

January 4, 2016

Members of the Pennsylvania Oil & Gas Technical Advisory Board (TAB)
Department of Environmental Protection
Rachel Carson State Office Building, 400 Market Street
Harrisburg, PA 17101

Dear members of the Technical Advisory Board:

The undersigned environmental and citizens' organizations write to you regarding the final draft revisions to 25 PA Code Chapter 78 and 78a of the Oil and Gas Act. We previously shared these comments with you prior to your September 2015 meeting and ask that you again consider our input as you draft your report to the Environmental Quality Board.

For too long, oil and gas operators in Pennsylvania have conducted their activities under outdated regulations and with virtual impunity—factors that have helped spur ever-growing impacts on water, air, and health.

The final draft Chapter 78 and 78a regulations released last month by the Department of Environmental Protection (DEP or the Department) represent a significant step forward in aligning the state's oil and gas regulations with new technologies and modern-day practices used at both conventional and unconventional well sites.

We ask the Technical Advisory Board to support the swift adoption and implementation of the regulations for both conventional and unconventional operators. Failure to do so would maintain the status quo of weak regulations that support environmentally damaging activities—which might be in the industry's interest but most certainly is not in the public interest.

DEP has clearly strengthened important aspects of the Chapter 78 and 78a regulations since the first draft was issued in early 2014. Such progress reflects the fact that the Department received more than 30,000 comments during the revision process—many of which expressed grave concern over the continued negative environmental and health impacts of gas and oil development being experienced by communities across Pennsylvania.

The final drafts of Chapters 78 and 78a offer better protections for the environment and health than the oil and gas regulations currently in place. In particular, we strongly support:

- The inclusion of school property and playgrounds in the list of public resources, which would trigger additional review of potential impacts during the permitting process.
- New prohibitions on the use of pits and open-top structures for waste storage.
- The addition of new standards (such as secondary containment) and requirements (such as specific permits and reporting mechanisms) for waste disposal.
- New closure and permitting processes for waste impoundments and some waste pits.
- Thorough pre-drill surveys that investigate orphaned, abandoned, inactive, and plugged wells.
- Extension of the distance within which operators must identify orphaned and abandoned wells prior to drilling and the requirement that operators altering such wells must plug them.
- Immediate notification by the operator of spills, releases, and other incidents involving regulated substances.

These changes clearly signal recognition by DEP that current waste management and drilling practices can pose unacceptable risks to water and soil, and that children are particularly vulnerable to air pollution, noise, and other impacts.

Nonetheless, we remain concerned about gaps in the final regulations—which do not go nearly far enough to offer protection of air, water, and health. During the public comment period, our organizations and thousands of our members asked for key changes, in particular:

- **The extension of the limit of disturbance to one mile** (from the proposed 200 feet in §78.15 and §78a.15). While there is no scientifically established distance beyond which health impacts from oil and gas wells and facilities would never occur, recent research suggests the potential for contamination at much longer distances than the proposed requirements, including in studies delineated at distances of a half-mile or mile.
- **The prohibition of open pits and open-air tanks or containers for any purpose.** Only a closed-loop system designed to prevent spills and air emissions is suitable for oil and gas waste management. The disposal of residual waste and drill cuttings using pits (§78.62 and §78a.62) and land application (§78.63 and 78a.63) would still be allowed under the final draft regulations. Yet leaving waste onsite creates a strong risk of contamination of soil and groundwater, potentially years after operators have ceased to be responsible for old well sites.
- **The prohibition of impoundments to store any fluids other than freshwater, which should be clearly defined to exclude oil or gas wastewater or water contaminated by mining.** §78.59b and §78a.50b allow for the storage of a variety of fluids in impoundments at well sites. But DEP has not provided any evidence to demonstrate the safety of “mine influenced water.” Other fluids used in well development and hydraulic fracturing contain chemicals, salts, and radioactive elements that damage water, soil, and vegetation when leaks and spills occur.
- **Strong design, construction, and maintenance standards for centralized tank storage.** Unfortunately, instead of strengthening this section (§78.57a and §78a.57a), DEP removed it completely from the final draft regulations.
- **Specific performance standards for noise mitigation.** Unfortunately, instead of strengthening this section (§78a.41), DEP removed it from the final draft regulations. We look forward to the swift development of separate regulations on noise—which is a nuisance and the cause of health problems—promised by DEP.

Our organizations will continue to work to achieve these and other critical measures, both through additional DEP regulatory initiatives and the legislative process. While we are strongly in favor of adoption of the final draft revisions, we will not stop advocating for the strongest regulations, oversight, and accountability possible.

All oil and gas producing states have the responsibility to regulate the industry in such a way as to protect the environment and the public. While federal oversight and enforcement will always remain essential, several key US environmental laws contain exemptions specifically for the industry—making state action even more critical.

It is incumbent upon Pennsylvania to ensure not only that regulatory improvements advance, but also that the strongest protections possible are implemented. Governor Wolf, Secretary Quigley,

and members of the legislature have stated that they will do what it takes to ensure that oil and gas development is done responsibly. Adoption of stronger regulations is one way to start demonstrating that commitment to the public.

The final drafts of 25 PA Code Chapters 78 and 78a of the Oil and Gas Act represent years of work and a significant step forward for Pennsylvania. While the regulations are not as strong as they should be, their approval and implementation process should not be derailed. Such a move would force DEP to restart the rulemaking process and delay the implementation of badly needed regulatory advancements.

In turn, this derailment would widen the existing gap between Pennsylvania's oil and gas regulations and realities on the ground. As a result, countless environmental problems will continue to remain unchecked and the environmental, health, and financial burdens borne by the public will continue to increase.

Thank you for your time and attention.

Sincerely,

B. Arrindell, Director, Damascus Citizens for Sustainability
Thomas Au, Conservation Chair, Sierra Club Pennsylvania Chapter
Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network
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