MARCELLUS SHALE COALITION™

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May 19, 2015

Department of Environmental Protection
Office of Policy
16th Floor Rachel Carson Building
400 Market Street
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Comments on Advance Notice of Final Rulemaking to 25 Pa. Code Chapters 78, Environmental Protection Performance Standards at Oil and Gas Well Sites [45 Pa.B. 1615]

To Whom It May Concern:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to comment on the Advance Notice of Final Rulemaking to "25 Pa. Code Chapters 78 & 78a, Environmental Protection Performance Standards at Oil and Gas Well Sites."

The MSC was formed in 2008 and is currently comprised of more than 250 producing and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the suppliers, consultants and contractors who serve the industry. MSC member companies have a steadfast commitment to strengthen communities by making our region a better place to live, work and raise our families – for our generation and future generations. More information about our organization can be found at http://marcelluscoalition.org.

MSC member companies produce approximately 96% of the unconventional natural gas produced in Pennsylvania. The MSC has separately submitted extensive and detailed comments to the Department regarding proposed revisions to Chapter 78a, related to Unconventional Wells. Additionally, many MSC member companies operate thousands of conventional oil and gas wells within the Commonwealth, and are therefore impacted by the Department's proposed revisions to Chapter 78, related to Conventional Wells. Therefore, the MSC explicitly incorporates and extends its comments submitted to the Department on Chapter 78a for all substantially similar regulatory provisions which are contained in Chapter 78. We request that the Department give the MSC's detailed comments on Chapter 78a the same weight and affect when reviewing and considering comments on substantially similar regulatory provisions contained in Chapter 78. Additionally, the MSC extends its support for the detailed comments submitted by the Pennsylvania Independent Oil & Gas Association with respect to Chapter 78.

The MSC appreciates your consideration in this matter.

Sincerely,

David J. Spigelmyer
President

MARCELLUS SHALE COALITION™

Via Electronic Submission to RegComments@pa.gov and Hand Delivery

May 19, 2015

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

Re: Comments on Advance Notice of Final Rulemaking to 25 Pa. Code Chapter78a, Environmental Protection Performance Standards at Oil and Gas Well Sites [45 Pa.B. 1615]

To Whom It May Concern,

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to comment on the Advance Notice of Final Rulemaking to "25 PA. CODE Chapters 78a, Environmental Protection Performance Standards at Oil and Gas Well Sites." The MSC is submitting separate correspondence commenting on Chapter 78.

The MSC was formed in 2008 and is currently comprised of more than 250 producing, midstream and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the suppliers, consultants and contractors who serve the industry. MSC member companies produce approximately 96% of the unconventional natural gas produced in Pennsylvania. MSC member companies have a steadfast commitment to strengthen communities by making our region a better place to live, work and raise our families — for our generation and for future generations. More information about our organization can be found at http://marcelluscoalition.org.

Introduction

The MSC and its members have consistently supported rigorous environmental controls that are based on facts, data, and sound science. Our role in helping to shape Act 13 of 2012, which substantially raised the bar by enacting numerous enhanced environmental standards – many of which have been copied by other states and even other nations - is ample evidence of that commitment. Few of the provisions set forth in the Proposed Regulations that were published Dec. 14, 2013 are necessary to implement Act 13, which is largely self-executing. Nonetheless, the MSC suggested improvements to the text in extensive comments and participated in the workshops conducted by the Department and the Technical Advisory Board in a good faith effort to balance legitimate environmental concerns with the ability of the industry to operate efficiently to produce a valuable resource essential to meeting the energy needs of the Commonwealth and nation. Some provisions of the Proposed Regulations were opposed as excessive, unnecessary, unreasonable or contrary to law. Our comments regarding the Proposed Regulations submitted to the Department on March 14, 2013 are hereby repeated and incorporated herein. Unfortunately, the Draft Final Regulations as they appear on the Department's website and as referenced in the ANFR noticed in the *Pennsylvania Bulletin* on April 4, 2015 exacerbate the problems that appeared in the Proposed Regulations. Therefore, it is necessary for the MSC to submit additional comments.

