



April 12, 2022

Pennsylvania Public Utility Commission
Attn: Secretary Rosemary Chiavetta
400 North Street
Harrisburg, PA 17120

Re: Proposed Rulemaking: Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 25 Pa. Code Chapter 59

Dear Secretary Chiavetta,

The Pennsylvania Department of Environmental Protection (Department or DEP) submits the following comments in response to the Pennsylvania Public Utility Commission's request for comments on the above-referenced proposed rulemaking.

Definitions

1. For the definition of "*Affected public*":
 - The Department recommends the Commission consider clarifying the definition of "*affected public*" to ensure that the regulated community and the public have a clear understanding of how to identify "residents and places of congregation" and how to demonstrate compliance with the notification requirements tied to this definition. The Department has similar requirements to identify and notify those potentially impacted by the location of a proposed well site as well as setbacks. Based on these similar provisions, the Department recommends the Commission consider amending "residents and places of congregation" to "surface landowners whose property is within 1,000 feet from the limit of disturbance of the pipeline project; the municipality or municipalities in which the tract of land upon which the pipeline project is located; water supply users with water supplies within 1,000 feet from the limit of disturbance of the pipelines project; and the owners of buildings located within 1,000 feet from the limit of disturbance of the pipeline project." For the purposes of this definition, the Department recommends including a definition of "building" as "an occupied structure with walls and roof within which person live or customarily work." See 25 Pa. Code § 78a.1.

The Department also recommends clarifying how to measure the distance between the pipeline and the *affected public*. The Department determined for similar requirements that it is reasonable and appropriate to measure distance from the limit of disturbance for the project. For example, in 25 Pa. Code § 78a.15(f), well operators are required to identify public resources with a certain distance from the limit of disturbance. "Limit of disturbance" is defined in 25 Pa. Code § 78a.1 as "The boundary within which it is anticipated that earth disturbance activities (including installation of best management practices) will take place." The Department recommends that the 1000 feet be measured from the limit of disturbance.

Lastly, the Department recommends the Commission provide information, including any scientific or technical rationale, that establishes that these particular distances afford an appropriate level of protection to the public. The Department notes that the similar requirements referenced above were established by the General Assembly in the 2012 Oil and Gas Act.

2. For the definition of “*TT—Trenchless technology*”
 - The proposed definition currently mirrors the proposed definition of the same term used in DEP’s “*Trenchless Technology Guidance*”, Doc. No. 310-2100-003 – a draft technical guidance document. *See* 52 Pa.B. 1693. The public comment period on this draft technical guidance document closes May 18, 2022. The Department recommends that the Commission and Department collaborate during the finalization of this rulemaking and that TGD to discuss consistent definitions of this term or a basis for any differences.

§ 59.138. Horizontal directional drilling and trenchless technology, or direct buried methodologies.

3. For subsection (b) (relating to Notification)
 - The Department recommends the Commission consider including how to accomplish notice. The Department specifies in 25 Pa. Code Chapter 78a (relating to Unconventional Wells) that notice is required by certified mail and defines “certified mail” as “any variable means of paper document delivery that confirms the receipt of the document by the intended recipient or the attempt to deliver the document to the proper address for the intended recipient.” *See* 25 Pa. Code § 78a.1. The Department also recommends that the Commission consider how the hazardous liquid public utility will demonstrate compliance with these notification requirements. The Commission may want to consider notice in the *Pennsylvania Bulletin* in addition to these notice requirements.
 - The Commission should note that the notice requirements here are in addition to the requirement in 25 Pa. Code § 78a.68a(c) that requires notice to the Department “at least 24 hours prior to beginning of any horizontal directional drilling activities, including conventional boring, beneath any body of water or watercourse.” The Department requires that this notice “be made electronically to the Department through its web site and include the name of the municipality where the activities will occur, GPS coordinates of the entry point of the drilling operation and the date when drilling will begin.” To coordinate and prioritize the inspection activities of the Department’s field staff, it has been helpful to obtain notice of the date when drilling will begin as operators may provide this notice months in advance. The Commission may want to consider whether there is information that would be useful to obtain with these notices prior to the commencement of drilling.
 - The Department recommends defining the term “O&M activities”.
4. For subsection (c) (relating to Geological and environmental impacts)
 - The Department recommends the Commission provide an explanation in the

rulemaking preamble as to the basis for limiting these requirements to pipelines with a “bore diameter 8 inches or greater, a bore depth greater than 10 feet, or a pipeline length greater than 250 feet”. Please note that the Department does not limit its regulation or guidance based on pipeline size. The Department recommends that the Commission consider that while all projects do not pose the same level of risk, pipelines operators are responsible for diligently evaluating all risks associated with a project based on a variety of factors. The Department has experienced issues with pipelines that do not meet the size thresholds provided here.

