? Recommend that the Notification requirement be removed
	(d) – Pits may not be used for temporary containment.	This could be interpreted as being applicable to freshwater impoundments / pits. Recommend adding (for regulated substances) to the end of the first sentence.
78a.57a Centralized Tank Storage		Please provide definition of Centralized Tank Storage or reference where definition is found.
	(f)(3) - Prohibits construction in areas underlain by limestone or carbonite at least five feet thick which present at the uppermost geologic unit.	Respectfully request clarification of the intent of the new proposed language. Is the intent based on structural, environmental, and or other? If the basis is of a structural nature it is recommended that the language read as such: In areas without a Geologic assessment to substantiate capacity to

		support/construct tank specifications.
	(i)(10) - Secondary Containment under the tank bottom and around underground piping shall be designed to direct any release to a monitoring point	Language is unclear. Please provide further definition; does this relate to the design of the secondary containment or failure of secondary containment which then directs to monitoring point. Secondary containment is designed to be impermeable and not used to store pollutional substances. Requiring the operator to design in anticipation of both primary and secondary containment for failure is overreaching and would unnecessarily increase costs.
	(i)(10-14)	Use of terminology such as "emergency containment structures, such as dike fields, curbing and containment collection systems" is inconsistent with Section 78a.57(c). Suggest language be consistent with 78a.57(c) and Section 78a.64
	(m) – The centralized tank storage site may not be used until the facility completion and final certification report is received and approved by the department. The Department will make a determination on the facility completion and final notification report within 30 days	If an operator chooses to utilize the option of a Centralized Tank Storage facility it would be one that is more temporary in nature. We encourage the Department to consider a field verification approval of the facility allowing for a quicker approval timeframe and signoff by an inspector. Preferably 7 days from completion and request of inspection by the operator sent electronically to the Department.
78a.59b Freshwater Impoundments	(g) – Freshwater impoundments shall be restored by the operator that the impoundment is registered to within 9 months of completion of drilling the last well serviced by the impoundment.	Suggest the section read as follows: Freshwater impoundments shall be restored by the operator that the impoundment is registered to within 9 months of completion of the last well or Turn in Line date (date the well is placed into production) serviced by the impoundment. Subsequently suggest a definition of "Completion of a Well" is

		added to definition section.
78a.64a Containment Systems	(j) Inspection reports and maintenance records shall be available at the well site for review by the Department.	It is suggested that the language be revised to state that records shall be maintained and available upon request. Storage of large amounts of paperwork on-site can be problematic. A few examples are as follows: documents can be stolen, become saturated by the elements, or end up in someone's vehicle forgetting to put them back.
78a.65 – Site Restoration	(a)(3) Failure to Drill – If a well site is constructed and the well is not drilled, The well site shall be restored within 30 calendar days after the expiration of the well permit unless the department approves an extension for reasons of adverse weather or lack of essential fuel, equipment or labor.	In the event it is determined that the location will not be developed and the permit will be allowed to expire 30 calendar days will not be enough time to perform the earth work let alone meet restoration requirements for an unconventional well site. It is strongly recommended that the restoration timeframe be changed to 9 months after expiration of the well permit, consistent with (a)(1) and (a)(2).
	(c)(1)Extension of Drilling or Production Period. A request to extend the restoration period must be submitted electronically on forms provided by the department through the department's web site not more than 6 months after the completion of drilling.	Significant time is required for completion of the wells and installation of facilities prior to restoration activities. It is recommended that the restoration deadline be 9 months from the completion of the last well on the pad or TIL of the last well on the pad. Temporary stabilization will be performed as per PA Code Ch. 102.8. This approach will drastically reduce the number of restoration extensions that may need to be applied for, reducing the administrative burden on both the Department and Oil and Gas Operators.

