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**Comments on Draft Final Rules - Proposed amendment to 25 Pa. Code Chapter 78, subchapter C (relating to oil and gas wells), and addition of new Chapter 78a**

***PIOGA's Comments on Chapter 78a (Unconventional Wells)***

The Pennsylvania Independent Oil & Gas Association respectfully submits the following comments regarding the Pennsylvania Department of Environmental Protection's Advanced Notice of Final Rulemaking ("ANFR") published in the *Pennsylvania Bulletin* on April 4, 2015. The ANFR solicits comments on PADEP's Draft Final Rule recommending changes to 25 Pa. Code Chapter 78. The proposed Draft Final Rule would substantially alter existing requirements, adding numerous new and stringent requirements regarding all aspects of oil and gas operations in Pennsylvania.

PIOGA is a nonprofit trade association, with nearly 800 members, representing Pennsylvania independent oil and natural gas producers, both conventional and unconventional, marketers, service companies and related businesses, landowners and royalty owners. PIOGA members are subject to provisions of Pennsylvania's Oil and Gas Act (Act 13), Clean Streams Law, and other environmental statutes and implementing regulations relevant to oil and gas operations in Pennsylvania. The association and our members therefore have a direct interest in the Department's comprehensive proposal to revise Chapter 78, Subchapters A, B, C, D, E, G and H.

PIOGA respectfully offers the following general comments regarding the proposed revisions to Chapter 78a pertaining to unconventional wells. Please see the attachments for comments on specific sections, and key outstanding issues from the 2013 proposed rules (2013

Proposal). We are submitting a separate comment letter on the proposed revisions to Chapter 78 pertaining to conventional wells.

## General Comments

Overall, the many new and expanded provisions of the Draft Final Rule regarding Chapter 78a will significantly burden the unconventional oil and gas industry in Pennsylvania to the point of stagnation. The proposed changes as a whole are even more onerous than the originally proposed Chapter 78 regulations that the Environmental Quality Board ("EQB") published on December 14, 2013. They do not provide any meaningful environmental benefit, and in fact are more stringent than regulations governing other industries. The Draft Final Rule seems to be designed to simply micro-manage the industry and to invite public scrutiny and comment on well permits in a manner that will increase the time and cost for each and every well permit sought in this Commonwealth, potentially paralyzing the issuance of well permits, which would be very much welcomed by many or our industry's opponents. Several provisions clearly exceed the Department's legal authority, others have been added without regard to the required legal steps for doing so, while still others are so ambiguous as to be meaningless.

This rulemaking package strays far from the principles of good regulation, which must be justified by compelling necessity, balanced by careful consideration of costs and impacts on the economy, and capable of providing clarity and predictability to the regulated community. These revisions accomplish none of these critical goals which are also stated in the Department's Policy for Development, Approval and Distribution of Regulations. We offer comments on specific sections of the Draft Final Rule as it pertains to the unconventional industry in the attachments that follow, but we have general overarching comments that fall into the following three categories.

1. <u>There is No Demonstrated Need for the Revisions in the Draft Final Rule</u>

It is a fundamental principle of rulemaking and sound administrative agency practice that regulations must be developed transparently on the basis of good law and science, not by reaction to unfounded fear and speculation of harm. The Department's obvious failure in this regard was to plow ahead and make the Draft Final Rule significantly more restrictive without responding to the voluminous comments the Department received in response to the 2013 Proposal. The Department has not released a Comment/Response document. The notice published in the *Pennsylvania Bulletin* on April 4, 2015 did not explain why the Department revised the 2013 Proposal. It did not provide any regulatory analysis. Neither the industry nor the public is able to discern why the 2013 proposal has been revised so substantially. In short, the Department and EQB have the responsibility and legal obligation to fully inform the regulated community of the necessity, justification, costs and impacts of the Draft Final Rule. Without this, we cannot provide fully informed comments on the Draft Final Rules. The Department should conduct this rulemaking in the open, not amend proposed rules behind closed doors without clear explanation.

In addition, the Regulatory Review Act requires a statement of need for regulations, and a statement of the necessary reporting procedures including copies of all new forms or reports. 71 P.S. § 745.5(a)(3), (5). The Department did not provide a statement of need in the ANFR for the newly added regulations nor did it provide the forms to be used to comply with the Draft Final

Rule. There are approximately 20 new forms referenced under proposed rules that simply state that information is to be submitted on a "form provided by the Department." Yet no forms or other manner of electronic submission has been provided for comment with the Draft Final Rule. Without seeing the forms, we cannot determine whether they conform with the regulations and are reasonable or whether they impose unjustified additional burden on operators. And even if this information were available, a 45 day comment period is not nearly sufficient time to offer comments on the excessive number of revisions in the Draft Final Rule.

2. The Draft Final Rule is Procedurally Flawed

The Draft Final Rule is procedurally flawed. First, the Regulatory Review Act requires the Department to conduct a Regulatory Flexibility Analysis and estimate the direct and indirect costs of a proposed rule on the private sector. 71 P.S. § 745.5(a)(4), (12.1). There must be special consideration of impacts on small businesses, including an evaluation of less stringent compliance standards and deadlines, simplification of reporting requirements, and exemptions from regulation where appropriate. The Regulatory Analysis Form for the 2013 Proposal was woefully deficient, and is missing entirely from the Draft Final Rule. This failure impedes our ability to comment in a meaningful manner and it compromises the ability of the Independent Regulatory Review Commission and the legislative standing committees to do the same.

Second, although not part of the rulemaking process described in the Regulatory Review Act, an ANFR has been used by agencies to solicit additional public comment on revisions to originally proposed regulations that were amended in response to initial public comment. However, an ANFR does not permit the Department to propose, as a substitute for fulfilling its formal rulemaking obligations prescribed by the Regulatory Review Act, Commonwealth Documents Law, and other statutes, entirely new provisions or substantial changes to previously proposed regulations. Chapter 78a is replete with new and substantially changed provisions, including noise mitigation (§ 78a.41); centralized tank storage (§ 78a.57); the definition of "other critical communities" (§ 78a.1); and prohibition of centralized wastewater impoundments (§ 78a.59c). These and similar provisions must go back through the rulemaking process from the start.

3. The Draft Final Rule has Many Legally Unsupported and Excessive Requirements

The Department has strayed beyond its legal authority in several areas. The Pennsylvania Supreme Court invalidated Sections 3215(b) through 3215(e) in its December 13, 2013 decision in *Robinson Township, et al. v. Commonwealth of Pennsylvania*, 83 A.3d 901, 999 [V], 1000 [VI(D)], 1009 [Baer concurring] (Pa. 2013). The Department has disregarded our Supreme Court's decision and included provisions in the Draft Final Rule – for example, the definitions of "Other Critical Communities" and "Public Resource Agency" in § 78a.1 and the revision to § 78a.15(f)(1)(iv) to incorporate these amended definitions into the permit application process - to implement these enjoined sections of the statute. These regulatory changes are legally wrong under *Robinson* and because they improperly create a binding regulatory requirement from the 2013 "Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation" (021-0200-001), to the extent that "other critical communities" refers to species on the Pennsylvania Natural Diversity Inventory database that are not designated by rulemaking.

The proposed noise mitigation provision of § 78a.41 is another example where the Department has exceeded its legal authority. Under Pennsylvania law, a regulation will be deemed void for vagueness, "if it a) traps the innocent by failing to give a person of ordinary intelligence reasonable opportunity to know what it prohibits so that he may act accordingly or b) results in arbitrary or discriminatory enforcement in the absence of explicit guidelines for its application". *Krichmar v. State Bd. of Veh. Mfgrs.* 850 A.2d 861, 865 (Pa. Commwlth. 2004). Proposed §78a.41(a) would require an operator to prepare and implement a site specific noise mitigation plan, "to minimize noise during drilling, stimulation, and servicing activities" without specifying any objective standard, criteria or method for determining when noise would be sufficiently minimized so as to avoid violation. Proposed §78a.41(c) would grant the Department the extraordinary remedy of suspending an operator's operations if during the course of drilling, stimulation or servicing activities, the Department determines (again without statement of any objective basis or standard for such determination) that the operator's noise mitigation plan is not adequate, in the Department's sole discretion, to minimize noise.

Many of the other new or expanded provisions of the Draft Final Rule exceed the Department's legal authority or impose an excessive burden without justification. These include the proposal to require operators to identify and monitor abandoned and orphaned wells for which they have no legal responsibility (§ 78a.52a) and the requirement to restore a water supply to a higher standard than Safe Drinking Water Standards, if the water supply was of a higher standard before disruption (§ 78a.51(d)(2)) and to restore a water supply to Safe Drinking Water Standards, if the water supply did not meet that standard before disruption (§§ 78a.51(d)(2) and 78a.51(d)(2)). The cost to install treatment technology to achieve predrilling conditions for individual parameters better than Safe Drinking Water Standards, or to achieve better than pre-drilling conditions for parameters that were worse than Safe Drinking Water Standards, even if possible, may be prohibitively expensive. No such requirement is imposed on any other industry. We discuss these and other excessively stringent regulations in more detail in the attachments to this letter.

In summary, PIOGA continues to have serious concerns about the legal basis underlying the Draft Final Rule, as well as the enormous adverse effects on unconventional oil and gas operations that would be imposed without clear environmental benefits. The Draft Final Rule would impose costs and burdens on operators that would likely put many small businesses out of business, which would harm a long-standing core of Pennsylvania's economy with justification. This is unacceptable. The Department has not demonstrated that the Draft Final Rule is necessary or justified.

PIOGA respectfully submits the attached comments for the Department's consideration in its review of the proposed Chapter 78a Draft Final Rules. We will also provide these comments to the Independent Regulatory Review Commission and the applicable standing committees of the House and Senate, which is critical in light of PIOGA's concerns with the inadequacy of the Regulatory Analysis Form. PIOGA also endorses the Marcellus Shale Coalition's comments on behalf of unconventional operators and encourages the Department to consider the full impact of the proposed regulations on unconventional operators individually and in the aggregate, and on Pennsylvania's economic future.

Sincerely,

Lou D'Amico
President and Executive Director
PIOGA

CC: John Quigley, Acting Secretary, Department of Environmental Protection
John Hanger, Director of Planning and Policy
Scott Perry, Deputy Secretary, Office of Oil and Gas Management

Attachments: PIOGA's Chapter 78a Comments
PIOGA's Outstanding Issues

**Attachment A**

## PIOGA's SPECIFIC COMMENTS ON CHAPTER 78a

As an initial matter, PIOGA notes that the Draft Final Rule contains an excessive number of references to new forms and new electronic reporting requirements. Under the Regulatory Review Act, all such forms were to have been provided to the EQB and IRRC with the proposed rulemaking. The Department has failed to comply with the express requirements of that act in this rulemaking and cannot finalize the rule without providing all such forms for review and comment. In addition, the dozens of new electronic reporting and notification obligations would create unnecessary burden on operators, as well as obvious compliance problems, where the Department cannot currently manage its online systems and has yet to comply with the express requirement of Act 13 to post all responses to NOVs online. Electronic reporting requirements must be accompanied by alternatives to accommodate likely system failures, as well as practical field realities that may prevent compliance with the obligations that would be created in the Draft Final Rule.

### § 78a.1 Definitions

### OTHER CRITICAL COMMUNITIES

If *Robinson Township* did not invalidate Section 3215 (c) of Act 13, Section 3215(c)(4) refers to "habitats of rare and endangered flora and fauna and other critical communities" with no associated definitions. But even with the lack of a statutory definition of "other critical communities," DEP is proposing an extremely expansive, and potentially unlimited, number of undefined and/or unlisted species (e.g. tentatively undetermined and candidate species; undefined taxa of conservation concern; undefined special concern plant populations), as well as numerous other undefined geographical areas, geological features, natural features, and natural communities. The lack of regulatory definition or criteria applicable to these many terms embedded in this definition would allow the designation as a "critical community" of any species, area, feature, or community by the Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, water purveyors, municipalities, and school districts, without going through the regulatory review process. This delegation of power to a wide range of public resource agencies cannot be done by DEP regulation, but would require legislative action under the various enabling statutes for those entities. The proposed definition also goes so far as to equate "significant" features or communities to "critical" communities, when in fact the normal usage of those terms implies a separation, with "critical" being a higher level of importance than "significant." For example, DEP is proposing to equate undefined "significant natural communities" to "critical communities" with absolutely no explanation or rationale that would support such an expansion.