Governor Wolf has been repeatedly quoted in the media as saying that he wanted the unconventional shale gas industry to succeed in Pennsylvania and he has personally made the same statement to some MSC members. The Draft Final Regulations run counter to the Governor's expressed wishes. Taken as a whole, these regulations appear to be designed to burden the industry to the point of paralysis, rather than enable the responsible development of the resource. The Draft Final Regulations are deficient in that: 1) many of the requirements are so ambiguous and subjective as to make it impossible to determine how to achieve compliance and leave judgment regarding compliance to the whim of individual inspectors or anti-industry activists; 2) several sections impose standards and obligations more onerous than imposed on other industries for similar activities without any basis, ignoring already existing regulatory programs; 3) some provisions impose requirements that interfere with efficient operations without creating any substantive environmental benefit or, in some cases, without any nexus at all to the environment; and 4) several provisions plainly exceed the Department's legal authority as determined by the Legislature and/or the courts, including a wholesale disregard for the Regulatory Review Act (RRA) 71 P.S.Section745.1 et seq.

Regulatory Review Act

The ANFR: The Department's publication of its proposed regulatory revisions on April 4, 2015 has been advertised as an Advanced Notice of Final Rulemaking (ANFR). The ANFR is not a formal component of the RRA, but has historically been used by agencies to permit the regulated community and general public to review and comment on changes to the originally proposed regulations that were made in response to specific commentary on the original proposed regulatory language. However, the ANFR is not a substitute to fulfilling any of the formal steps of the RRA or the accompanying requirements imposed on the promulgating agency. An ANFR is not and cannot be a substitute for compliance with the RRA for new provisions added or radical changes made to the proposed regulations. Examples in the ANFR include a new definition of "other critical communities"; new standards for centralized storage tanks; site remediation; prohibition on the use of centralized wastewater impoundments and pits; noise mitigation requirements and others discussed in greater detail in the attached comments. In the ANFR, the Department itself notes that many of these provisions are new and/or significant changes on which it solicits comments. However, the call for comments cannot substitute for compliance with the RRA. As the Department is aware, agencies are generally prohibited from introducing new matters into a final rulemaking. Use of the ANFR process to evade these prohibitions, and to allow an abbreviated opportunity for public comment without the benefit of the accompanying data and information the Department is required to generate, is not consistent with the letter or spirit of the RRA or the Commonwealth Documents Law, and also allows these new provisions to evade review and comment by the legislative oversight committees and the Independent Regulatory Review Commission (IRRC).

Cost of Compliance: The MSC's comments regarding the Proposed Regulations noted the gross underestimation of the costs of compliance in the Department's RAF and those comments are hereby restated and incorporated herein. The RRA clearly requires the promulgating agency to include "estimates of the direct and indirect costs…to the private sector". 71 P.S. Section 745(a)(4)]. While we believe that this requirement was inadequately implemented for the proposed regulations, it is entirely missing for the new provisions of the Draft Final Regulations and for the radical changes made to some originally proposed provision that totally rewrite them. This failure impedes the ability of the regulated community, general public, and legislative oversight committees, to offer meaningful and informed comments on the proposed regulatory changes within the context of evaluating its economic costs and benefits and prevents the IRRC from being able to carry out its statutory duty to determine whether the rulemaking satisfies the requirements of the RRA.

In its April 14, 2014 letter to the Department, the IRRC recognized the importance of an accurate assessment of the cost of compliance. The IRRC stated on page 4: "We are concerned that there is such a large disparity between cost estimates prepared by Environmental Quality Board (EQB) and the cost estimates prepared by the industry as a whole. There appears to be a basic misunderstanding of what this proposal will require and

when those requirements will become effective. As this proposal moves forward, we strongly encourage EQB to consult with both conventional and unconventional operators **and their associations** so that all parties can gain an understanding of what will be required, when it will be required, and what it will cost to comply with the rulemaking…". No consultation has taken place, at least not with the industry.

In our comments regarding the proposed regulation, we estimated that the cost of compliance would likely be $200 million to $300 million per year. The new and rewritten provisions in the Draft Final Regulation will undoubtedly add more cost. However, by employing the ANFR process and avoiding the requirements of the RRA, DEP has failed to provide any information on increased costs. Moreover, it is difficult for the industry to make an exact cost estimate with so many vague and arbitrary provisions. How does one estimate the cost to "minimize" noise without a standard? How does one guess when DEP will "determine" that some river or stream contains mine influenced water, requiring additional approvals? How will we know which species will be considered "taxa of conservation concern" requiring additional actions? (See comments below). Nonetheless, we believe that the new and rewritten provisions will increase the cost of compliance to nearly $900,000 per well. Even accounting for reduced drilling under the current economic conditions, these regulations have the potential to impose a $900 million annual burden on the industry.