78a.69 – Water Management Plans	(f) - A WMP renewal application shall be submitted at least six months prior to the expiration of the five year term for withdrawal or use of a water source under a WMP.	It is suggested that a phase in period for currently approved sources be added to this section to cover the interim period between the effective dates of the regulation.
78a.73 – General Provision for Well Construction and Operation	Under 78.52a abandoned wells must be identified and monitored within an area of review (1,000 feet measured horizontally from the vertical well bore and 1,000 feet measured from the surface above the entire length of the horizontal well bore) and monitored for any treatment pressure changes. Section 78.73(d) requires any changes in the abandoned wells that indicate abnormal fracture propagation at the well being stimulated to be reported to the DEP. If an operator alters an orphaned or abandoned well by hydraulic fracturing, the operator is required to plug the orphaned or abandoned well or may adopt the altered well and place it into production.	The new provisions to monitor orphaned and abandoned wells may create access issues for monitoring on property that is not owned or leased by an operator. In addition, there is no objective standard or definition for what is "abnormal propagation at the well being stimulated" or what "alters" an orphaned or abandoned well. To the extent that this proposed provision would require an operator to plug an orphaned or abandoned well that it did not currently or formerly own, we believe that is contrary to Section 3220 of Act 13, which allows the DEP to plug the well or requires an owner or operator to plug the well.
78a.121 – Production Reporting	(b)The monthly production report must include information on the amount and type of waste produced and the method of waste disposal or reuse, including the specific facility or well site where the waste was	Operators will need time to set up systems and time to collect the information to meet the monthly turn-around time for reporting at the proposed frequency. Additionally the expectation appears to be that reuse water would be included in the requirement. That will result in an over calculation of water that is utilized in stimulation of the well. A portion of the reuse water utilized in

	managed.	stimulation of a well will return with flowback. Chemical concentrations and volume of said reuse water will vary. Basically you could be reporting the same molecules more than once giving the appearance of higher water use. Not to mention that reuse is not a "waste". Please see the justification below based on current regulation. Further, 25 PA Code 287.1 provides the following definition of "waste", in pertinent part: (i) Discarded material which is recycled or abandoned. A waste is abandoned by being disposed of, burned or incinerated or accumulated, stored or processed before or in lieu of being abandoned by being disposed of, burned or incinerated. A discarded material includes contaminated soil, contaminated water, contaminated dredge material, spent material or by-product recycled in accordance with subparagraph (iii), processed or disposed. (ii) Materials that are not waste when recycled include materials when they can be shown to be recycled by being: (A) Used or reused as ingredients in an industrial process to make a product or employed in a particular function or application as an effective substitute for a commercial product, provided the materials are not being reclaimed. This includes materials from the slaughter and preparation of animals that are used as raw materials in the production or manufacture of products. Steel slag is not waste if used onsite as a waste processing liming agent in acid neutralization or onsite in place of aggregate. Sizing, shaping or sorting of the material will not be considered processing for the purpose of this

		sub clause of the definition. (B) Coproducts. (C) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. When the original process to which the material is returned is a secondary process, the materials shall be managed so that there is no placement on the land and the secondary process takes place onsite. The definition of "waste" does not apply to reuse water because it is not discarded. Further, though not necessary to the analysis, reuse water is recycled and not reclaimed, and therefore is clearly not a "waste" under the applicable regulations.
78a.122 – Well Record and Completion Report	(a)(14) Certification by the operator that the monitoring plan required under section 78a.52a (Relating the area of review) was conducted as outlined in the area of review report.	Request clarification of what the certification process is. Would this be a check box? Certification by notary? Recommend this section be removed.
	(b) Within 30 calendar days after completion of the well, when the well is capable of production, the well operator shall arrange for the submission of a completion report to the	What are the Department's definition / interpretation of when a well is capable of production? Recommendations to the Department are as follows: 1. Turned in Line

	Department on a form provided by the Department that includes the following information:	Or 2. When the last mechanical barrier in the well is drilled out or dissolved allowing the potential for gas or fluids to move vertically up the well bore.
	(b)(8) - Open flow production and shut in surface pressure, measured 24 hours after completion	Since several operators are shutting in wells and waiting for facilities to be built it is suggested that language is added to clarify that completion means after a well is turned in line.
78a.123 – Logs and Additional Data	(c) - Upon notification by the Department prior to drilling, the well operator shall collect additional data specified by the Department, such as representative drill cuttings and samples from cores taken, and other geological information that the operator can reasonably compile. Interpretation of the data is not required to be filed.	Clarify whether this requirement applies to pilot holes, development wells, exploration wells, appraisal wells, etc.