The proposed definition of "Other Critical Communities" is entirely lacking in its ability to satisfy due process requirements. Simply put, the Department has not published a list of the things that are actually included within the definition or informed the public how things get included within the definition. Rather it has defined the category or term "other critical communities" by reference to other categories of things such as "taxa of conservation concern"

and "significant non-species resources." This provides insufficient public notice and omits necessary information upon which a public comment can be made about any specific species proposed for protection status. Consequently, the manner in which the things to be protected have been presented violates procedural due process guarantees of both the United States and Pennsylvania Constitutions.

On April 22, 2015, PIOGA filed a right-to-know request with the Department asking for a list of the things included in the definition(s) or categories of things listed so that it might have the ability to respond and comment on the actual things being proposed for listing. Under the right-to-know law the department has 5 days to file its response or to invoke a 30 day delay. The department invoked its 30 day delay right in a letter dated April 30, 2015 and thereby admitted that it could not produce a list of the things included in the definition within 5 days, and in the case of the instant rulemaking, before the end of the ANFR comment period which expires on May 19, 2015.

If the Department could not produce a list of the things included in the definition in less than 30 days, it would appear that it did not know what things actually were included in the definition when it proposed the regulation. This would indicate that any commission or legislative body reviewing the rulemaking cannot have confidence in what the Department or the EQB is proposing. Moreover, the Department's inability to produce a list as noted above denied the public of adequate public notice and, correspondingly, the ability to provide informed comment on the regulatory proposal.

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 such well permit obligations, cannot create certainty or predictability for those who would obtain well permits in Pennsylvania because the definition incorporates unavailable information, as well as lists of species and non-species resources that could change without notice on a daily, weekly or monthly basis.

This proposed definition should be deleted in its entirety, unless and until legislative action provides otherwise.

**PUBLIC RESOURCE AGENCY**

There are significant concerns with including water purveyors, municipalities and school districts within the list of public resource agencies that would have authorities and responsibilities within 78a.15 to review and condition oil and gas permits. Of particular concern here is the fact that the term "water purveyor" includes not only public utilities or other public entities, but also many private companies or organizations that provide drinking water to a sufficient number of individuals (25 or more individuals for 60 or more days per year) or via 15 service connections. For example, a company/facility with 25 or more employees that supplies its own drinking water would be defined as a "water purveyor" and as such, a "public resource agency" under the proposed definitions. Classifying those types of private entities as "public resource agencies" with the associated roles and responsibilities outlined in section 78a.15 is inappropriate, particularly without any associated Regulatory Impact Analysis of the consequences.

PADEP's Draft Final Rule would add municipalities, school districts and water purveyors to its list of "public resource agencies," along with new obligations for well permit applicants to provide notice to such agencies. This contrived definition of such agencies beyond the state and federal agencies that are authorized by statute to protect the public natural resources of the Commonwealth is outside the scope of EQB's authority. This regulatory language is unnecessary, and is contrary to the express purpose of Act 13 to promote the optimal development of oil and gas resources. Like the numerous new proposals throughout the rulemaking for notice to landowners and other entities, this expansion appears to be a deliberate attempt to obstruct, rather than optimize development of oil and gas resources. Oil and gas operators have communicated with local municipalities, school districts and community members for decades and will continue to do so in a manner that is consistent with both the law and good community relations. There is no authority or need for EQB to require additional consultation between operators and local communities.

In addition, under Section 3212.1 of Act 13, municipalities are provided with the express opportunity to submit comments describing local conditions and circumstances that should be considered in the issuance of well permits for *unconventional* oil and gas wells, and PADEP is fully empowered to consider those comments.[1] This proposed action is unauthorized, redundant and unnecessary to add further avenues for comments in section 78a.15, where the legislature has made its policy determination regarding the timing and avenue for the comments of municipalities.

The sheer numbers of new "public resource agencies" reveals the absurdity of this proposed definition. There are 2,562 municipalities in Pennsylvania and 500 school districts. There are also 67 counties in Pennsylvania, but it is not known if the term "municipalities" as used in the new definition is intended to include counties. It is also not known how many water purveyors exist in Pennsylvania. But the term would include all public water authorities and any privately owned companies that provides the public with drinking water via 15 or more service connections or to 25 or more individuals for 60 or more days per year.

There are 3,287 public schools and 2,238 private schools. It is not known how a playground would be defined, how many playgrounds exist in the Commonwealth or if the proposed definition only includes publically owned playgrounds. Conservatively, it would be safe to estimate that there are at least 3,000 public playgrounds in the Commonwealth. It is not known how many well head protection areas are approved in the Commonwealth or potentially approvable. Adding 10,000 new "public resources" and inviting comments from thousands of newly designated "public resources agencies" can only be intended to stop the development of oil and gas resources in this Commonwealth immediately upon finalization of this rule.

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[1] Section 3212.1 provides: "The municipality where the tract of land upon which the unconventional well to be drilled is located may submit written comments to the department describing local conditions or circumstances which the municipality has determined should be considered by the department in rendering its determination on the unconventional well permit. A comment under this subsection must be submitted to the department within 15 days of the receipt of the plat under section 3211(b) (relating to well permits). The municipality shall simultaneously forward a copy of its comments to the permit applicant and all other parties entitled to a copy of the plat under section 3211(b), who may submit a written response. A written response must be submitted to the department within ten days of receipt of the comments of the municipality" (emphasis added).

**THREATENED OR ENDANGERED SPECIES**

The definition proposed in the Draft Final Rule is entirely unnecessary and inconsistent with those terms as they are already defined by the applicable statutes. The Department has no authority or jurisdiction to create different definitions or additional protection for any species and should not confuse and complicate a well-established legal framework for the protection of threatened or endangered species, as defined under state and federal law. Any definition included here must be identical to existing definitions under relevant law, none of which includes species simply "proposed" for listing as endangered and threatened. This manufactured definition is well beyond the Department's legal authority and would purport to create obligations that do not exist under any applicable law.

**§ 78a.15 Application Requirements**

Act 13 has provided well-defined and carefully detailed obligations to provide notice of well permit applications to landowners, water purveyors, municipalities, gas storage operators and owners of coal interests. Act 13 has also delineated precise opportunities for certain categories of persons to comment or object to permit applications before such permits are issued by the Department. See Sections 3212 (a) and 3212.1.

- Section 3211 (b.1) of Act 13 prescribes notification requirements with respect to operators having to provide well site plats to various entities in advance of submitting a permit application. These are a surface landowner where the well is located, the municipality in which the well will be drilled, municipalities within 3,000 feet of a well bore, municipalities adjacent to the well, surface landowners and water purveyors whose water supplies are within either 1,000 feet (conventional) or 3,000 feet (unconventional) of the vertical well bore, gas storage operators, and coal seam owners. Section 3211 (b.2) requires proof of these notifications to be sent to the Department with the permit application.

- Section 3212 (a) and (b) provide coal operators and surface owners (who do not also own the subsurface) with the right to file objections to permit locations based upon alleged violations of Section 3215 which section includes and addresses well location restrictions and all of the public resources well location restriction enabling provisions.

- Through Sections 3212 (a) and 3212.1, only two entities or categories of persons are authorized, in the course of the well permit application process, to either "object" to or "comment" on well permit applications.

    - The first category is surface landowners on whose tract the well will be located. They are authorized to object to such permits with the objection grounds limited to alleged violations of Section 3215 restrictions or that information in the application is untrue in any material respect.
    - The second category is the municipality where the tract of land upon which the unconventional well will be drilled is located. Only municipalities of this type or description in the group of municipalities required to be notified pursuant to Section 3211 (b) are authorized to "comment."

This deliberate and comprehensive legislative scheme makes it quite clear that NO OTHER NOTICE OR COMMENT AVENUES are to be created by rulemaking. Each of these notice and comment opportunities has been provided by Act 13, which also requires permit issuance within 45 days of the permit application submission.

Without any legislative direction or authority, the Department is proposing an entirely new well permit application process that would require additional notice to new entities, offering additional opportunities to comment on well permit applications, and would impose this new pre permit process on all well permit applicants under the guise of protecting impacts to "public resources."

This proposal is clearly designed to increase the time and cost of each well permit issued in this Commonwealth, which becomes even more apparent by the complete absence of criteria by which the permit reviewer would judge the hundreds of comments to be invited for his or her consideration. The legislative authority for this new pre permit process is entirely lacking.

**§ 78a.15 (f) (1)**

Section 78a.15 (f)(1) would add several new Public Resources to the list established by the General Assembly, adding wellhead protection areas, common areas on a school's property and playgrounds to the existing list of natural or entirely public resources that may trigger consideration by PADEP in its well permitting. Please see PIOGA's comment to the definitions of Other Critical Communities, Threatened or Endangered Species, and Public Resources Agencies regarding the thousands of new public resources to be protected and the thousands of new entities designated under the Draft Final rule to suggest permit conditions to the Department.

The new public resources are described as locations:

- **WITHIN 200 FEET OF COMMON AREAS ON A SCHOOL'S PROPERTY OR A PLAYGROUND.**

- **WITHIN AN AREA DESIGNATED AS A WELLHEAD PROTECTION AREA AS PART OF AN APPROVED WELLHEAD PROTECTION PLAN.**

First, even if PADEP has the authority to expand the list of public resources, common areas of schools and playgrounds are simply not comparable to:

- Publicly owned park, forest, game land or wildlife area;
- State or National scenic river;
- National natural landmark;
- A location that will impact other critical communities; or
- Historical or archeological site listed on the Federal or State list of historic places.

"Common areas" on a school's property are often not publicly accessible and lack the clarity of the resources listed in Act 13, which include state and national resources of a limited nature, all of which are clearly known because of precise listing procedures for inclusion or clear geographic boundaries, in the case of parks, forests and game lands. It is also notable that the public resources listed in Act 13 are limited in number and unlikely to be altered or expanded without significant public notice. The sheer number of "common areas" that PADEP would add to the list illustrates the incongruity of the additions. Even if one were to limit "schools" to public school districts, permit applicants, school officials and permit reviewers will be overwhelmed with the variety and uses of "common areas," as well as the universe of measures that could be recommended by schools and parents for the mitigation of impacts. These additions create tremendous regulatory uncertainty and will certainly create numerous unintended consequences, including the consideration of hundreds of proposed mitigation measures to address thousands of different types of "common areas." All of these concerns are equally applicable to the addition of 'playgrounds' to public resources to be protected.

Second, Act 13 expressly provides for the protection of water wells under Section 3215(a) through a setback requirement that can be waived by the owner of that supply. Given that the legislature already considered and addressed wellhead protection in this manner, there is no authority for PADEP to create either duplicative or additional protection by expansion of the listed public resources in Section 3215 (c). The legislature considered and comprehensively provided for the protection of water supplies in the adoption of Act 13 in 2012. The legislators deliberately chose to add precise protection with respect to unconventional well locations in Section 3215(a) and drinking water supplies in Section 3215(c) and created obligations for PADEP in Section 3218.1.[2] In the face of this comprehensive statutory scheme, the inclusion of wellhead protection areas in the permit review process is clearly beyond PADEP and EQB's statutory authority and should be deleted.

Further, if PADEP intends to protect some "area" beyond the setbacks and protections already specified in Act 13, neither the need nor purpose for such expansion can be gleaned from the proposed revision, preventing PIOGA or anyone else from providing a well-informed comment on whether the revision properly addresses either a need or PADEP's purpose in making the revision. Even if there were legal authority for PADEP or EQB to add wellhead protection areas to the list of public resources provided by the legislature, and the need for such protection justified the proposed revision, "wellhead protection area" is not a defined term, and

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[2] Section 3215 (a) provides that "Unconventional gas wells may not be drilled within 1,000 feet measured horizontally from the vertical well bore to any existing water well, surface water intake, reservoir or other water supply extraction point used by a water purveyor without the written consent of the water purveyor" (emphasis added).

Section 3215 (c) provided that "Sources used for public drinking supplies in accordance with subsection (b)" be considered by PADEP when issuing well permits. Section 3215 (b), which was stricken by the Pennsylvania Supreme Court in *Robinson Township v. Commonwealth of Pennsylvania*, had provided setbacks from certain surface waters, allowing waivers from such setbacks where appropriate.

Section 3218.1 provides: "Notification to public drinking water systems. Upon receiving notification of a spill, the department shall, after investigating the incident, notify any public drinking water facility that could be affected by the event that the event occurred. The notification shall contain a brief description of the event and any expected impact on water quality" (emphasis added).

approved wellhead protection plans are not readily available, preventing both compliance and enforcement of the rule.

