

May 19, 2015

By Electronic Mail

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

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IRRC

Re: Draft Final Rulemaking, 25 Pa. Code Ch. 78a,  
Environmental Protection Performance Standards at Oil and Gas Well Sites

Dear Department of Environmental Protection:

On behalf of Damascus Citizens for Sustainability, NYH2O, and Citizens for Water, we thank the Department of Environmental Protection (“DEP” or the “Department”) for the opportunity to comment on the draft final revisions of 25 Pa. Code Ch. 78a (“Chapter 78a”) and to participate in the public process associated with this important rulemaking. Our principal concerns about the proposed revisions are summarized in a letter and extensive comments submitted by Earth Justice on behalf of a broad range of organizations including the three groups noted above. This comment letter by the three groups supplements the Earth Justice submissions.

The three organizations submitting this letter are raising several general comments applicable to all parts of the Chapter 78a final draft revisions and a few specific suggestions on particular sections of the Chapter 78a proposal.

**Waste Burial Legacy Sites** In our March 2014 comments we requested the addition of a program to address sites where onsite burial of waste materials from oil and gas development had been allowed. With the addition of the suggestions proposed in the Earth Justice comments, the proposed Chapter 78a regulations will require restoration of each site to conditions existing prior to oil and gas development for new and existing sites subject to the new Chapter 78a regulations. However, this leaves potentially thousands of now-closed or abandoned sites where onsite disposal or burial was allowed. The threat of contamination potential from these disposal or burial sites

becomes an environmental legacy that may cause considerable damage from release and migration of contaminants in the future.

To mitigate the environmental risks from these pre-Chapter 78a burial sites, we propose that a program be added to specifically address these risks. This program would have several components, including: 1) identifying the location of each waste burial site; 2) determining the type and volume of waste in each burial site; 3) determining the waste site design and burial method used; 4) testing the waste to determine whether any constituent exceeds applicable or relevant and appropriate federal, state or local environmental quality criteria; 5) testing soils, groundwater and surface waters in the vicinity of the burial site to determine whether waste constituents have already migrated from the burial site; 6) removal of all waste materials from the burial site, all soils contaminated from contaminant migration, and remediation of impacted groundwater and surface waters; 7) transportation with a manifest system for tracking shipments of wastes and contaminated soil to waste handling, treatment and disposal facilities licensed to accept such wastes; 8) establishing a record keeping and reporting system for the owner/operator (if known) to provide PADEP with the information identified above; 9) making all of this information available to the public through the PADEP website; and 10) payment by permit applicants of a fee to establish a fund to address orphan burial sites. Our 2014 comments addressed the details related to this proposed program. We have attached a copy of these 2014 comments for your convenience.

**Split Samples on Request** There are several additional issues that are involved in a number of sections of the Chapter 78a proposal. These issues have been raised to us repeatedly by individuals across Pennsylvania that have been impacted by oil and gas development. The first of these is that in a number of instances where PADEP is conducting environmental testing in response to complaints or requests from residents, when the resident or impacted individual requests that a split sample be taken so that the resident can obtain a separate analysis from another certified environmental laboratory, all too often this request has been rejected by the PADEP representative. Certainly the resident or individual requesting the split sample will be responsible to assure that the sample is properly maintained and tracked until it is received by the laboratory, but there is no justification for rejecting such a request.

**Uniform Information Format** It also has come to our attention that a wide array of different formats are being used by oil and gas operators to submit information to the agency. This often makes it difficult for the public to understand and evaluate the information contained in these submissions. As part of the new regulatory program under Chapter 78 and 78a, we would request that the agency adopt a uniform set of

forms, materials, and instructions to be used in all communications to facilitate public access to and understanding of the data provided in such submissions.

**User Friendly Website** In the same vein as uniformity in data formatting and submission, throughout the Chapter 787 and 78a proposals reference is made to posting of information on the PADEP website to facilitate public review. As the new regulatory programs are further developed and finalized, we respectfully request that the department review, update and harmonize the formatting and access mechanisms to simplify and maximize the consistency of presentation of this information through the website to the public.

**Section 78a-52(c)(1) Testing** As part of the comments by the Earth Justice coalition, it is requested that predrilling and prealteration survey testing should include a specific list of substances to be analyzed in water samples. We would strongly recommend that uranium, thorium, radium and radon be added to the list of substances to be analyzed in both the liquid phase and the gaseous phase. Current information about concentrations of these radioactive substances at oil and gas well sites is sporadic and limited. Rather than continue to have limited data about these potentially public health impacting elements, this information should be collected and reported through the PADEP website to improve the knowledge and understanding of any risks posed by such materials.

In addition to testing for these radioactive materials, we recommend that the testing and analysis utilize EPA approved methods wherever such methods exist. Obviously accredited laboratories must be used, but often the testing methods and analytical protocols are different among testing and analysis companies. Wherever possible, uniformity should be required so that results can be more easily interpreted.

**Section 78a-73** The latest proposal for this section would allow an operator to convert an abandoned or orphaned well into a producing well rather than being required to properly plug and abandon(P&A)the well. The Earth Justice comments oppose this approach and would require that such a well be P&Ad. We strongly agree with the Earth Justice comments, but would like to add a few thoughts. First and foremost, by virtue of the fact that the well in question has be abandoned or orphaned, there is essentially no information available about how the well was drilled, whether it was placed in production, how it was operated, and how it was closed if anything was done other than walking away. Consequently, there is no information available about the condition of the casings, cementing, and well bore. It is known from peer-reviewed scientific papers such as Ingraffea, et al. Assessment and Risk Analysis of Casing and Cement Impairment in Oil and Gas Wells in Pennsylvania 200-2012” (PNAS 2014) and by the Society of Petroleum Engineers such as Dusseault’s “Why Oil Wells Leak:Cement Behavior and Long Term Consequences” (SPE #64733, 2000) and

“Casing Shear: Causes,Cases, Cures” (SPE June 2001) that oil and gas wells will eventually all leak. Therefore, the only way to minimize the environmental risk posed by these orphaned and abandoned wells is to properly plug them in accordance with approved P&A procedures.

WE appreciate the opportunity to provide comments on this very important rulemaking. If there are any questions concerning these comments please contact me by telephone at 240-912-6685 or by email at [zimmermanjj@verizon.net](mailto:zimmermanjj@verizon.net).

Respectfully submitted,

s/s J.J. Zimmerman

John J. Zimmerman

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Damascus Citizens for Sustainability  
NYH2O and Citizens for Water