

January 6, 2014

**Berks Gas Truth \* Clean Water Action \* Delaware Riverkeeper Network \* Earthworks \* Clean Air Council \* Damascus Citizens for Sustainability, Inc \* Sierra Club, Pennsylvania Chapter**

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

In mid-December, the Department of Environmental Protection (DEP) issued proposed changes to the state's oil and gas regulations, known as Chapter 78 of the Pennsylvania Code. Act 13, the oil and gas law passed in 2012, requires DEP to make these changes. They are also necessary because regulations for conventional drilling are outdated and inadequate given the large amount of land and water used and waste and pollution produced in shale gas development.

***Public participation is essential to making regulations stronger and more protective of air, water, and health!*** You have until February 12 to submit written comments or testify at hearings. You can use the analysis and talking points below (which cover key parts of the regulations) to prepare your comments. The regulations and public comment information are at:  
[www.portal.state.pa.us/portal/server.pt/community/public\\_resources/20303/surface\\_regulations/1587188](http://www.portal.state.pa.us/portal/server.pt/community/public_resources/20303/surface_regulations/1587188)

***Please state that the public comment period should be expanded to 120 days minimum and more hearings should be set in affected counties.*** This is an important and far-reaching rulemaking and more time is needed for people to participate in a meaningful way. Dozens of Pennsylvania organizations and thousands of people have sent letters and a petition calling for these changes.

**1. Pre-drill water testing and the restoration and replacement of contaminated water supplies (Sections 78.51 and 78.52).** We learned through DEP's determination letters that natural gas drilling operations have impacted at least 161 water supplies statewide. The natural gas industry has fought to have water restored to only pre-contamination conditions—even if it is not safe to drink. In addition, DEP leaves it up to the driller to decide when, where, and how to conduct water quality tests before drilling starts. DEP should require:

**Operators to restore contaminated drinking water to a quality that meets Safe Drinking Water Act standards**, no matter what the quality of the water prior to drilling. If the quality of a water supply prior to drilling was above these standards, the operator must restore the water to that higher standard; otherwise, good water supplies will be degraded.

**All drillers to use a consistent list of parameters for pre-drill water testing, which DEP must establish before the proposed regulatory changes are adopted.** The parameters should be as comprehensive as possible, but at a minimum match what DEP uses when it conducts full contamination investigations and to ensure that complete baseline data is available.

**All drillers to make pre-drill data available to the public**, while protecting individual homeowners' privacy, through an online platform, which DEP must establish before the proposed regulatory changes are adopted.

**2. 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 which utilize tanks to store wastewater. DEP should:

**Prohibit operators from using open pits for storage of regulated substances**, including wastewater, drill cuttings, and substances (like gels and cement) that return to the surface after fracking. Many spills,

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leaks, and other problems involving pits have occurred statewide that contaminate water, soil and air. Waste should be stored only in closed systems.

**Prohibit the onsite processing of shale drill cuttings**, which often contain hazardous substances and radioactive materials and require thorough analysis and special handling.

**Define “freshwater” that is used in oil & gas operations**. Water leftover from fracking and contaminated fluids being recycled for fracking (such as from mining or sewage) is often mixed with clean water for additional operations. The lack of a clear definition allows operators to avoid regulations on the use and disposal of polluted substances.

**3. Disposal of brine, drill cuttings, and residual waste (Sections 78.60, 78.61, 78.62, and 78.63, and 78.70)** Operators currently escape the strict federal regulation of hazardous substances that other industries have to follow. Yet drilling and fracking generate large amounts of solid and liquid waste that can harm water supplies, air quality, land, health, and wildlife. Pennsylvania should apply U.S. Resource Recovery and Conservation Act standards to regulate all aspects of the storage, transport, and use of hazardous materials contained in pits, centralized impoundments, and tanks. In addition, DEP’s proposed Chapter 78 changes don’t address the risks posed by hazardous waste and do little to improve current regulations or ensure safe disposal. DEP should:

**Prohibit the burial or land application of drill cuttings**, which can contain polluting and radioactive substances. DEP proposes different conditions for disposal of drill cuttings from above and below the well casing, but neither makes the practice safe. Cuttings from deep underground may contain more pollutants, but chemical additives and contaminated fluids are also found in drill cuttings from shallower areas.

**Prohibit the onsite burial of waste pits**. Buried pits can leak and pollute groundwater over time, yet burial allows operators to walk away from any responsibility after completing operations.

**Prohibit the use of brine for dust suppression, de-icing, and road stabilization**. Stormwater runoff carries brine into nearby waterways and wetlands. Not allowing the use of brine from shale gas wells is a positive step, but brine from conventional wells can also push salinity loads far above any naturally occurring conditions.

**Prohibit the land application of tophole water, pit water, fill, or dredged material**. These substances can contain chemicals and sediments bound with pollutants that pose risks to water, air and soil.

**4. Identification of orphaned and abandoned gas and oil wells (Section 78.52(a))**. This is an important change and should be supported. About 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 before site and well construction and drilling** (not just fracking), 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 well site construction. The state lacks funding to address the large number of old wells, so drillers should be responsible for preventing pollution of adjacent water wells and air pollution from accidents when they occur.