Regulation must provide clear and predictable direction to the public and the agency tasked with its enforcement. The proposed addition of wellhead protection areas to a list of public resources to be considered by PADEP in the course of issuing well permits has no clear legal authority, purpose, justification or direction with respect to compliance or enforcement. It is clear, however, that as written, it will open the door to protracted and costly discussion and debate between and among permit applicants, permit reviewers and the public. If this is the purpose of the revision, it is certain to succeed.

**§ 78a.15 (f)(2)**

PIOGA repeats and reaffirms its prior comment to the process of notice and comment proposed under Section 78a.15(f)(2), which has been revised in a manner that exacerbates rather than resolves the problems created in the prior draft through the inclusion of additional public resource agencies to be notified and additional public resources to be considered. DEP's proposed revisions in paragraph (f)(2) are without statutory authority, and would result in significant costs because the revisions do not comply with Pennsylvania law and do not contain a process for respecting private property rights of oil and gas owners.

**§ 78a.15 (g)**

Act 13—if the relevant sections had not been invalidated under *Robinson*—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 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 definitions and new reviewing agencies. By this omission, PADEP has failed to comply with one of the very few express commands of Act 13.

**§ 78a.15 (h)**

PIOGA strongly objects to a new well permit requirement that would include the review and approval of erosion and sedimentation plans for sites with less than five acres of earth disturbance. Pennsylvania Clean Streams Law and Chapter 102 provide for erosion and sedimentation plans but do not require permits or approvals for oil and gas activities less than five acres. The Department should not expand Chapter 78, especially in a subsection related to well permits, to create new earth disturbance obligations, which are already addressed under existing law. Oil and gas operators are well aware of environmental obligations that exist outside Act 13 and the oil and gas program – there is no need for the Department to recreate every other program inside the oil and gas program.

## § 78a.17 Due Diligence

Section 3211 (i) of Act 13 provides that well permits "shall expire one year after issuance unless operations for drilling the well are commenced within the period specified and pursued with due diligence or unless the permit is renewed in accordance with regulations of the department. If drilling is commenced during the one-year period, the well permit shall remain in force until the well is plugged in accordance with section 3220 [] or the permit is revoked."

The Draft Final Rule would define "due diligence" as "completion of the well to total depth within 16 months of issuance," allowing for permittees to request extension of the "16-month expiration."

The Department is not authorized under Act 13 or elsewhere to create a new "expiration" period of 16 months and should delete this from the rule. If there is a need to develop a policy regarding the meaning of "due diligence," such a need must be explained and justified by the Department. PIOGA is unaware of the need to define due diligence in the context of rulemaking or policy at this time. The timing for the drilling and completing of wells is a matter of sound business judgment, which is informed by permit terms, market conditions, and private agreements with landowners and lessors. The Department should not intrude upon this business decision making process without a compelling need.

## § 78a.18 Disposal and Enhanced Recovery Well Permits (deleted)

PIOGA understands that the Department does not intend to prohibit unconventional operators from applying for disposal or enhanced recovery well permits but has placed this section in the rule for conventional wells, as that term is defined under existing law to include such wells. To avoid confusion to assist applicants who would seek to convert unconventional wells to disposal wells, there should be cross reference in Chapter 78a to the appropriate regulations for such conversion.

## § 78A.41 NOISE MITIGATION

PIOGA recommends that this section with entirely withdrawn because it is a new proposed regulation that has not been accompanied by regulatory analysis required under the Regulatory Review Act and was never submitted to TAB, EQB or IRRC as a proposed rulemaking. These procedural flaws cannot be remedied through this notice and comment period, and the comments below are only provided to illustrate additional flaws with the proposal. PIOGA is aware that individual members of the oil and gas industry may submit comments that recommend specific changes to the Draft Final Rule according to what that particular company may find to be acceptable. The variation in such comments further supports the conclusion that the rule is premature and should be withdrawn for discussion and analysis.

### Proposed § 78a.41, If Promulgated, Would be Deemed Void for Vagueness

Under Pennsylvania law, a statute or regulation will be deemed void for vagueness, "if it a) traps the innocent by failing to give a person of ordinary intelligence reasonable opportunity to know what it prohibits so that he may act accordingly or b) results in arbitrary or discriminatory

enforcement in the absence of explicit guidelines for its application". *Krichmar v. State Bd. of Veh. Mfgrs.* 850 A.2d 861, 865 (Pa. Commwlth. 2004); *Toms v. Borough of Prof'l. and Occupational Affairs*, 800 A.2d 342 (Pa. Commwlth. 2002). It should also be noted that in interpreting a statute to determine if it is so void, the language, "may be interpreted in the context of the common knowledge and understanding of members of a particular profession". . . *Stephens v. State Bd. of Nursing*, 657 A.2d 71 (Pa. Commnwlth. 1995).

Applying these principles to the instant situation leads to the conclusion that if § 78a.41 were promulgated it would likely be deemed void for vagueness in any legal challenge.

- § 78a.41(a) would require an operator to prepare and implement a site specific noise mitigation plan, "to minimize noise during drilling, stimulation, and servicing activities" without specifying any objective standard, criteria or method for determining when noise would be sufficiently minimized so as to avoid violation.
- § 78a.41(c) would grant the Department the extraordinary remedy of suspending an operator's operations if during the course of drilling, stimulation or servicing activities, the Department determines (again without statement of any objective basis or standard for such determination) that the operator's noise mitigation plan is not adequate, in the Department's sole discretion, to minimize noise.
- § 78a.41(b) would require the specified noise mitigation plan to include, "an assessment of background noise in the area of the well site", with no details as to how the assessment is to be performed, what would constitute an acceptable assessment, the time period over which the assessment would have to be performed or how large an area would have to be assessed.
- § 78a.41(b)(3) would require operators to, "adopt and incorporate a best practices approach to noise management" without specifying any best practices to so include.

**Proposed § 78a.41 would not pass muster under either of the prongs of the vagueness test aforementioned.**

First, by failing to specify any objective method for determining whether noise is sufficiently minimized to avoid violation and possible suspension of operations, proposed §7 8a.41 would trap the innocent by failing to give a person of ordinary intelligence reasonable notice of what it prohibits so that the person may plan his behavior accordingly and avoid violation or worse yet suspension of operations. For the same reason, proposed § 78a.41 would result in arbitrary enforcement. Without having an objective standard as to how much noise is permitted, an operator would have no way of knowing if its operations were in violation or not.

Proposed § 78a.41 would not be saved by the fact that its language may be interpreted in the context, "of the common knowledge and understanding of members of a particular profession". No matter how much expertise an expert might have in noise mitigation such expert would not be able to determine from the language of proposed § 78a.41 what level of noise mitigation would be sufficient to avoid violation. Only the Department, in its sole and unfettered discretion, would be deemed to have the ability to do so.

Likewise proposed § 78a.41 would not be spared by the fact that the Department might in the future issue technical guidance providing standards or criteria for noise mitigation. As the Department is well aware, it is not bound by its technical guidance and may deviate from such guidance if it determines it appropriate to do so, leaving operators subject to potential arbitrary enforcement. See for example the Department's technical guidance entitled "Guidance for Performing Single Stationary Source Determinations for Oil and Gas" on page 1. "DEP reserves the discretion to deviate from this policy statement if circumstances warrant."

For the above reasons, PIOGA respectfully requests that the Department withdraw proposed § 78a.41 in its entirety.

**The Department's Lack of Specificity prevents PIOGA from Providing Meaningful Comments**

As stated, proposed § 78a.41 fails to give fair notice to a person of ordinary intelligence of what it regulates such that such person may adjust his behavior accordingly; fails to give any specifics as to the required noise mitigation plan including how it is to be prepared, what standards are to be used and over what time period it is to be evaluated; and would require an operator in preparing the required noise mitigation plan to "incorporate a best practices approach to noise management" without giving any indication of what best practices the Department might consider acceptable. Not only do those failings subject proposed § 78a.41 to a likely successful challenge on constitutional grounds if promulgated, they also prevent PIOGA from providing meaningful comments on the potential costs or burden of such proposed regulations.

For this additional reason, PIOGA respectfully requests that the Department withdraw proposed § 78a.41 in its entirety.

**Noise from Drilling, Stimulation or Servicing Activities is Temporary and Should Not Be Subject to Comprehensive Regulation**

Proposed § 78a.41 does not recognize drilling, stimulation and servicing activities as temporary activities. Instead, as noted, proposed § 78a.41 would require the operator of every well to prepare a site specific noise mitigation plan, prior to preparation or construction to minimize noise during drilling, stimulation and servicing activities regardless of noise level or complaints by nearby property owners, if there are any. Such requirement for temporary activities such as drilling, stimulation and servicing activities would clearly be inappropriate.

PIOGA requests that the Department withdraw § 78a.41 in its entirety and recognize that noise from drilling, stimulating and servicing activities is temporary and should be regulated on a complaint only basis.

In sum PIOGA believes that proposed § 78a.41 should be withdrawn because: (i) it fails to give fair notice to a person of ordinary intelligence of what it regulates so as to enable such person to plan his behavior and avoid enforcement including the extraordinary remedy of having his operations suspended; (ii) impairs PIOGA's right to comment due to its lack of specificity

and fails to recognize drilling, stimulation and servicing activities are temporary activities not warranting comprehensive noise regulation. In the event the Department disagrees with PIOGA and elects to move forward with some version of proposed § 78a.41, PIOGA submits the following additional comments in the alternative.

1. The noise provisions of § 78a.41 are proposed to apply during "drilling, stimulation, and servicing activities," so the mitigation plan timing requirement should be prior to drilling, not prior to site preparation and construction. There is no need to have it "prepared and implemented" prior to site construction. There may be a long period of time between site construction and the initiation of drilling, so the mitigation plan would serve no purpose in that interim period. Also, as proposed it's unclear what the difference is between "preparation" and "construction" of the site. If DEP insists on staying with the pre-site construction timing, at a minimum the word "preparation" should be deleted.

2. Requiring the plan to "minimize" noise is a much stricter standard than is necessary. "Minimize" suggests a requirement that noise be reduced to the lowest level possible, when in fact that is often unnecessary and unwarranted, as long as there is compliance with the applicable sections of the OSHA noise standards in 29 CFR 1910.95 for worker protection and operators adequately take into consideration nearby residents. If those parameters are being adequately addressed, then requiring additional controls (which can be at very significant expense) to further "minimize" the noise is not justified.

3. As noted, § 78a.41(b)(3) would essentially elevate unspecified "best practices" to regulatory requirements by use of the terminology "must adopt." Without knowing what best practices DEP is referring to, PIOGA is not able to properly evaluate the potential impact. Plus, as noted in the comment above, once adequate noise levels are achieved, there is no regulatory justification for requiring best practices that may further reduce those levels.

4. PIOGA requests that the language of proposed § 78a.41(c) authorizing the Department to determine the adequacy of a plan to minimize noise and suspend operator's operations be deleted from the section.

5. PIOGA requests that the regular inspections called for by proposed § 78a.41(d) be performed no more frequently than weekly and that the word comprehensive be deleted. Site inspections to evaluate the effectiveness of any noise mitigation measures as is already required should be sufficient.

6. Lastly, PIOGA requests that the word "problems" be deleted from the language of proposed § 78a.41(e). The requirement that the operator promptly address and correct deficiencies identified in the course of inspections is sufficient.

**§ 78a.51 Protection of Water Supplies**

§ 78a.51 (d)(2) has been revised to state:

(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 (35 P.S. §§ 721.1 – 721.17). **IF, PRIOR TO POLLUTION, A WATER SUPPLY WAS OF A HIGHER QUALITY THAN REQUIRED UNDER PENNSYLVANIA SAFE DRINKING WATER ACT STANDARDS, THE RESTORED OR REPLACED WATER SUPPLY SHALL MEET THE PRE-POLLUTION QUALITY OF THE WATER ~~[, or is comparable to the quality of the water supply before it was affected by the operator if that water supply [did not meet these] [exceeded those standards]~~].**

Under the 2013 Proposal, as well as the Draft Final Rule, PADEP would impose an obligation on oil and gas operators that is neither legally required under Act 13 nor practically achievable under certain circumstances in Pennsylvania.

The absurdity of a requirement to restore ALL water supplies to Safe Drinking Water Act standards or better is revealed by the definition of "water supplies" in Chapter 78, which includes "water for human consumption or use, or for agricultural, commercial, industrial or other legitimate beneficial uses." (emphasis added). Water supplies for commercial, industrial and other purposes may be impaired water, mine influenced water, or untreated water of various qualities. Act 13 recognizes the very different purposes of water supplies, and requires water to be restored "for the purposes served." The plain language of the revision, however, requires ALL water supplies impacted by oil and gas operations to be restored to DRINKING WATER standards or better. It is not only counter to Act 13, it is unreasonable, unjustified, and often unattainable. The existing language in Chapter 78 regarding the restoration standard should not be revised in any manner that would create such a result.

