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Revisions to Proposed changes to Pennsylvania's oil and gas regulations
Key concerns and talking points

In 2014, the Department of Environmental Protection (DEP) issued a revision to their initial proposed changes to the state's oil and gas regulations, known as Chapter 78 of the Pennsylvania Code. Subsequently, the state legislature required DEP to create two sets of regulations, one for conventional operators (Chapter 78) and one for unconventional/Marcellus Shale operators (now called Chapter 78a).

Following consideration of tens of thousands of comments from the public, advocates, issue experts, and industry, DEP released their revised proposals in April 2015.

Continued public participation is essential to making the regulations stronger and more protective of air, water, and health! You have until May 19th to submit written comments. You can also testify at the three public hearings scheduled. You can use the analysis and talking points below (which cover key parts of the revised regulations) to prepare your comments. There are many additional areas (like the section on noise mitigation) that you may also be interested in including in your comments. Information on the complete regulations, hearings, and how to submit comments are at:
http://www.portal.state.pa.us/portal/server.pt/community/public_resources/20303/surface_regulations/1587188

1. Standards for frack pits and impoundments (Sections 78.56, 78.57, 78.58, and 78.59).
Mounting violations and the potential for water and air pollution have already led some companies to transition away from pits and standardize the use of closed loop systems for the storage and treatment of waste. Issues with frack pits have led to contaminated water and resulted in the largest state fines ever against a driller in Pennsylvania, both over $4 million, to Range Resources and XTO for water contamination due to leaking. DEP should amend the final regulations to:

Prohibit operators from using ANY open-air pits and tanks, regardless of size or location, for storage and treatment of regulated wastes, including wastewater, drill cuttings, and substances (like gels and cement) that return to the surface after fracking. The new revisions prohibit the use of production pits at shale gas well sites, an important change that should be supported. But the use of huge impoundments to service multiple wells would still be allowed. Waste should be stored and treated only in closed, aboveground systems.

Require all waste impoundments to be properly closed immediately upon the effective date of the regulations. The revisions give operators 3 years to either properly close their existing impoundments or bring them under compliance with the construction requirements in residual waste permits. This is an improvement but still puts nearby residents and the environment at risk.

Require that tanks used for the storage of waste be completely enclosed. The revisions give operators the option of using tanks "without lids" to store waste on well sites—making it more likely that polluting spills and emissions will occur.

2. Definition of public resource (Section 78.15, 78.57, 78a.15, 78.57a)
DEP has added schools to the list of public resources that require additional consideration when permitting oil and gas wells and longer setbacks of waste storage from school buildings, parks, and playgrounds. This is a positive step, but is not sufficiently protective. While there is no scientifically established "safe setback" beyond which there aren't health risks from oil and gas development, the distances in the regulations (200 feet and 300 yards) are far too little to offer even limited protection.

To improve protection from pollution, noise, and light and safety from traffic, accidents, and explosions, **DEP should require, at minimum, a one-mile setback of oil and gas wells, waste storage facilities, and any other infrastructure from the property boundary of any school property.** This setback should also be

applied to locations where other vulnerable populations reside, including nursing homes, hospitals, day care centers, and communities at a disproportionate risk of health impacts (such as environmental justice areas).

3. Identification of orphaned and abandoned gas and oil wells (Section 78.52a.) Operators of unconventional wells are required to identify the location of old wells before drilling new ones, an important change that should be supported. An estimated 200,000 abandoned wells exist statewide. As drilling spreads and intensifies, so does the chance of accidents, blowouts, and pollution from the intersection of new wells with old ones. DEP should expand these changes and require operators to:

Identify existing wells through onsite inspection before site and well construction and drilling so that the location of a new well can be changed if needed.

Plug and seal or otherwise appropriately address abandoned and orphaned wells according to state safety standards *prior* to new well site construction. The state lacks funding to address the large number of old wells, so drillers should be responsible for preventing water and air pollution when accidents occur.

4. Separation of unconventional and conventional regulations

DEP is required by law to issue two sets of regulations—but that doesn't change the agency's mandate to develop regulations that protect people and the environment. Sometimes the only difference is the scale of operations. Conventional wells also use water and chemicals, create waste, and disturb land. Conventional operators also cause spills, accidents, and contamination. Due to the inherent risks of all oil and gas development, DEP should require *all operators of all wells* to:

End the use of all open-air production pits for the storage of waste and immediate conversion to closed tanks. DEP is proposing to continue to allow conventional operators to store their waste in pits and to bury waste at well sites. Many spills, leaks, and other problems involving conventional pits have occurred statewide. If the waste is potentially toxic and harmful to water, air, soil, and health, the type of well it came from shouldn't determine how it's managed and where it ends up.

Develop water management plans that specify the source and volume of the water used in site construction, drilling, hydraulic fracturing, and site restoration. This would be required for unconventional but not conventional operators. All gas development requires large volumes of water and withdrawals can harm streams, rivers, and aquifers. There is no logical reason to let conventional drillers off the hook for planning and documenting their water use.

Prohibit the road-spreading of brine. DEP would continue to prohibit the use of wastewater (brine) from unconventional wells as a de-icer and dust suppressant, but continue to allow waste from conventional wells to be used for these purposes. Brine contains chemicals, hydrocarbons, and salts regardless of the type of well it comes from. DEP has set limits on contaminant levels in the brine, but has not provided scientific evidence that road-spreading is safe for water, vegetation, and wildlife—especially over large areas for prolonged periods of time.

5. Transparency and access to information

DEP proposes to require oil and gas operators to file permit applications and required reports electronically. This change would improve data, efficiency, and enforcement and should be supported.

DEP should also make sure that all electronic filings and reports made by operators are also available to the public on DEP's website on the same day they are deemed complete by DEP. Easy and timely access to information by the public is necessary to ensure agency transparency and operator accountability.