It is imperative to note that these proposed regulatory revisions are occurring in the midst of a significantly depressed natural gas market. Nationally, natural gas index prices are currently $2.50 - $2.70 per million British thermal units, down nearly 50% from a year ago. In Pennsylvania, this suppressed price is even more pronounced, as a shortage of critical infrastructure has led to natural gas prices which are currently $0.90-$1.10 per million British thermal units. These sustained, suppressed prices have already resulted in billions of dollars of reduced capital expenditures into Pennsylvania, as well as the loss of jobs and general contraction of the industry. The General Assembly's directive to agencies to consider the economic impacts of regulations it seeks to promulgate clearly implies that the underlying economics of the regulated industry must be factored into the evaluation of the regulations. To this end, it is worth noting that the Administration which oversees the department is also, in addition to imposing new costs associated with these regulations, seeking legislative approval for an additional severance tax on natural gas production that, under its current design and market conditions, approaches an effective tax rate in excess of 19%.

Conflict with Other Statutes or Existing Regulations: Section 745.5b(b)(3) of the RRA provides that, in determining whether a regulation is in the public interest, the "clarity, feasibility and reasonableness" of the regulation shall be assessed based upon possible conflict with, or duplication of, other laws or existing regulations. As noted in IRRC's April 14, 2014 comments to the previous version of these proposed regulations, nine other chapters of Department regulations were listed as the source of language in the proposed oil and gas regulations or cross-referenced in the proposed regulations. IRRC noted that commentators had expressed concern that the proposed regulations impose requirements upon the oil and gas industry even though those laws may not be applicable to the oil and gas industry. The Draft Final Regulations under the ANFR do not address this concern, but rather exacerbate the problem. Consider the following three examples:

- The ANFR contains a significant number of new regulatory standards for above-ground storage tanks that have been copied directly from regulations promulgated under Pennsylvania's Storage Tank and Spill Prevention Act (Tank Act). However, the Tank Act expressly exempts tanks used to store brines, crude oil, and drilling or frac fluids related to oil and gas development. Therefore, the Department is attempting to override by regulation a decision made by the Legislature and expressed in statute. Clearly it is not authorized to do so.
- The ANFR imposes requirements relating to the cleanup of spills at gas well sites that go beyond the criteria established under Pennsylvania's Land Recycling and Environmental Remediation Standards Act (Act 2), and creates new procedural requirements that do not currently apply to spills at gas well sites. Under Section 904 of Act 2, the only types of cleanups conducted under

state law not governed by Act 2 are those implemented under the Tank Act and the Hazardous Sites Cleanup Act. Again, the Department cannot change a statute by regulation.

- The ANFR establishes comprehensive new standards for tanks and impoundments used to store fluids associated with natural gas development that go well beyond those set forth in the Department's previous proposed rules. The ANFR imposes technical requirements on tanks and impoundments used to store fluids from oil and gas operations that are more restrictive than those imposed under the Solid Waste Management Act (SWMA) for storage of wastes from any other industry. No justification is offered as to why the existing regulations, applicable to all other industries, are not adequate.

Statement of Need: The RRA also requires a statement of need for the regulations 71 P.S. Section745.5(a)(3). The original RAF was cursory and inadequate in its statement of need and just as the ANFR is lacking in any assessment of the cost of compliance, it is also lacking in any statement of need for the new radical changes and additions proposed. For example: 1) what is the need for a new provision on noise minimization when many municipal ordinances regulate noise; 2) what is the need for extensive new provisions for centralized storage tanks when regulations already exist governing the storage of residual waste in tanks; 3) what is the need for different spill remediation procedures for oil and gas operations, when a robust and nationally copied remediation program already exists; and 4) why is it necessary to require the closure of centralized impoundments that have been or will be built to current Department specification? Closely related to the statement of need is the requirement for a statement that the "least burdensome acceptable alternative has been selected" (71 P.S. Section 745.5(a)(12). Given the wide-ranging rewrites to numerous provisions in the Draft Final Regulations which added new requirements and a multitude of new provisions, such an evaluation should have been included in the ANFR. Frankly, we doubt the Department could justify any Statement of Need.