In addition, as a matter of statutory construction, "exceeded" as used in the § 3218(a) means worse than, than not better than, as shown by the fact that the only other place in the Act where the General Assembly used the word "exceed" or "exceeded" in a similar context is in §§ 3304(b)(7)(ii) & (8)(ii) related to exceeding noise standards. This usage clearly meant worse than those standards. Though § 3304 is now enjoined, it provides a clear example of the General Assembly's usage of the term to mean worse than. Also, 25 Pa. Code Chapter 109 (safe drinking water) consistently uses the term "exceed" to refer to water that does not meet, and is therefore worse than, the relevant standard. Given this predominant regulatory usage of the term, there is no legitimate basis for assuming the same word means the complete opposite in Act 13.

Unfortunately, the revised language in the Draft Final Rule would further impose obligations on oil and gas operators that are neither legally required nor practically feasible, and in fact, PADEP has increased the level of practical infeasibility with the revision. Requiring a restored supply to "meet" the pre-pollution quality of water that was of higher than SDWA standards prior to impact creates a standard that invites prolonged debate and increases costs

chasing a standard that is effectively meaningless in the overall quality of water. For example, if a water supply sample taken prior to drilling showed 50 ppm of some constituent, and the SDWA standard is 250 ppm, would a replaced supply of 80 ppm satisfy the rule as stated? In effect, the 80 ppm is comparable to the 50 ppm where a standard is 250 ppm and it would be unreasonable to require continue efforts to "meet" the 50 ppm pre-drill result.

**§ 78a.52 Predrilling or pre-alteration survey**

Paragraph (d) has been revised to require the submission of the survey results within 10 business days of "assignment of the API number by the department for the gas well." The timing for assignment of the API number is associated with the permit application process, and has nothing to do with the timing of the pre-drill survey activities (nor does the operator necessarily even know what day the department assigns the number). For the initial well on a pad, the pre-drill sampling will often occur long after an API number is assigned as part of the permit application process, in which case it would be impossible to comply with the proposed submission of results within 10 days of the API number being assigned. For subsequent wells on the pad, if the same pre-drill data is to be used, then the 10 business days following assignment of the API number may be acceptable, if there is an associated requirement for DEP to notify the operator when the API is assigned. At a minimum, this paragraph needs to be revised to allow for submission "within 10 business days of receipt of all the sample results taken as part of the survey" as previously proposed, in situations where the data is not available at the time of API number assignment.

**§ 78a.52a AREA OF REVIEW**

It appears that previous comments and suggestions made by PIOGA and other industry organizations have not been properly addressed with the final draft revisions of this section. Operators rely on all available data resources as well as industry practices to aid in the identification and location of abandoned and orphaned wells. The Department needs to consider a less costly or less intrusive alternative method, yet common sense approach for achieving the goal of this proposed regulation.

The abandoned/orphaned well identification process is not a straight forward and comprehensive process. The introduction of a property owner questionnaire will create problems and confusion between all stakeholders, including the Department. Many landowners will generally not give accurate answers, not answer the proposed questionnaire or allow access to their properties, especially if they do not benefit from the prospective well. In general, the obligations and cooperation from the specified landowners will likely be problematic, especially when it comes to property access and any necessary remedial action. Does the Department plan to interrupt well drilling and development if abandoned and orphaned wells are not able to be precisely located or if coordinates cannot be assigned to them, based on available data? In addition to this concern, the Department still needs to consider a comprehensive mapping tool that will be constantly maintained and updated by the Department to ensure "up-to-date" information is provided to operators in order to address abandoned/orphaned well issues. While the Department's "database" is referenced in this section, if this database is not continually updated by the Department, this will cause room for significant errors that can't be blamed on industry if proper due-diligence methods are completed.

One of the most important parts of this section that needs to be considered is the burden on the operator from the paperwork that will need to be produced. The generated questionnaire forms (and associated proof of notification) for property owners and the guidelines to be utilized for the proposed monitoring plan need to be available as part of this regulatory package for proper review. The submittal of proposed forms that are part of the proposed regulation is required in Section 5(a)(5) of the Regulatory Review Act. Accurate and complete commentary cannot be made on this section without the ability to review this information.

**(b) Identification shall be accomplished by [~~conducting~~] the following:**

PIOGA Comment: The language of this introductory phrase must be revised to indicate that the obligation to identify the location of other wells will be deemed to be satisfied by undertaking reasonable efforts as described below. There is no guarantee that "identification" will be accomplished by the following, and an operator's obligation must be limited to what reasonable efforts can be undertaken.

**(1) CONDUCTING [A] A review OF the Department's [ ~~orphaned and abandoned well~~ database] WELL DATABASES AND OTHER AVAILABLE WELL DATABASES.**

PIOGA Comment: PIOGA member operators complete this review as a standard industry practice. The lack of definition regarding "databases" is troubling and can cause confusion. It is suggested that the references to "available databases" is removed.

**(2) CONDUCTING [A] A review of HISTORICAL SOURCES OF INFORMATION. SUCH AS applicable farm line maps, where accessible.**

**(3) Submitting a questionnaire on forms provided by the Department to landowners whose property is within the area identified in subsection (a) regarding the precise location of orphaned and abandoned wells on their property.**

PIOGA Comment: As stated in the general comments, a questionnaire form has the ability to create significant issues and uncertainty with all stakeholders regarding the information gathered from this form. In addition, this form has not been submitted as part of this proposed regulatory package, which causes even further uncertainty. PIOGA objects to the use of a questionnaire in this section.

**(c) [~~Prior to hydraulically fracturing a well, the~~] THE operator shall submit a REPORT SUMMARZING THE REVIEW, INCLUDING:**

**(1) A plat [~~to the Department~~] showing the location and GPS coordinates of ALL [~~orphaned and abandoned~~] wells identified under subsection (b).**

**(2) [~~and proof~~] PROOF [~~of notification~~] that the operator[s] submitted questionnaires under subsection (b)(3)**

PIOGA Comment: As stated above, PIOGA objects to the use of questionnaires.

**(3) A MONITORING PLAN FOR WELLS REQUIRED TO BE MONITORED UNDER SECTION 78a.73(c) (RELATING TO GENERAL PROVISION FOR WELL CONSTRUCTION AND OPERATION), INCLUDING THE METHODS THE OPERATOR WILL EMPLOY TO MONITOR THESE WELLS.**

PIOGA Comment: As stated in the general comments, the Department has not provided any guidance regarding the monitoring plan and what should be contained in such a plan. The methodology and language spelled out in § 78a.73(c) would be sufficient enough action to fulfill the requirement, while not providing additional paperwork burden to the operator.

**(4) TO THE EXTENT THAT INFORMATION IS AVAILABLE, THE TRUE VERTICAL DEPTH OF IDENTIFIED WELLS.**

PIOGA Comment: This can be a significant issue with wells that are identified, yet not accessible due to landowner access restrictions.

**(5) THE SOURCE OF THE INFORMATION PROVIDED FOR IDENTIFIED WELLS.**

**(6) TO THE EXTENT THAT INFORMATION IS AVAILABLE, SURFACE EVIDENCE OF FAILED WELL INTEGRITY FOR ANY IDENTIFIED WELL.**

PIOGA Comment: Once again, this can be an issue given potential for landowner access restrictions. In addition, § 78a.73(c) adequately addresses the necessary requirements.

**(d) THE OPERATOR SHALL SUBMIT THE REPORT REQUIRED BY SUBSECTION (c) TO THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO COMMENCEMENT OF DRILLING THE WELL OR AT THE TIME THE PERMIT APPLICATION IS SUBMITTED IF THE OPERATOR PLANS TO COMMENCE DRILLING THE WELL LESS THAN 30 DAYS FROM THE DATE OF PERMIT ISSUANCE. THE REPORT SHALL BE PROVIDED TO THE DEPARTMENT ELECTRONICALLY THROUGH THE DEPARTMENT' S WEB SITE . IN CASES WHERE A WELL INITIALLY PRODUCED NATURALLY IS STIMULATED AT A LATER DATE, THE OPERATOR SHALL SUBMIT THE REPORT REQUIRED BY SUBSECTION (c) TO THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO COMMENCEMENT OF HYDRAULIC FRACTURING.**

PIOGA Comment: There is concern that if a report is submitted 30 days or more prior to drilling, but after the permit is issued, the results disclosed in the report could potentially void or alter the drilling permit. This intention was reported by the Department. However, PIOGA would like to see a compromise here between the Department and the operator to resolve these

issues and ensure drilling schedules are maintained. In addition, if this report is anticipated to be in an electronic form, the Department is obligated to provide this draft form as part of this review process.

**PIOGA Suggested Language:**

**§ 78a.52a. Area of Review.**

**(a) The operator shall identify in accordance with subsection (b) the surface locations of active, inactive, orphaned and abandoned wells within 1,000 feet measured horizontally from the vertical well bore and 1,000 feet measured from the surface above the entire length of a horizontal well bore.**

**(b) Identification shall be deemed to have been satisfied by conducting the following:**

**(1) A review the Department's active, inactive, orphaned and abandoned well database;**
**(2) A review of applicable farm line maps and well databases, where accessible.**

**(c) Prior to the drilling of a well, the operator shall submit a plat to the Department showing the location and if possible, the GPS coordinates of wells identified pursuant to subsection (b), whose total depth is known to be less than 1,500 feet above the shallowest vertical depth to be stimulated by hydraulic fracturing. The operator may identify on the plat those wells that are identified in the Department's database, but field verification of the identified well has not been confirmed utilizing reasonable investigatory efforts.**

**§ 78a.53 E&S and STORMWATER**

PADEP would revise this section to list numerous manuals that may provide best management practices for erosion and sediment control and stormwater management. There is no need, however, to list or refer to manuals in the regulation, which already provides a reference to the mandatory obligations in Chapter 102 with which anyone conducting earth disturbance activities must comply. The first sentence thus provides all of the instruction necessary for this subsection; the second sentence is not only unnecessary but also creates the very real risk that PADEP staff in regional offices will require rigid adherence to manuals that do not have the same legal authority as the regulations themselves. Operators and Department staff are well aware that manuals exist and may be useful. Elevating manuals to the status of regulations is legally improper and potentially limits the best practices that may be developed outside of the manuals and utilized with better efficiency and results. The second sentence should be deleted or qualified with an express statement that manuals do not create legally binding obligations.

**§ 78a.55 Control and disposal planning**

PIOGA reiterates its prior comment on this section, which were not reflected in the Draft Final Rule. The use of the term "regulated substance" is inaccurate and misleading in this and other sections of the Draft Final Rule. And the rule should not impose obligations to provide

PPC plans to agencies or landowners who have no authority to review PPC plans. Members of the public can access DEP files according to open records laws.

In addition, the revision in the Draft Final Rule that would require emergency response plans to include the location and monitoring of emergency shut off valves located along "temporary pipelines" cross references Section 78a.68b, which has been revised to remove all references to "temporary pipelines." PIOGA reiterates its prior comment here that these sections for pipelines are beyond the scope of Chapter 78, are unnecessary and should be stricken from rule.

**§7 8a.56 – Temporary Storage**

**(a) (8) The operator [~~of an unconventional well site~~] shall display a sign ~~on or near~~ the tank or other approved storage structure identifying the contents and an appropriate warning of the contents such as flammable, corrosive or a similar warning.**

PIOGA Comment: The "or near" option for the signs should be reinserted, as in the original proposal. DEP has provide no justification for removing that option, and as along as the sign is clearly associated with the tank or other structure that it applies to, there is no reason a sign near the tank would not suffice. Requiring that the sign be physically "on" the tank or storage structure may unnecessarily limit the options for the sign construction materials, require less durable signs, or increase the likelihood of loss of the sign depending on the method of attachment.

**(c) Disposal of uncontaminated drill cuttings in a pit or by land application shall comply with § 78a.61. [A pit used for the disposal of residual waste, including contaminated drill cuttings, shall comply with § 78.62. Disposal of residual waste, including contaminated drill cuttings, by land application shall comply with § 78.63.]**

PIOGA Comment: This paragraph (c) dealing with disposal of drill cuttings is not necessary here in the § 78a.56 "Temporary Storage" section since it has nothing to do with temporary storage, and it duplicative of the requirements already contained in § 78a.61, and so should be deleted

**(d) [requiring closure of pits for temporary containment]**

PIOGA Comment: PIOGA objects to the closure within six months of existing pits that temporarily store flowback, especially where the Draft Final Rule would require closure of centralized impoundments and add new obligations for the use of pipelines, tanks or other facilities for the storage of substances generated by and necessary for oil and gas operations. The Draft Final Rule should not apply retroactively to existing operations without express legislative direction or compelling justification. Existing pits on well sites were built in accordance with applicable law, and will be closed and restored according to existing law. Chapter 78a should not impose unnecessary burdens on this industry.

