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DEP Policy Office
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P.O. Box 2063
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DEP Policy Office:

We have reviewed the proposed Oil and Gas Regulations, Chapter 78, Conventional Oil and Gas Wells, and Chapter 78a, Unconventional Wells and offer the following comments. Although most of the proposed changes do not directly affect our membership, we do have a few concerns and questions that we need to bring to your attention.

Section 78.52a: requires that an operator identify the location of “active, inactive, orphaned and abandoned wells” within a distance of 1,000 feet from a well bore. Since many orphaned or abandoned wells are not properly known it may be of benefit for the operator to also have to “publish a notice in a newspaper of general circulation in the host municipality and county.” In this way those that know of past activities will have the chance to bring their knowledge forward.

Section 78.61(f): should be expanded to include notification to the “municipality in which the disposal occurred.” This would guarantee that the municipality has knowledge of what is being done.

Section 78.63(a) (5): should be expanded to include notification to the “municipality in which the disposal occurred.” This would guarantee that the municipality has knowledge of what is being done.

Section 78.65(b)(6): should include a provision that would require the owner/operator provide a “bond or other financial security” to the department to assure compliance with the storm water requirements should the owner/operator cease to exist.

Section 78.70: allows the use of brine from oil and gas wells for dust suppression and road stabilization. We understand that the proposed regulations only allows for “conventional well” brine to be use for this purpose and we have no issue with that determination at this time. Our concerns are the following:

- Is this material to be used on unpaved public roads, state and local, or just private roads?
- Are these regulations any different from the requirements of the PA Department of Transportation pertaining to the application of brine on state or municipal unpaved roads?
- If allowed to be used on public roads is the “plan applicant” the governing body or someone else?

- If allowed to be used on public roads does the municipality or the state have to authorize the use of the brine? No individual has authority to perform any work on any municipal or state road without their prior approval.
- If the state or municipality is spreading the brine do they have to comply with the signage requirements since their trucks are already marked?
- What is the purpose of the notification to the department when the spreading of the brine is to take place?
- Some of the provisions of subsection (c) contradict with subsection (e) and (f). An example is (c) (6) states “the proposed rate ...” while (f) states “the road shall initially be spread ... the road shall subsequently be spread ...”

Section 78.70a: allows for the use of brine from oil and gas wells for pre-wetting anti-icing and de-icing. Again we understand that the proposed regulations only allows for “conventional well” brine to be use for this purpose and we have no issue with that determination at this time. Our concerns are the following:

- This section seems to imply that this material may be used on paved roads, both public and private. Since local governments have more roads than PennDoT, why is PennDoT to be notified if this material is to be used on their roads and not a municipality? A better question would be why is PennDoT to be notified since no individual may perform any function on their roads without their prior approval.
- Are these regulations any different from the requirements of the PA Department of Transportation pertaining to the application of brine on state or municipal unpaved roads?
- If this material is going to be used on state and public roads, does the state and municipality have to be the plan applicant?
- Are the application rates of subsection (f) sufficient for the purposes intended, and do they correspond with those established by PennDot?
- Does the state or municipality have to comply with the signage requirements since their trucks are already marked?
- Subsection (j) indicates that brine may not enter bodies of water. If a paved road is in proximity of a water body, how is the applicant to keep out brine residue when the snow and ice melts?

Section 78a.41: addresses noise mitigation from the standpoint of having an operator prepare a “specific noise mitigation plan.” Although well intended, one has to question how a mitigation plan can be prepared when the requirement does not stipulate what is the frequency or decibels of the noise. Municipalities that adopt ordinances to control noise have to have parameters from which an individual can determine whether they are in or out of compliance with the ordinance’s regulations. Courts have constantly indicated that just by stating something is “noisy” is not a scale that can be regulated. The issue is that the noise level from drilling activities that are similar to other activities (non-drilling activities) would have to be treated the same. The regulations need to be more specific on what they are attempting to control and not let it up to the discretion of the department to determine “that during drilling, etc. that the plan is inadequate to minimize noise, the department may order the operator to suspend operations.” Finally, we need to ask if these requirements are to supersede local regulations on noise, and if

they are to supersede local regulation, we question the authority and would argue that it would be better that this requirement be a partnership with the municipalities?

Section 78a.52a: requires that an operator identify the location of “active, inactive, orphaned and abandoned wells” within a distance of 1,000 feet from a well bore. Since many orphaned or abandoned wells are not properly known it may be of benefit for the operator to also have to “publish a notice in a newspaper of general circulation in the host municipality and county.” In this way those that know of past activities will have the chance to bring their knowledge forward.

Section 78a.57a(n)(iv)(G)(4): should read that the “site ... existed prior to oil and gas operations to the ‘maximum’ extent possible.” This would guarantee that the land is as close to prior activity as possible.

We appreciate the opportunity to comment on these proposed regulations. Should you need further clarification on our comments, please contact me.

Sincerely,

Elam M. Herr

Asst. Executive Director