Forms: The RRA also requires that on the same date that a proposed rulemaking is sent to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, a statement of the required reporting procedures "including copies of forms or reports" (71 P.S. Section 745(a)(5) must be sent to the IRRC and the legislative committees as part of the Regulatory Analysis Form. This requirement was ignored with the proposed regulations and continues to be ignored with the Draft Final Regulations. There are numerous provisions which require something to be submitted on a "form provided by the department" or "forms provided through its website," yet no forms are provided. However, the situation has worsened. In this version there are at least 30 different reports required to be submitted electronically without any information being provided on the content of those reports or the manner of submission. Moreover there is significant uncertainty as to whether the Department has a web-based system capable of handling that volume.

Compliance Date: The RRA also requires a statement regarding the compliance date for the regulations (71 P.S. Section 745.5 (a)(7)). However, as currently proposed, it is unclear as to how the new and revised requirements will apply to existing oil and gas well sites and related operations. It would put an undue burden on the oil and gas industry both financially and practically to require that the ANFR's new operational and design criteria apply to existing operations already working within the scope of DEP's current regulations. Moreover, a requirement to retrofit or update existing operations would put Pennsylvania at a competitive disadvantage with respect to other states. As such, DEP should include a clear "grandfathering" provision in the Proposal. DEP's "grandfathering" provision should state that the new standards should not apply to well sites, impoundments, or other related operations that have already been constructed; to oil and gas well sites where wells have already been drilled; or to well sites, impoundments, or other related operations for which permit applications have been submitted to DEP by an operator prior to the effective date of the final rulemaking.

In summary, the Department continues to act contrary to the RRA. At a minimum, it has not provided an adequate statement of need nor considered less burdensome alternatives; has not provided an estimate of cost

to the regulated community; has not provided the required forms and has not met any of the other requirements of the RRA for these new or totally rewritten provisions

Key Provisions

Several key provisions illustrate the over-arching deficiencies noted in the Introduction above and thus warrant separate comment:

1. Public Resources:

   In Section 78a.15(f) the Department originally proposed to equate "critical communities" with "special concern species." The MSC objected to this provision because, among other reasons, it "create[d] tremendous uncertainty about a permit applicant's obligations with regard to an ever-changing and undefined list." The Department has now proposed a definition of "other critical communities," however the same problems remain and have been significantly compounded. The definition now proposed is so vague and general as to potentially encompass every plant and animal species on earth, except those listed as T&E species ["Plant and animal species not listed as threatened or endangered … including…"]. Moreover the list of examples following the word "including" are equally vague using terms that are undefined in any law or regulation and are apparently open to evolving interpretation by anyone. To the extent the terms are intended to refer to certain species, areas, features, and/or communities on the Pennsylvania Natural Diversity Inventory (PNDI) database, such designations are not done by rulemaking, nor are they clearly defined there either. Accordingly, DEP is improperly seeking to create a binding regulatory requirement in excess of its statutory authority. Since permit applicants would be required to undertake extensive and expensive procedures, pursuant to Section 78a.15(f)(1)(iv), if a well site is "in a location that will impact other critical communities," it is essential to know exactly what species, areas, features, and communities are covered and to be able to establish the locations of those species, areas, features and communities. The proposed definition fails to provide any meaningful details, guidance, or criteria and should be eliminated.

   More fundamentally, the Department's authority to regulate the potential impact on public resources derives from Section 3215(c) of Act 13. In fact, the term "other critical communities" is used in that subsection and nowhere else in Act 13, nor is it used in any other statute relied upon as authority for these regulations. However, in the Robinson Township decision (*Robinson Twp. et al v. Commonwealth*, 83 A.3d 901 (PA 2013)), the Supreme Court enjoined the application of Section 3215(c). Accordingly, the Department lacks the authority to regulate with regard to "other critical communities" specifically and lacks the legal authority to implement Section 3215(c) in its entirety. Section 78a.15(f) should be stricken.

   Section 78a.15(g) replicates, in part, the language of Act 13 Section 3215(e) which recognizes the oil and gas owners' property rights to develop the oil and gas resources. However, Section 3215(e) also requires the EQB to develop by regulation criteria for the DEP to utilize in the imposition of any permit conditions to protect public resources while respecting those property rights and ensuring optimal development of those resources. DEP has not proposed any such criteria. The rule thus fails to comply with Act 13, which requires that the EQB develop these criteria in this rulemaking. Taken together, Section78a.15(f) and the definition of "Other Critical Communities" exceed the Department's legal authority as determined by the Supreme Court and provide a definition that not only far exceeds any rational interpretation of legislative intent but is also so ambiguous and subjective as to be arbitrary and capricious.