PIOGA also supports the MSC's comment and recommendations to allow temporary storage on any well site. This option must be made available because the Draft Final Rule would create new and excessive restrictions on pits, pipelines, impoundments, and tanks, all of which will have the net effect of forcing additional trucks onto local roads and the disposal of fluids that could be recycled or reused.

**§ 78a.57 (i) Control, storage and disposal of production fluids**

This new section in the Draft Final Rule would impose a monthly inspection obligation on oil and gas operators that would be documented on new forms, along with a requirement to provide notice to the Department of any "deficiencies" identified. The form offered by the Department is utilized under the tank program, from which oil and gas brine tanks are exempt. The Department should not use Chapter 78 to remove exemptions that exist elsewhere in the law, and should not create new inspection, record keeping and notification requirements that are not justified by compelling need. Operators are already required to report and remediate leaks and spills of materials under existing law. Monthly inspections of the thousands of tanks would impose excessive cost and burden without any clear environmental benefit.

The new subsection (h) should be deleted.

**§ 78a.57 Centralized Tank Storage**

DEP will not encourage the reuse and recycling of extraction wastewater through this proposal because of the excessively onerous provisions in the lengthy and complicated subsection. Because the Draft Final Rule would impose significantly more stringent requirements than those currently affecting centralized tank facilities associated with wastewater, it will likely act as a disincentive to reuse and recycling.

Because of their relatively benign character, tanks that are used to store brines, crude oil, drilling or frac fluids and similar substances directly related to the exploration, development or production of oil or gas are exempted from the Storage Tank Act. *See* 35 P.S. § 6021.102. Additionally, a facility employed for the disposal, storage or processing of residual waste that is generated by drilling or production of an oil or gas well, and is located on the well site, is exempted from the residual waste regulations in Chapter 287.

It is clear that the Legislature and EQB exempted tanks that hold oil and gas extraction waste from more stringent statutory and regulatory requirements in the past because extraction waste is not as harmful as other types of industrial wastes. It is unclear why PADEP would propose regulations contrary to this legislative direction and create obligations that are in some instances more stringent than the regulations found in Chapters 245 and 287. As proposed, the ANFR provisions will likely be irrelevant to current recycling and reuse operations and lead to increased disposal rather than reuse. And the Draft Final Rule fails to enhance the flexibility of short-term operations, because it contains provisions that are as stringent, or more stringent, than the regulations applied to permanent industrial waste facilities.

The requirement to use "forms provided by the Department" should be deleted because DEP has not provided a copy of this form at the same time that they proposed the regulation, as required by Section 5(a)(5) of the Regulatory Review Act, so we are unable to review any inspection requirements that may be contained in this form and therefore unable to comment appropriately.

There should be no need to report every possible deficiency noted during an inspection to DEP. It should be sufficient to ensure that the deficiency is documented and remedied, and that DEP has access to those inspection records upon request. If DEP insists on a reporting aspect with regard to these inspections, it should be limited to deficiencies that meet some threshold of significance, such as deficiencies that "compromise the integrity of the tank" such that it may fail prior to the next inspection if not repaired, similar to the concept used on § 78a.88(d) and associated DEP guidance for corrosion on wells.

The proposed requirement to remedy every deficiency "prior to continued use of the tank" is unworkable. These monthly tank inspections will typically occur while the tank is in use and brine or other fluids are being actively stored in it. In those situations, any requirement to repair a deficiency prior to continued use would require that the tank be immediately emptied, which is often operationally and logistically impossible, and generally unnecessary.

Comments on Specific Subsections

- Subsections 78a.57a(d)-(e) contain bonding and insurance requirements that are not required for aboveground storage tanks in Chapter 245.
- The setback requirements in § 78a.57(f) are similar to those for municipal waste landfills, residual waste landfills, and waste tire facilities and are significantly more stringent that the setback regulations for aboveground and underground storage tank facilities in Chapter 245. Additionally, several of the setback requirements for municipal waste landfills, residual waste landfills, and waste tire facilities contain written waiver provisions, but no such written waiver allowances are provided in the Draft Final Rule.
- The permeability standard in § 78a.57a(i)(11) is orders of magnitude more stringent than the permeability standard for aboveground storage tanks in Chapter 245. There is no indication as to how PADEP calculated the ANFR permeability requirement.
- The closure requirements in § 78a.57a(n) mimic those for residual waste landfills, municipal waste landfill, and construction/demolition waste landfills. The ANFR's use of landfill closure requirements as a basis for centralized storage tank facility closure requirements presumes that the area is contaminated and will require monitoring and reporting.
- Some of the proposed subsections are similar to those storage tank requirements in Chapter 245 related to reportable releases, which appears to presume that spills to soil or waters of the Commonwealth will occur. Spills are handled under existing law and there is no need to impose such burdens on a new and temporary facility.

**§ 78a.58 – Onsite Processing**

The Department should encourage the processing, recycling and beneficial reuse of fluids and waste at well sites. The natural gas industry has been recycling and/or reusing water and minimizing fresh water use for quite some time now, and unfortunately the Draft Final Rule did not incorporate or address PIOGA's prior comments and the revisions will in fact force operators to rethink its recycling versus disposal options. In order to increase the amount of water being reused and recycled in the Commonwealth, the regulations need to provide an avenue for the operator to document, move, or reuse water from one site to another. Adding references in § 78a.58(f) and (h) regarding compliance with the Solid Waste Management Act and Chapter 287 do not enhance or enable environmentally beneficial solutions and more likely deter operators from recycling and reuse of water.

As noted in prior comments, the proposed definition "mine influenced water" could potentially include an entire surface water body that would otherwise be considered a freshwater source. Either the definition of "mine influenced water" must be changed in § 78a.1 or the term "mine influenced water" should be deleted from this section.

**§ 78a.59b – Freshwater Impoundments**

PIOGA reiterates its prior comment that any new rule for freshwater impoundments specifically targeting oil and gas operations is inappropriate and should be deleted from Chapter 78a. In addition, the requirement to certify that impoundments constructed prior to the effective date of the rule were constructed according to these new standards which were not required at the time of the construction is inappropriate and should be deleted. It also conflicts with paragraph (a) that says that this section applies to "any new freshwater impoundment." Finally, no fence can absolutely ensure "prevention" of unauthorized acts of third parties or damage caused by wildlife.

**§ 78a.59c – Centralized Impoundments**

PIOGA objects to a prohibition against the use of pits and impoundments for temporary storage unless or until DEP provides practical storage alternatives that will encourage the reuse and recycling of flowback and produced water. The centralized storage tank proposal in § 78a.57a above does not provide such an alternative and will not be likely to be used by industry. PIOGA and its members would be happy to engage in detailed discussions about operational realities and technical details that must form the basis for such a regulatory option.

**§ 78a.60 – 78a.63 Discharge and Disposal**

The Department proposes to use the term "regulated substances" throughout these sections, which is overly broad and lacking in clarity necessary for regulatory guidance to the agency and the regulated community. "Regulated substances" as defined would include sediment or other natural constituents of tophole water or soil, which would effectively prohibit

the discharge of tophole water and the disposal of uncontaminated drill cuttings, entirely defeating the purposes of subsections § 78a.60 and § 78a.61. The term should be removed from § 78a.60 (b)(1), § 78a.61 (a)(2), § 78a.61 (b)(2), and elsewhere in these sections to avoid absurd results and unintended consequences.

The Department has also added a new prohibition to the discharge of tophole water or disposal of drill cuttings "within the floodplain," which lacks both clarity and justification. Under Section 3215(f) of Act 13, well sites may be located within floodplains. Without a Comment/Response Document explaining why the Department is suggesting this blanket prohibition on certain disposal practices, PGCC cannot provide an informed comment on the proposal. Without compelling justification, however, the prohibition should be deleted.

Finally, DEP is an agency tasked only with the enforcement of environmental laws and regulations, and should not require or dictate landowner/operator communications beyond any provisions expressly provided in Act 13 or other enabling statutes.

**§ 78a.64 Containment around oil and condensate tanks**

At the federal level (SPCC 40 CFR 112), these containment systems are also called "secondary containment" since the primary containment is the container itself. Sections of Chapter 78 refer to "secondary containment"[§ 78a.57 (c), § 78a.57(i)(10,11,16)], "containment" [§ 78a.57 (c)] and "emergency containment" [§ 78a.57(i)(12,13,14,15) instead of "containment system". The term should be standardized in the regulation. Also adding to the confusion is that aboveground storage, which is primary containment, is also referred to as "containment" [§ 78a.78(i)(8,9)] and "containment structures" [§ 78a.57 (c)]

**PIOGA's suggested language:**

***Primary Containment*— A tank, vessel, pipe, truck, rail car, or other equipment designed to keep a material within it, typically for purposes of storage, separation, processing or transfer of gases or liquids.**

***Secondary Containment*—A ~~impermeable~~ physical barrier specifically designed to prevent release into the environment of materials that have breached primary containment. Secondary containment systems may include, but are not limited to, synthetic liners, coatings, dikes, curbing around process equipment, drainage collection systems into segregated oil drain systems, the outer wall of double walled tanks, etc.**

**§ 78a.64. *Secondary* containment around oil and condensate tanks.**

**(a) If an owner or operator uses tanks with a combined capacity of at least 1,320 gallons to contain oil or condensate produced from a well, the owner or operator shall construct and maintain a dike or other method of secondary containment which satisfies the requirements under 40 CFR 112 (relating to oil pollution prevention) around the tank or tanks which will prevent the tank contents from entering waters of this Commonwealth.**

**(b) The *secondary* containment provided by the dikes or other method of secondary containment shall have containment capacity sufficient to hold the volume of the largest single tank, plus a reasonable allowance for precipitation based on local weather conditions and facility operation.**

**(c) Prior to drainage of accumulated precipitation from *secondary* containment, the *secondary* containment area shall be inspected and accumulations of oil picked up and returned to the tank or disposed of in accordance with approved methods.**

**(d) After complying with subsection (c), drainage of *secondary* containment is acceptable if:**

**(1) The accumulation in the *secondary* containment consists of only precipitation directly to the *secondary* containment and drainage will not cause a harmful discharge or result in a petroleum sheen.**

**(2) The *secondary* containment drain valve is opened and resealed, or other drainage procedure, as applicable, is conducted under responsible supervision.**

**§ 78a.64a Containment systems and practices at well sites**

Please the revisions and comments related to the terms "primary" and "secondary" containment above.

In addition, DEP has not demonstrated the need, nor provided justification, for requiring a 1 x 10-10 cm/sec permeability standard, which is far more stringent than is required to prevent spill materials from leaving the well site. A "sufficiently impervious" standard is similar to and consistent with the containment standard for oil and condensate tanks at § 78a.64(a), which simply requires that the containment "prevent the tank contents from entering waters of the Commonwealth."

DEP has provided no justification or rationale for prohibiting subsurface secondary containment at this ANFR stage. As long as subsurface secondary containment meets the criteria that follow, it is more than adequate to prevent spills from leaving the well site or contacting the ground surface. This new ANFR prohibition should be deleted since DEP has not provided any explanation as to why such subsurface secondary containment is inadequate,

The requirement to remove stormwater from containment areas "as soon as possible" is more stringent than is necessary. The wording "as soon as possible" should be deleted, which would still require the stormwater to be removed "prior to the capacity of secondary containment being reduced by 10% or more."

**§ 78a.65 Site Restoration**

The Draft Final Rule has completely revised the 2013 Proposal for Site Restoration. PIOGA appreciates that the Department now recognizes that there are two restoration periods

(one that is post-drilling and one that is post-plugging) and that site restoration is entirely guided by an approved site restoration plan contained within E&S plans required under Chapter 102, which are necessarily site specific rather than defined regulation.

As an initial comment, post-drilling restoration should occur within 9 months of completion of a well, not within 9 months of drilling a well, because there is an interval between the two activities that requires accommodation, and well sites cannot be restored until wells are both drilled and completed.