- The Department recommends the Commission amend § 59.138(c)(1) to add “(1) Comply with the applicable laws implemented by the Department of Environmental Protection, including but not limited to 25 Pa. Code Chapter 78a (relating to Unconventional Wells), 25 Pa. Code Chapter 102 (relating to Erosion and Sediment Control), and 25 Pa. Code Chapter 105 (relating to Dam Safety and Waterway Management).”
- The Department recommends the Commission amend § 59.138(c)(1) as follows: “Conduct an analysis of geological and environmental impacts. An analysis in conformance with the Department of Environmental Protection’s *Trenchless Technology Guidance*, Document No. 310-2100-003, as amended and updated, or in a manner at least as protective of public health, public safety and the environment which meets all applicable statutory and regulatory requirements, satisfies this requirement. The analysis shall be made available to the Department and the Commission upon request.”

The Department notes that this technical guidance document is not yet finalized.

- The Department recommends adding a new paragraph that states: “Develop a written preparedness, prevention and contingency plan that addresses: (1) potential impacts from drilling fluid discharges, (2) potential impacts to public and private water supplies and (3) underground mining and karst terrain. A plan developed in conformance with the Department of Environmental Protection’s *Trenchless Technology Guidance*, Document No. 310-2100-003, as amended and updated, or in a manner at least as protective of public health, public safety and the environment which meets all applicable statutory and regulatory requirements, satisfies this requirement. The plan shall be made available to the Department and the Commission upon request.”

Again, the Department notes that this technical guidance document is not yet finalized.

- The Department recommends adding the Department to subparagraph (5) with the ability to request the information outlined in paragraph (c)(5)(i)-(iv).

5. For subsection (d) (Protection of water wells and supplies)

- The Department recommends defining the term “O&M activities”.
- The Department recommends replacing (d) with the following: “Conduct an analysis of the impacts to public and private water supplies. An analysis conducted in

conformance with the Department of Environmental Protection's Trenchless Technology Guidance, Document No. 310-2100-003, as amended and updated, or in a manner at least as protective of the environment which meets all applicable statutory and regulatory requirements, satisfies this requirement. This analysis shall be made available to the Commission and the Department upon request."

- To the extent the Commission retains subparagraph (d)(1), the Department recommends amending paragraph (d)(1) as follows: "Comply with the applicable laws implemented by the Department of Environmental Protection, including but not limited to The Clean Streams Law, the act of June 22, 1937, P.L. 1987, as amended, 35 P.S. 691.1-691.1001; 25 Pa. Code Chapter 78a (relating to Unconventional Wells); 25 Pa. Code Chapter 91 (General Provisions); 25 Pa. Code Chapter 102 (relating to Erosion and Sediment Control); and 25 Pa. Code Chapter 105 (relating to Dam Safety and Waterway Management)".
 - The Department recommends the Commission clarify, in paragraph (d)(2), how a water supply is deemed a potential risk and how a hazardous liquid public utility demonstrates that a water supply is at risk, or not, based on geological structures.
 - The Department recommends the Commission consider amending "private water supply wells" to "private water supplies", and "public water supply wells" to "water wells, surface intakes, reservoirs or other water supply extraction points used by a water purveyor." The Commission may also want to consider including zones 1 or 2 of a wellhead protection area as part of a wellhead protection program approved under 25 Pa. Code § 109.713 (relating to wellhead protection program).
 - In paragraph (d)(3), the Department recommends the Commission amend this section as follows: "Identify the owners of water supplies identified in paragraph (2) . . ."
 - The Department recommends the Commission provide an explanation in the rulemaking preamble of the basis for requiring notice and the opportunity for testing 1,000 feet from the applicable activities.
 - In paragraph (d)(4), the Department recommends that the Commission clarify when this notice is required, how notice is to be provided, how to demonstrate compliance with this notice requirement, and whether the hazardous liquid public utility must conduct water supply testing and, if so, whether there are specific parameters that must be included in that testing.
6. For subsection (e) (relating to Adverse impacts to water wells and supplies).
- The Department believes that adverse impacts to water wells and supplies are already adequately addressed by existing rules and regulations that the Department implements and does not believe that additional regulation of such issues by the Commission is necessary. The Department recommends that subsection (e) be removed from the rule. To the extent that the Commission elects to retain subsection (e), the Department also provides the following comments.
 - The Department recommends amending paragraph (e)(1) as follows: "Comply with