2. Threatened or Endangered Species:

Closely related to the improper definition of "Other Critical Communities" is the newly proposed definition of Threatened or Endangered (T&E) Species. It represents another action beyond the Department's legal authority. The legislature has not granted any authority to DEP to designate T&E species. Rather the three statutes cited in the proposed definition grant that authority to the Department of Conservation and Natural Resources, the Fish and Boat Commission and the Game Commission. None of those Pennsylvania enabling statutes, nor the federal act, provides authority to regulate species that are merely proposed for listing as though they are actually listed. Species may be proposed for years without action and ultimately may not be listed. DEP has no authority to add species to the list before the agencies that actually have the authority to do so act. The last portion of the definition dealing with proposed species should be eliminated.

3. Water Supply Protection:

The MSC agrees with the interpretation expressed by Oil and Gas Technical Advisory Board (TAB) in its letter dated July 18, 2013 that "exceeded," as the term is used in Section 3218(a) of Act 13 and used by the DEP in its originally proposed Section 78.51(d)(2), refers to an operator's requirement to restore an affected water supply to its pre-drilling conditions, when that water supply did not meet Safe Drinking Water Act standards (SDWA) prior to drilling. The DEP's proposed contrary interpretation that operators would be required to improve each and every water supply, including commercial, agricultural and industrial supplies, to a minimum of SDWA standards is unreasonable since it is well documented that many of these water supplies do not, and need not, meet SDWA standards for water quality parameters. MSC members accept their responsibility to address impacts to water supplies that they may have caused, and to restore water supplies for the purpose served, but it is unreasonable for the DEP to require that the oil and gas industry address contamination in water supplies unrelated to oil and gas operations, as no other industry in Pennsylvania has been held to such a standard.

It is also impractical to require operators to restore an affected water supply to pre-drilling conditions for individual parameters that were allegedly better than SDWA standards. In some cases the private water well will have had no pre-drilling samples taken or in other cases the pre-drilling sample may not be sufficient to reflect natural variability in water quality. Accordingly, the industry will be required to meet a degree of water quality that did not truly exist prior to drilling. Such a requirement has not been imposed upon any other industry, and it would be unfair to impose it solely upon the oil and gas industry.

The new language added to Section 78a.51(d)(2) differs from the statutory language in Section 3218(a) of Act 13. The Act does not refer to water quality to be "of a higher quality than required" nor does it state that the replaced water supply "shall meet the pre-pollution quality." Rather Act 13 requires the water to be "comparable to the quality of the water" if the water supply "exceeded those [SDWA] standards." DEP has no authority to change the wording of a statute through regulation.

Lastly, Sections 78a.51 (b) and (c) purport to implement Section 3218(b) of Act 13; however the proposed regulation adds "well site construction" to the list of activities enumerated in Act 13 that trigger the reporting and investigation activities set forth in Subsection 3218(b). DEP simply has no authority to amend the statutory language and this addition should be stricken. No one doubts that DEP can investigate complaints regarding water supplies; however, they cannot engraft new language onto the legislative language.

4. "Mine influenced water":

This definition gives DEP the ability to determine that any surface waters impaired by mine drainage are mine influenced water, without any criteria or standards. Given the breadth of the DEP's list of waters impaired by mine drainage, this definition would include many surface waters throughout the Commonwealth, including sections of the major rivers such as the Allegheny, Monongahela, Youghiogheny and West Branch of the Susquehanna, and their tributaries, some of which are widely used for public water supplies. Storage and use of such a vaguely defined and potentially broad universe of waters, which are routinely used for numerous other purposes by industries beyond the oil and gas industry, should not be subject to the special approval requirements specified in the Draft Final Regulations. We commented on this definition at the time of the proposed regulation, largely due to the requirement in Section78a.58b requiring special permission to place "mine influenced water" in a freshwater impoundment. However, its significance has been magnified by the amendment to Section 78a.58(a) which would seem to potentially require special permission to mix water from the above-mentioned rivers with other water before using the mixture to hydraulically fracture a well. The definition is overly broad and fails to establish a cogent regulatory standard that informs the industry which waters are subject to these requirements. Alternatively, it authorizes ad hoc and arbitrary determinations by the Department.