Section 78a.65 (a)(1)(iv) of the Draft Final Rule far exceeds the scope of authority under Act 13 or Clean Streams Law because it intrudes upon decisions that are necessarily those of the operators and owners of the sites, decisions driven by operational needs, contractual agreements with land owners, and Pennsylvania property law. The Department has neither the authority nor the knowledge necessary to tell operators what "areas are necessary to safely operate a well." The Department does not presume to impose such restrictions on other commercial or industrial activities and it is entirely unjustified for it to do so for well sites. The listing of such areas may or may not be helpful to industry or DEP staff, but it is inappropriate to require restoration of any area that the Department has simply predetermined to be unnecessary.

Sections 78a.65 (a)(2) (Post Plugging), 78a.65 (b)(Restoration Plan), or any other section that expressly or impliedly creates an obligation to comply with Chapter 102.8(g), would impose excessive and improper obligations on operators with small well pads, and even smaller restoration footprints, to design and install post construction stormwater BMPs. Such a requirement will impose design and construction costs well beyond any environmental benefit, and would intrude upon landowner rights to utilize the post drilling and post plugging areas to their fullest potential.

Clean Streams Law and Chapter 102 clearly provide an exemption for small earth disturbances, such as oil and gas operations, that would be eliminated under the Draft Final Rule with no justification. Any obligation to comply with 102.8(g) for operations should be deleted from the final rule. Constructing long term PCSM BMPS on such sites would cause far more environmental harm than the current practice and law.

In addition, PIOGA objects to any requirement to return land to "approximate original conditions" unless such a commitment has been made in the approved site restoration plans or private agreements with landowners. No such obligation is created under any relevant statute and is without environmental justification.

**§ 78a.66 Spills and Releases**

In September 2013, PADEP finalized a policy addressing spills on oil and gas well sites, including access roads. That document created a policy unique to the oil and gas industry, but could not impose new binding obligations beyond existing statutes and regulations. The policy includes references to mandatory provisions outside the policy, and provides recommendations for reporting and remediation steps that would help operators "clearly protect themselves" from potential liability. See PADEP's Comment and Response Document, September 2013, pp. 6, 9,

10, and 11.[3] The stated purpose of the policy is to increase uniformity of handling spills on oil and gas well sites.

Relevant and applicable law, outside the policy, includes the Pennsylvania Clean Streams Law, 25 Pa. Code Chapter 91.33, 25 Pa. Code 78.66, and Pennsylvania's Land Recycling and Reclamation Act, Act 2. Pennsylvania Clean Streams Law, Act 2, and the reporting obligations under Section 91.33 fully provide for the reporting and cleanup of typical accidental spills that occur on oil and gas well sites, which may include brine or oil spills. Under the existing provisions of section 78.66, oil and gas operators are further required to report releases of brine, depending on the quantity spilled and the total dissolved solids in the brine. This provision addresses what may be unique to oil and gas operations, namely brine spills.

PIOGA is unaware of any need to revise Section 78.66 and strongly recommends that no revisions be made to this section of the rule for oil and gas operations. Neither brine nor oil typically presents a hazardous situation or significant threat to the environment or public health or safety in the course of typical oil and gas operations that would justify revision. If oil and gas operations present remediation challenges under existing law, PADEP should work to address those concerns with its existing authority and its vast arsenal of enforcement tools. PIOGA is unaware of any spills on oil and gas operations that cannot be addressed under current law.

The Draft Final § 78a.66 would increase the reporting and cleanup obligations beyond the 2013 Proposal, through the elimination of the alternate method for spill cleanups that was developed under the 2013 Spill Policy. The Draft Final Rule would not only require full compliance with Act 2 for all spills, but would require operators to demonstrate Act 2 attainment through specific procedures with restrictive deadlines that are not found in Act 2. These additional requirements are virtually identical to the procedural requirements under the Storage Tank and Spill Prevention Act ("Tank Act"), from which oil and gas operations are generally exempt. By imposing Tank Act remediation procedures on spills of brines and oil, the proposed § 78a.66 effectively eliminates the legislature's distinction between tanks used for oil and gas operations, and regulated tanks storing gasoline or hazardous substances.

The Draft Final Rule would significantly broaden reporting obligations, and require greater documentation, increased sampling, and more stringent restoration standards than are necessary or appropriate for operations. These additional requirements would substantially increase the time and costs of addressing small spills on well sites, with little meaningful environmental benefit. Existing law provides standards for cleanups and enforcement authority where needed to protect public health, safety and the environment. Brine and oil accidental spills, which have occurred in the past and will occur in the future, can be and should continue to be addressed under existing law and policy.

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[3] Addressing spills and releases at oil & gas well sites or access roads (800-5000-001) Final technical guidance document; Comment and response document. Available at http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-96768/Final%20Spill%20Policy%20Comment%20%20Response%20%282013-09-18%29.pdf

The Department has created submittal timeframes for oil/gas operators within this section that are not found in any current part of the Act 2 program. This certainly holds the oil/gas industry to a higher standard than all other industries, which utilize the Act 2 program. Existing policy and guidance fully addresses spills by this industry or any other and if consistency is still needed, revision of the policy, not the regulation, is the appropriate avenue. It is expected that as part of this program, additional electronic forms and notifications will be created that also adds to the burden of the operator. These additional forms should be made available to the stakeholders as part of the regulatory review process.

See below for specific comment on subsections of the Draft Final Rule:

§ 78a.66. Reporting **and remediating SPILLS AND** releases.

**(a) *Scope.* This section applies to reporting and remediating spills or releases of regulated substances on or adjacent to well sites and access roads.**

**(b) *Reporting releases.***

**(1) An operator or OTHER responsible party shall report the following spills and releases of regulated substances to the Department in accordance with paragraph (2):**

**(i) A spill or release of a regulated substance causing or threatening pollution of the waters of this Commonwealth, IN THE MANNER REQUIRED BY § 91.33 (RELATING TO INCIDENTS CAUSING OR THREATENING POLLUTION).**

**(ii) A spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by a containment system.**

PIOGA Comment: A 5 gallon release for reporting a release is an extremely stringent standard and is considered burdensome to the operator. PIOGA suggests utilizing 42 gallons as the benchmark for reporting a release to the Department.

**(2) In addition to MEETING the notification requirements of § 91.33 (relating to incidents causing or threatening pollution), the operator or OTHER responsible party shall contact the appropriate regional Department office by telephone or call the Department's Statewide toll free number ~~[at (800) 541-2050]~~ as soon as practicable, but no later than 2 hours after discovering the spill or release. To the extent known, the following information shall be provided:**

**(i) The name of the person reporting the ~~[incident]~~ SPILL OR RELEASE and telephone number where that person can be reached.**

**(ii) The name, address and telephone number of the OPERATOR OR OTHER responsible party.**

**(iii) The date and time of the [~~incident~~] SPILL OR RELEASE or when it was discovered.**

**(iv) The location of the [~~incident~~] SPILL OR RELEASE, including directions to the site, GPS coordinates or the 911 address, if available.**

**(v) A brief description of the nature of the [~~incident~~] SPILL OR RELEASE and its cause, what potential impacts to public health and safety or the environment may exist, including any available information concerning the [~~contamination~~] POLLUTION OR THREATENED POLLUTION of surface water, groundwater or soil.**

**(vi) The estimated weight or volume of each regulated substance spilled or released.**

**(vii) The nature of any injuries.**

PIOGA Comment: PIOGA does not understand why there needs to be a listing of potential injuries in this section.

**(viii) Remedial actions planned, initiated or completed.**

**(3) [~~Upon the occurrence of any spill or release, the~~] THE operator or OTHER responsible party shall take necessary corrective actions to prevent:**

**(i) The regulated substance from [~~reaching~~] POLLUTING OR THREATENING TO POLLUTE the waters of the Commonwealth.**

**(ii) Damage to property.**

PIOGA Comment: PIOGA does not understand the reasoning behind the need to list damages to property.

**(iii) Impacts to downstream users of waters of the Commonwealth.**

**(4) THE OPERATOR OR OTHER RESPONSIBLE PARTY SHALL IDENTIFY AND SAMPLE WATER SUPPLIES THAT HAVE BEEN POLLUTED OR FOR WHICH THERE IS A POTENTIAL FOR POLLUTION IN A REASONABLE AND SYSTEMATIC MANNER. THE OPERATOR OR OTHER RESPONSIBLE PARTY SHALL RESTORE OR REPLACE A POLLUTED WATER SUPPLY IN ACCORDANCE WITH § 78a.51 (RELATING TO PROTECTION OF WATER SUPPLIES). THE OPERATOR OR OTHER RESPONSIBLE PARTY SHALL PROVIDE A COPY OF THE SAMPLE RESULTS TO THE WATER SUPPLY OWNER AND THE DEPARTMENT WITHIN 5 DAYS OF RECEIPT OF THE SAMPLE RESULTS FROM THE LABORATORY.**

PIOGA Comment: PIOGA is concerned about the use of § 78a.51 in accordance with this section. Once again, the water supply should be restored to baseline water quality established prior to oil/gas activities.

**[~~(4)~~] (5) The Department may immediately approve temporary emergency storage or transportation methods necessary to prevent or mitigate harm to the public health, safety or the environment. Storage may be at the site of the incident or at a site approved by the Department.**

PIOGA Comment: PIOGA members have concern regarding the use of this language and potential additional permitting requirements. As read, this section can be interpreted that additional permitting requirements may be necessary for a site to become a waste transfer facility, when the operator is looking for a simple waste staging location to aid in the remedial process. The Department is defeating the purpose of effectively addressing a spill or release issue in a timely manner by adding this section to the proposed rulemaking.

**[~~(5)~~] (6) After responding to a spill or release, the operator OR OTHER RESPONSIBLE PARTY shall decontaminate equipment used to handle the regulated substance, including storage containers, processing equipment, trucks and loaders, before returning the equipment to service. Contaminated wash water, waste solutions and residues generated from washing or decontaminating equipment shall be managed as residual waste.**

**(c) *Remediating releases.* Remediation of an area [~~affected~~] POLLUTED by a spill or release is required. The operator or OTHER responsible party shall remediate a release in accordance with [~~one of~~] the following:**

**(1) Spills or releases to the ground of less than 42 gallons at a well site that do not [~~impact or~~] POLLUTE OR threaten to pollute [~~of~~] waters of the Commonwealth may be remediated by removing the soil visibly impacted by the SPILL OR release and properly managing the impacted soil in accordance with the Department's waste management regulations. The operator or responsible party shall notify the Department of its intent to remediate a spill or release in accordance with this paragraph at the time the report of the spill or release is made. [~~Completion of the cleanup should be documented through the process outlined in § 250.707(b)(1)(iii)(B) (relating to statistical tests).~~]**

**(2) For spills or releases to the ground of more than 42 gallons or that [~~impact~~] POLLUTE or threaten [~~pollution of~~] TO POLLUTE waters of the Commonwealth, the operator or OTHER responsible person MUST [~~may satisfy the requirements of this subsection by demonstrating~~] DEMONSTRATE attainment of one or more of the standards established by Act 2 and Chapter 250 (relating to administration of land recycling program) IN THE FOLLOWING MANNER:**

PIOGA Comment: With this regulatory language, the operator will enter the voluntary Act 2 Program, which is an unprecedented requirement being made by the Department. The oil/gas operators are being discriminated against, as no other industry follows this regulatory outline. What is the Department's reasoning for requiring operators to enter the Act 2 program in this instance?

~~[(3) For releases of more than 42 gallons or that impact or threaten pollution waters of the Commonwealth, as an alternative to paragraph (2), the responsible party may remediate a spill or release using the Act 2 background or Statewide health standard in the following manner:]~~

**(i) Within 15 business days of the spill or release, the operator or OTHER responsible party shall provide an initial written report that includes, to the extent that the information is available, the following:**

**(A) The regulated substance involved.**

**(B) The location where the spill or release occurred.**

**(C) The environmental media affected.**

**(D) [~~Impacts to~~] POLLUTION OR THREATENED POLLUTION OF water supplies.**

**(E) IMPACTS TO buildings or utilities.**

**[~~(E)~~] (F) Interim remedial actions planned, initiated or completed.**

**(ii) The initial report must also include a summary of the actions the operator or OTHER responsible party intends to take at the site to address the spill or release such as a schedule for site characterization, to the extent known, and the anticipated timeframes within which it expects to take those actions. After the initial report, any new POLLUTION OR OTHER impacts identified or discovered during interim remedial actions or site characterization shall also be reported in writing to the Department within 15 [~~calendar~~] BUSINESS days of their discovery.**

**(iii) Within 180 calendar days of the spill or release, the operator or OTHER responsible party shall perform a site characterization to determine the extent and magnitude of the [~~contamination~~] POLLUTION and submit a site characterization report to the appropriate Department regional office describing the findings. THE TIME TO SUBMIT THE SITE CHARACTERIZATION REPORT MAY BE EXTENDED BY THE DEPARTMENT.**
**The report must include a description of any interim remedial actions taken. [~~For a background standard remediation, the site characterization must contain information required under § 250.204(b)□□□(c) (relating to final report). For a Statewide health standard remediation, the site characterization must contain information required under~~**

~~§ 250.312(a) (relating to final report).]~~

PIOGA Comment: The Act 2 program and Chapter 250 currently have no provision that require the completion of site characterization. Once again, the oil/gas industry is being required to follow regulations that is required of no other industry. What is the Department's reasoning behind establishing these deadlines?