the applicable laws implemented by the Department of Environmental Protection, including but not limited to The Clean Streams Law, the act of June 22, 1937, P.L. 1987, as amended, 35 P.S. 691.1-691.1001; 25 Pa. Code Chapter 78a (relating to Unconventional Wells); 25 Pa. Code Chapter 91 (General Provisions); 25 Pa. Code Chapter 102 (relating to Erosion and Sediment Control); and 25 Pa. Code Chapter 105 (relating to Dam Safety and Waterway Management)”.

- The Department recommends amending this section to include the following in place of subparagraphs (1)-(4):

(e)(1) A hazardous liquid public utility using HHD, TT, or direct buried methodologies shall not affect a public or private water supply by pollution as that term is defined in The Clean Streams Law, the act of June 22, 1937, P.L. 1987, as amended, 35 P.S. 691.1-691.1001, which includes diminution, as administered by the Department of Environmental Protection.

(2) If a hazardous liquid public utility affects a public or private water supply by pollution or diminution resulting from the use of HHD, TT, or direct buried methodologies, the hazardous liquid public utility shall implement the preparedness, prevention and contingency plan developed under (c).

(3) A hazardous liquid public utility using HHD, TT, or direct buried methodologies who affects a public or private water supply shall restore or replace the affected supply with an alternate source of water adequate in quantity or quality for the purposes served by the supply.

(4) A landowner, water purveyor of affected person suffering pollution or diminution of a water supply as a result of HHD, TT, or direct buried methodologies may notify the Commission or the Department and request that an investigation be conducted. The notice and request must include the following: (1) the name, address and telephone number of the person requesting the investigation, (2) the type, location and use of the water supply, (3) available background quality and quantity data regarding the water supply, if known, (4) well depth, pump setting and water level, if known, (5) a description of the pollution or diminution.

(5) A hazardous liquid public utility who receives a notice from a landowner, water purveyor or affected person that water supply has been affected by pollution or diminution shall report receipt of notice from an affected person to the Commission and Department with 24 hours of receiving this notice.

- The Department recommends that the Commission review the Department’s “Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations”, Document No. 820-4000-001 which provides the Department’s standards and guidelines for initiating, documenting and resolving water supply investigation requests at oil and gas well sites and the Department’s “Policy for the Replacement or Restoration of Private Water Supplies Impacted by Unconventional Oil and Gas Operations,” Document No. 800-0810-002, which provides the Department’s guidance for implementing the requirements relating to restoring or replacement

water supplies adversely impacted by well operators with a water supply of adequate quality and quantity for the purposes served by the impacted water supply.

- The Department recommends the Commission provide an explanation in the rulemaking preamble of its statutory authority to regulate water supply impacts.
- The Department requests that the Commission coordinate with the Department when investigating water supply complainants, determining adverse impacts from the applicable activities, and determining the adequacy of a replaced or restored water supply.
- To the extent the Commission retains subsection (e), the Department recommends deleting paragraph (e)(4) as the Department is best positioned to determine compliance with its corrective actions.

§ 59.139. Pressure testing.

- The Department recommends adding “comply with all regulations of the Department of Environmental Protection including but not limited to 25 Pa. Code §92a, 93, and 95 as it relates to the discharge water from hydrostatic testing of pipelines to waters of the Commonwealth

§ 59.140. Operation and maintenance.

- In general, the Department recommends that the Commission review 25 Pa. Code § 78a.55 relating to emergency management.

§ 59.143. Corrosion control

- The Department recommends citing to 49 CFR Part 192, Subpart I and Part 195, Subpart H (relating to requirements for corrosion control; and corrosion control) as appropriate.

Conclusion

DEP appreciates the opportunity to provide this feedback and questions on the Proposed Rulemaking: Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards. Thank you for your consideration of our remarks. Should you have questions or need additional information, please contact Joseph Adams, by e-mail at josepadams@pa.gov or by telephone at 717-772-2727.

Sincerely,



Patrick McDonnell
Secretary