5. "Regulated substances":

This definition is cross-referenced to the definition in Act 2 that was developed to assist those conducting cleanup operations at brownfield sites throughout the Commonwealth, sites that were used for a wide variety of industrial activities. The definition, which includes substances "covered by" six other named statutes, is stated broadly for the purposes of Act 2 but is overly broad and fails to provide the necessary guidance for reporting obligations that would be imposed under the proposed Section 78a.66(b). The term "regulated substances" is utilized extensively throughout the proposed rule, which does not appear to be warranted and may lead to unintended consequences for both the Department and the regulated community. At a minimum, the definition must be further clarified by reference to some known list of substances, such as those found in 25 Pa. Code Chapter 250. In addition, the term "regulated substances" should be replaced or removed entirely where the intent of the rule is better served by a different term. See Sections 78a.55 (Control and disposal planning), 78a.56 (Temporary storage), 78a.61 (Disposal of drill cuttings), and 78a.64a (Containment systems and practices at unconventional well sites) for specific recommendations below.

6. Noise Mitigation, Section78a.41:

This brand new section represents a prime example of the defects in this rulemaking noted in the Introduction. First, DEP is proposing an entirely new requirement as a final regulation without complying with the RRA. None of the requirements of the RRA, such as statement of need or estimate of cost have been followed. Nor have the IRRC or standing committees had an opportunity to review and comment on this provision. Secondly, we question DEP's authority to regulate noise, a matter usually regulated under local zoning ordinances. Neither Act 13 nor any other statute we are aware of authorizes DEP to regulate noise, and it does not regulate noise for any other industry. Thirdly, the language in Section 78a.41 is so vague and arbitrary that it fails as a regulatory standard. What does it mean to have a plan to "minimize" noise? Minimize from what level to what level? Must noise always be minimized even if there are no receptors? If so, why? Lastly, the language gives DEP the ability to require the cessation of operations if it "determines" that the plan is inadequate to "minimize" noise, without providing any standard or criteria for such determination or how inadequacy will be determined. Inserting this provision at this stage of the rulemaking violates the RRA, lacks legal authority and is arbitrary and capricious on its face. It should be eliminated.

7. Centralized Tank Storage, Section 78a.57a:

   In brief, there is no need for this section. The Department has steadfastly maintained that the water generated by producing wells as well as flowback water is a residual waste. Regulations already exist for the storage of residual waste in tanks (25 Pa. Code Chap. 299). There is no need to create a whole new regulatory scheme, adding new requirements, just for oil and gas-derived residual waste. Of course, one cannot gauge the need for nor the cost of this new provision. The statement of need and estimate of cost required under the RRA are absent, since DEP is proceeding without regard to the RRA. Once again, neither the IRRC nor the standing committees will have had a chance to review this provision until it is presented as a final rule. There is no need for this section, and it should be eliminated.

Conclusion:

The MSC members recognize the importance of strong environmental protections and accept them as an essential part of operations. However, we believe that the DEP significantly underestimated both the operational and economic burden that the Proposal Regulations would impose on the unconventional gas industry. That burden has been multiplied several times over by the additions and changes in the Draft Final Regulations. The Draft Final Regulations make such fundamental changes from the Proposed Regulations that they should not become final form regulations without full compliance with the RRA. At a minimum, the Department should not proceed to finalize the new Sections 78a.15(1)(f)(vii) and (viii) (new public resources), 78a.41 (Noise), 78a.57a (Centralized Tank Storage); the new definitions of "Other Critical Communities" and "Public Resource Agency"; and the totally rewritten Aections 78a.59c (centralized impoundments), 78a.65 (site restoration) and 78a.69 (water management plans) but should withdraw those provisions and proceed with a separate proposed rulemaking in order to fully and properly comply with the RRA.

Moreover, we urge the Department to undertake an objective assessment of the real need for this extensive, but flawed, regulatory package. Act 13 provided significant enhanced environmental protections, many of which are self-executing and do not need to be repeated in regulation and cannot be changed by regulation. Environmental protection will not suffer since these provisions are and have been applicable and enforceable for three years. Regulatory programs for residual wastes, tanks, stream and wetland protection and others that are applicable to all other commercial and industrial operations already exist and there is no environmental reason to impose different requirements on the oil and gas industry. In short, many of the provisions in the Draft Final Regulations are not needed.

These Draft Final Regulations introduce a level of burden, ambiguity and arbitrariness that will make it extremely difficult for our members to continue to commit capital to operations in Pennsylvania faced with such potential costs and uncertainty.

Although we strongly believe that the Draft Final Regulation should not proceed to final regulation, we offer the following section-by-section comments for your consideration, should you elect to proceed.

Sincerely,

David J. Spigelmyer
President