**(iv) [~~This~~] THE report UNDER PARAGRAPH (iii) may BE CONSIDERED TO be a final remedial action report if the interim remedial actions meet[s] all of the requirements of an Act 2 [~~background or Statewide health standard~~] remediation. [~~or combination thereof.~~] [~~Remediation conducted under this section may not be required to meet the notice and review provisions of these standards except as described in this section.~~]**

**(v) If the site characterization indicates that the interim remedial actions taken did not adequately remediate the SPILL OR release, the operator or OTHER responsible party shall develop and submit a remedial action plan to the appropriate Department regional office for approval. The plan is due within 45 calendar days of submission of the site characterization to the Department. Remedial action plans should contain the elements outlined in § 245.311(a) (relating to remedial action plan).**

PIOGA Comment: The Act 2 program and Chapter 250 currently have no provisions that a Remedial Action Plan is submitted to the Department within 45 days of a site characterization report. Once again, why is the Department singling out the oil/gas industry with this regulation and their own timeframes and deadlines? The Department fails to recognize that within the Act 2 program, a remediator can submit a Notice of Intent to Remediate (NIR) to officially enter the program and the next report submittal to the Department could be the Final Report. By creating many unnecessary steps and going through the Act 2 process, the Department is losing sight that the most important item is to thoroughly and effectively remediate a release or spill in a timely manner. The existing spill policy process allows for the effective completion of remedial activities. The outlined Act 2 process brings forth a very lengthy process.

**(VI) A REMEDIAL ACTION PROGRESS REPORT SHALL BE SUBMITTED TO THE DEPARTMENT THREE MONTHS FOLLOWING THE DATE OF REMEDIAL ACTION PLAN IMPLEMENTATION.**

PIOGA Comment: There is no Act 2 or Chapter 250 provision that requires the submittal of a quarterly remedial action progress report. Once again, the Department is making the process cumbersome and has outlined additional requirements for oil/gas operators that no other industry is required to follow.

**(vi) [~~Once~~] AFTER the remedial action plan is FULLY implemented, the OPERATOR OR OTHER responsible party shall submit a final report to the appropriate Department regional office for approval. [ ~~The Department will review the final report to ensure that the remediation has met all the requirements of [the background or Statewide health~~**

~~standard, or combination thereof, except the notice and review provisions. Relief from liability will not be available to the responsible party, property owner or person participating in the cleanup.]~~

~~[(vii) An operator or responsible party remediating a release under this paragraph may elect to utilize Act 2 at any time.]~~

**§ 78a.67 Borrow Pits**

The Department has added some new language to comport with Section 3273.1 of Act 13, which provides an exemption from all obligations under the Noncoal Surface Mining Conservation and Reclamation Act or regulations under that statute, where a borrow area is used solely for the purpose of oil and gas well development. The Department has added, however, a requirement that areas subject to this exemption comply with standards in Chapter 77, adopted pursuant to the Noncoal SMCRA. This is contrary to the exemption provided in Act 13 for ALL obligations under the Noncoal SMCRA, not just for Noncoal SMCRA permitting requirements.

In the Draft Final Rule, DEP has also added the requirement that such areas be "included in any permit required under Chapter 102." The meaning and purpose of this statement is unclear. The exemption in Act 13 states that the obligations for borrow areas are satisfied when the well is permitted and the owner or operator of the well meets its bonding obligations. There is no reference to additional permits under Chapter 102 needed to satisfy the exemption. If the Department means that borrow pits are not exempt from the Pennsylvania Clean Streams Law or that permits under Chapter 102 may be needed for certain borrow areas, the language must be revised to state its intent more clearly.

**§ 78a.68b WELL DEVELOPMENT pipelines for oil and gas operations**

PIOGA notes that the Department has replaced the term "temporary" with the term "well development," while retaining the definition that refers to the transport of materials for the drilling and/or stimulation of wells, and the residual waste generated by such activities. PIOGA reiterates its prior comment here that such pipelines are already regulated under Chapters 102 and 105 as appropriate and should not be subject to duplicative and/or unnecessary regulation under Chapter 78. Daily inspections of such pipelines, especially those transporting fresh water, are unnecessary.

**§ 78a.69. Water management plans.**

With this new proposed regulatory package, there continues to be a lack of clarity on several issues regarding monitoring requirements, submittals and guidelines for plans. If these expectations were more sufficiently outlined in the regulation package with use of technical guidance, PIOGA believes that many of the issues would be clarified to operators and to Department representatives to ensure consistency and understanding of this regulatory section. The Department should further explain many of the requested details to lessen the interpretative burden between the operator and regulatory representatives

**(6) AN OPERATIONS PLAN THAT INCLUDES AN INTAKE DESIGN, A FLOW SCHEMATIC SHOWING HOW WATER IS TO BE WITHDRAWN, A SITE LAYOUT AND A FOOTPRINT FOR EACH SURFACE WATER WITHDRAWAL.**

PIOGA Comment: The Department should provide technical guidance illustrating the details that are required as part of the referenced operations plan. This guidance should be shared as part of this regulatory review.

**(8) A REUSE PLAN FOR FLUIDS THAT WILL BE USED TO HYDRAULICALLY FRACTURE WELLS. A WASTEWATER SOURCE REDUCTION STRATEGY IN COMPLIANCE WITH § 95.10(b) (RELATING TO TREATMENT REQUIREMENTS FOR NEW AND EXPANDING MASS LOADINGS OF TOTAL DISSOLVED SOLIDS (TDS)) WILL SATISFY THE REUSE PLAN REQUIREMENT.**

PIOGA Comment: The Department should provide technical guidance illustrating the details that are required as part of the referenced reuse plan. This guidance should be shared as part of this regulatory review.

**(2) MEASURE WATER WITHDRAWALS AND PURCHASES USING CONTINUOUS-RECORDING DEVICES OR FLOW METERS. WATER SOURCES HAVING PASSBY FLOW CONDITIONS SHALL CONDUCT INSTREAM FLOW MONITORING AND MEASURING USING METHODS ACCEPTABLE TO THE DEPARTMENT THAT DO NOT CAUSE UNDUE BURDEN TO THE OPERATOR.**

PIOGA Comment: The Department has been continually vague with this and existing language regarding instream flow monitoring and establishing passby requirements. It is suggested that simple, brief technical guidance is established here for operators to understand acceptable techniques and for Department representatives to have clarity and consistency to this section of the regulation.

**(3) SUBMIT QUARTERLY REPORTS TO THE DEPARTMENT BY ELECTRONIC MEANS CONSISTING OF PERIODICWITHDRAWAL VOLUMES, IN-STREAM FLOW MEASUREMENTS AND/OR WATER SOURCE PURCHASES.**

PIOGA Comment: Due to the proposed changes, the Department will be issuing a new report form. It is appropriate for the Department to share a draft of this form as part of this regulatory review process.

**(1) RETAIN WITHDRAWAL DATA AND PERIODICINSTREAM FLOW MEASUREMENTS AND PURCHASES FOR A PERIOD OF AT LEAST FIVE YEARS. THESE RECORDS SHALL BE AVAILABLE FOR REVIEW BY THE DEPARTMENT UPON REQUEST**

PIOGA Comment: Dependent on the frequency of usage of the water source, it is undue burden on the operator to collect daily instream flow measurements once the flow rating curve has been established.

**§ 78a.73 General provision for well construction and operation.**

The newly proposed presumption about the true vertical depth of wells where such TVD is unknown presents an unreasonable burden on unconventional operators to monitor wells that are unlikely to penetrate within 1500 feet from the formation to be stimulated. Shallow wells in Pennsylvania, which are much more numerous and much more difficult to inventory, do not present any risk of communication from the stimulation of unconventional formations. The presumption, if any, must be rebuttable by other types of information that may be relevant to the well depth while not actually confirming TVD.

Changes in stimulation treatment pressures that may be indicative of "abnormal fracture propagation" should not require reporting to DEP. The terminology "abnormal fracture propagation" is far too subjective to be a proper basis for triggering an immediate notification to DEP, and would generally be indicative of situations having no probable relevance to impacting another well. For example, if a stimulation plan calls for fracture propagation to approximately 300 ft., and treatment pressure indicates that fractures may only be extending 100 ft., or may be extending to 500 ft., both of those situations could be considered "abnormal" by the operator but would have no relevance to impacting a well that may be 1000 ft. away.

In addition, PIOGA members have concern that if an operator can't identify the operator of an active or inactive well, how will this type of well be treated and to what extent does the operator need to reach out to the owner of an active or inactive well? This is not well defined in the regulation, which creates potential logistical issues in contacting the owners within 72 hours of stimulation activities. This scenario needs to be considered by the Department, as this type of case will be reality in the future.

As stated in PIOGA's prior comments, "visual monitoring" during stimulation activities is not well defined from the standpoint of details or required time period. The monitoring activities being proposed in this section needs further definition, which should be part of technical guidance that should be included as part of this rulemaking proposal.

Finally, the electronic notification process is excessive and impractical, given the remote locations of these monitoring locations.

**§ 78a.121 Production Reporting**

The Waste Reporting portion of the Production Report requires that the specific waste processing or disposal facility, or other method of waste management, be selected from a pre-populated drop down list and does not allow the user to enter other information, such as a well site name. Since DEP has not provided a proposed form revision for us to review that would accommodate this change, the requirement to specify a "well site where the waste was managed" should be removed.

With regard to Monthly reporting of waste, there was no legislative intent in Act 173 or 2014 (HB 2278) to have waste data included in the monthly Production reports, nor has DEP demonstrated, or even articulated, the need to have oil and gas waste reported more frequently than any other waste from any other industry, which is on an annual basis for all other industries. Oil and gas waste from unconventional well sites is currently reported to DEP in the Production reports twice per year (already double the frequency of any other industry) and for typical operator may take approximately 20-30 hours per reporting period, regardless of the frequency of reporting, This waste data is available to DEP inspectors throughout the year if a need arises for DEP to review it, but there is simply no demonstrated need for operators to incur the administrative burden and expense to report it on a monthly basis.

**§ 78a.122 Well record and completion report**

This new requirement, which appears for the first time in the ANFR, to include a certification that the § 78a.52a monitoring plan was conducted should be deleted. The §78a.52a monitoring plan requirements are just one of many requirements that operators must adhere to, and there is no reason to single this requirement out as one that must be certified in the Well Record report. The § 78a.52a monitoring plan will have to be submitted to DEP, per § 78a.52a(d), which is adequate proof that the monitoring plan was developed. The monitoring plan will not actually be "conducted" per § 78a.73(c) under the well is stimulated, which may be long after the Well Record is due, so certification in the Well Record that the monitoring plan was actually "conducted" would not be possible in those cases.

## Attachment B – OUSTANDING ISSUES

In March 2014, PIOGA submitted comments on the following key topics and issues which do not appear to have been addressed by the Department's Draft Final Rule. Without a Comment/Response document, neither PIOGA nor its members can evaluate the Department's response to these key concerns and is compelled to restate the following concerns. In addition to this summary, PIOGA incorporates by reference its March 2014 comments to the 2013 Proposed Rule.

## CHAPTER 78a. UNCONVENTIONAL OIL AND GAS WELLS

### § 78a.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

***Act 2*—The Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101□6026.908).**

PIOGA Comment:

PIOGA continues to object to the Department's efforts by policy and/or regulation to compel oil and gas operators to utilize what is a voluntary process for all other entities. Act 2 procedures should not be required for spills at oil and gas well sites but should continue to be available for operators who choose to use them to obtain relief from liability.

***Approximate original conditions*—Reclamation of the land affected to preconstruction contours so that it closely resembles the general surface configuration of the land prior to construction activities and blends into and complements the drainage pattern of the surrounding terrain, and can support the land uses that existed prior to THE APPLICABLE oil and gas [~~activities~~] OPERATIONS to the extent practicable.**

PIOGA Comment:

PIOGA strongly objects to a requirement to return land to "approximate original conditions" unless such a commitment has been made in the approved site restoration plans or private agreements with landowners. No such obligation is created under any relevant statute and is without environmental justification.

***Freshwater impoundment*—A facility that is:**

**(i) Not regulated under § 105.3 (relating to scope).**

**(ii) A natural topographic depression, manmade excavation or diked area formed primarily of earthen materials although lined with synthetic materials.**

**(iii) Designed to hold fluids, including surface water, groundwater, and other Department approved sources.**
**(iv) Constructed for the purpose of servicing multiple well sites.**

PIOGA Comment:

Any new rule for freshwater impoundments specifically targeting oil and gas industry is inappropriate and should be deleted from Chapter 78.

***Oil and gas operations*—The term includes the following:**

**(i) ~~[Well location assessment, seismic]~~ SEISMIC operations, well site preparation, construction, drilling, hydraulic fracturing, completion, production, operation, alteration, plugging and site restoration associated with an oil or gas well.**

**(ii) Water withdrawals, residual waste processing, water and other fluid management and storage INCLUDING CENTRALIZED TANK STORAGE, used exclusively for the development of oil and gas wells.**

**(iii) Construction, installation, use, maintenance and repair of:**

**(A) Oil and gas WELL DEVELOPMENT, GATHERING AND TRANSMISSION pipelines.**

**(B) Natural gas compressor stations.**

**(C) Natural gas processing plants or facilities performing equivalent functions.**

**(iv) Construction, installation, use, maintenance and repair of all equipment directly associated with activities in subparagraphs (i)–(iii) to the extent that the equipment is necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant.**

**(v) Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.**

PIOGA Comment:

PIOGA objects to the proposed definition of oil and gas operations which significantly and inappropriately expands the current scope of Chapter 78. This definition should be deleted the current scope of Chapter 78 should be retained.

***PPC plan—Preparedness, Prevention and Contingency plan*—A written preparedness, prevention and contingency plan.**

PIOGA Comment:

PIOGA is concerned about the unnecessary burden created for small operators who conduct operations at multiple well sites in close proximity where the PPC plan would be the same for all such operations.

***Regulated substance*—Any substance defined as a regulated substance in section 103 of Act 2 (35 P.S. § 6026.103).**

PIOGA Comment:

The term "regulated substances" as defined by Act 2 is too broad, including materials that are naturally present in the environment, as well as those with no threshold concentration for regulation, or that present no threat of pollution or harm to public health, safety, welfare or the environment. This proposed definition would create an unreasonable and unattainable standard under several sections of Chapter 78, including effectively prohibiting the disposal top hole water under Section 78a.60 or drill cuttings under Section 78a.61. The use of this term throughout the rule creates absurd results.

***Small Business*—the term is defined in accordance with the size standards described by the United States Small Business Administration's Small Business regulations under 13 C.F.R. Ch. 1. Part 121 or its successor regulation.**

PIOGA Comment:

PIOGA strongly supports and recommends the addition of a defined term to allow for small business exemptions where such relief will have minimal or no environmental impact. In accordance with the 2012 amendments to the Regulatory Review Act, the Department is required to provide such exemptions to reduce the impact of the proposed regulation on small businesses.

**§ 78a.52. Predrilling or prealteration survey.**

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(d) An operator electing to preserve its defenses under section **[208(d)(1) of the act]** **3218(d)(1)(i) ~~[and (2)(i)]~~ of the act (relating to protection of water supplies)** shall provide a copy of **all** the **sample** results **taken as part** of the survey **ELECTRONICALLY** to the Department **[and]** **~~[by electronic means in a format determined by the Department]~~ ON FORMS PROVIDED THROUGH ITS WEB SITE within 10 business days of [receipt of all the sample results taken as part of the survey] ASSIGNMENT OF AN API NUMBER BY THE DEPARTMENT FOR THE OIL OR GAS WELL THAT IS THE SUBJECT OF THE SURVEY. The operator shall provide a copy of any sample results to** the landowner or water purveyor within 10-business days of receipt of the **sample** results. **[Test]** **Survey** results not received by the Department within 10 business days may not be used to preserve the operator's defenses under section **[208(d)(1) of the act]** **3218(d)(1)(i) ~~[and (2)(i)]~~ of the act.**

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PIOGA Comment:

PIOGA recommends that the Department accept hard copies or electronic submission for the sample results submittal to accommodate small. operators.

**§ 78a.58. [Existing pits used for the control, storage and disposal of production fluids.] Onsite Processing**

PIOGA Comment:

As an overarching comment, Chapter 78 should encourage the processing, recycling, and beneficial reuse of fluids and waste at well sites. The regulations should provide an avenue for the operator to document, move, or reuse water from one site to another.

**[For pits in existence on July 29, 1989, the operator may request approval for an alternate method of satisfying the requirements of § 78.57(c)(2)(iii) (relating to control, storage and disposal of production fluids), the angle of slope requirements of § 78.57(c)(2)(v) and the liner requirement of § 78.57(c)(2)(vi)—(viii) by affirmatively demonstrating to the Department's satisfaction, by the use of monitoring wells or other methods approved by the Department, that the pit is impermeable and that the method will provide protection equivalent or superior to that provided by § 78.57. The operator shall request approval under § 78.57(c)(1).]**

**(a) The operator may request approval by the Department to process fluids generated by the development, drilling, stimulation, alteration, operation or plugging of oil or gas wells OR MINE INFLUENCED WATER at the well site where the fluids were generated or at the well site where all of the fluid is intended to be beneficially used to develop, drill or stimulate a well. The request shall be submitted on forms provided by the Department and demonstrate that the processing operation will not result in pollution of land or waters of the Commonwealth.**

**(b) Approval from the Department is not required for the following activities conducted at a well site[,] OR CENTRALIZED TANK STORAGE SITE PERMITTED UNDER § 78a.57a (RELATING TO CENTRALIZED TANK STORAGE) [~~or centralized impoundment permitted under § 78.59c (relating to centralized impoundments)~~]:**

**(1) Mixing fluids with freshwater.**

**(2) Aerating fluids.**

**(3) Filtering solids from fluids.**

**(c) ACTIVITIES DESCRIBED IN SUBSECTION (b) MUST BE CONDUCTED WITHIN A CONTAINMENT SYSTEM.**

**(d) OPERATORS CONDUCTING ACTIVITIES DESCRIBED IN SUBSECTIONS (b)(1-**

**3) AT A WELL SITE OR CENTRALIZED TANK STORAGE SITE PERMITTED UNDER § 78a.57a (RELATING CENTRALIZED TANK STORAGE) MUST NOTIFY THE DEPARTMENT THAT THE ACTIVITY WILL BE CONDUCTED AT A PARTICULAR LOCATION AT LEAST THREE BUSINESS DAYS PRIOR TO CONDUCTING THE ACTIVITY. THE NOTICE SHALL BE SUBMITTED ELECTRONICALLY TO THE DEPARTMENT THROUGH ITS WEB SITE. IF THE DATE OF INSTALLATION IS EXTENDED, THE OPERATOR SHALL RENOTIFY THE DEPARTMENT WITH THE DATE THAT THE INSTALLATION WILL BEGIN, WHICH DOES NOT NEED TO BE 3 BUSINESS DAYS IN ADVANCE.**

**[(c)] (e) The operator may request to process drill cuttings only at the well site where those drill[ing] cuttings were generated by submitting a request to the Department for approval. The request shall be submitted on forms provided by the Department and demonstrate that the processing operation will not result in pollution of land or waters of the Commonwealth.**

PIOGA Comment:

The phrase "to process drill cuttings" is unclear. Solidification material, such as sawdust or wood pellets, should be permitted to be used without Department approval.

**[(d)] (f) Processing residual waste generated by the development, drilling, stimulation, alteration, operation or plugging of oil or gas wells other than as provided for in subsections (a) and (b) shall comply with the Solid Waste Management Act (35 P.S. §§ 6018.101 □6018.1003).**

**[(e)] (g) Processing of fluids in a manner approved under subsection (a) will be deemed to be approved at subsequent well sites provided the operator notifies the Department of location of the well site where the processing will occur AT LEAST THREE BUSINESS DAYS prior to the beginning of processing operations. The notice shall be submitted electronically to the Department through its web site and include the date activities will begin.**

**[(f)] (h) Sludges, filter cake or other solid waste remaining after the processing or handling of fluids under subsection (a) or (b), including solid waste mixed with drill cuttings, shall be characterized under § 287.54 (relating to chemical analysis of waste) before the solid waste leaves the well site.**

PIOGA Comment:

Often times sludges, filter cake or other solid waste remaining after the processing or handling of fluids at a well site may be taken to a treatment or recycling facility that must complete its own characterization. It is impracticable to require operators to retain this material onsite to conduct a full chemical analysis, which may take up to 27 days. Completing a full chemical analysis should only be required when the solid waste leaves the well site for disposal, rather than for further treatment.

**§ 78a.61. Disposal of drill cuttings.**

(a) *Drill cuttings from above the* ***SURFACE*** *casing seat—pits.* The owner or operator may dispose of drill cuttings from above the **SURFACE** casing seat determined in accordance with **[§ 78a.83 (b)]** **§ 78a.83(c)** (relating to surface and coal protective casing and cementing procedures) in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with **[pollutional material]** **a regulated substance,** including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a **[stream, or a wetland]** **watercourse or** body of water **OR WITHIN THE FLOODPLAIN** **[~~unless approved as part of a waiver granted by the Department under section~~] [205(b) of the act (58 P.S. § 601.205(b))] [~~3215(b) of the act (relating to well location restrictions)~~].**

(4) The disposal area is not within 200 feet of a water supply.

(5) The pit is designed, constructed and maintained to be structurally sound.

(6) The free liquid fraction of the waste shall be removed and disposed under § 78.60 (relating to discharge requirements).

PIOGA Comment:

The term "waste" should not be used in reference to uncontaminated drill cuttings from above the casing seat. These materials are not residual wastes.

**§ 78a.122. Well record and completion report.**

PIOGA Comment:

Operators should not have to identify borrow pits or impoundments on their well records. There is no statutory authority or environmental justification for this requirement in completion records.

(a) For each well that is drilled or altered, the operator shall keep a detailed drillers log at the well site available for inspection until drilling is completed. Within 30 calendar days of cessation of drilling or altering a well, the well operator shall submit a well record to the Department on a form provided by the Department that includes the following information:

* * * * *

**(13) The borrow pit used for well site development, if any.**

* * * * *

(b) Within 30 calendar days after completion of the well, **when the well is capable of production,** the well operator shall **[submit] arrange for the submission of** a completion report to the Department on a form provided by the Department that includes the following information:

* * * * *

**(9) The freshwater [~~and centralized~~] impoundment, if any, used in the development of the well.**

* * * * *

**§ 78a.123. Logs and additional data.**

PIOGA Comment:

The proposed revisions to subsection (d) have removed the current three year protection for logs generated under subpart (a) without providing a timeframe in which such information should be submitted to DEP. Revisions to Subpart (d) also refer to "required" data that would only be "required" if requested in a timely manner by DEP under subparts (a) through (c).

(a) If requested by the Department within 90 calendar days after the completion **[of drilling]** or recompletion **[of a well] of drilling,** the well operator shall submit to the Department a copy of the electrical, radioactive or other standard industry logs run on the well.

**(b)** In addition, if requested by the Department within 1 year of the completion **[of drilling]** or recompletion **[a well] of drilling,** the well operator shall file with the Department a copy of the drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis and lithologic log or sample description or other similar data as compiled. No information will be required unless the operator has had the information described in this subsection compiled in the ordinary course of business. No interpretation of the data is to be filed.

**[(b)] (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.**

**[(c) The information requested by the Department under subsections (a) and (b) shall be provided to the Department by the operator, within 3 years after completion of the well unless the Department has granted an extension or unless the Department has requested information as described in subsection (d). If the Department has granted an extension, the information shall be submitted in accordance with the extension, but in no case may the extension exceed 5 years from the date of completion of the well.**

**(d) In accordance with the request of the Department, the operator shall submit the information described in this section for use in investigation or enforcement proceedings, or in aggregate form for statistical purposes.]**

**(d) Data required under subsections (b) and (c) shall be retained by the well operator and filed with the Department no more than 3 years after completion of the well. Upon request, the Department will extend the deadline up to 5 years from the date of completion of the well.**

**(e) The Department is entitled to utilize information collected under this section in the enforcement proceedings, in making designations or determinations under section 1927-A of The Administrative Code of 1929 (71 P.S. § 510-27) and in aggregate form for statistical purposes.**