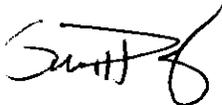




MEMO

TO Kurt E. Klapkowski
Director
Bureau of Oil & Gas Planning and Program Management

John W. Ryder
Director
Bureau of District Oil and Gas Operations

FROM Scott R. Perry 
Deputy Secretary
Office of Oil and Gas Management

DATE July 15, 2015

RE Oil and Gas Conservation Law – Waiver Request Process

MESSAGE:

The purpose of this memo is to outline the process for requesting a waiver from the setback requirements in Oil and Gas Conservation Law (OGCL), 58 P.S. §§ 401—419 and 25 Pa. Code Chapter 79 (relating to oil and gas conservation).

Background

The General Assembly enacted the OGCL in 1961. The fundamental purposes of the OGCL were to prevent waste or loss in the ultimate recovery of oil and gas from formations below the Onondaga formation and to protect correlative rights and the rights of royalty owners and producers. *See* 58 P.S. §§ 403–405.

The OGCL applies to a well that penetrates the Onondaga horizon. In areas where the Onondaga horizon is nearer to the surface than 3800 feet, the OGCL applies to a well that exceeds a depth of 3800 feet beneath the surface. These are known as conservation wells. *See* 58 P.S. § 403(b)(1).

Setbacks

A conservation well must be at least 330 feet from the nearest outside boundary line of the lease on which it is located.¹ If the lease is included in a voluntary unit, then the well must be located

¹ 25 Pa. Code § 79.1 defines “lease” as “[a] tract or tracts of land which by virtue of an oil and gas lease, fee or oil and gas ownership, constitute a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas, or both.”

at least 330 feet from the nearest unit line. These setbacks are to be measured from the entire length of the well bore from the top-hole location to the bottom-hole location. Section 402 of the OGCL defines "well" as "a bore hole or excavation for the purpose of producing oil or gas, or both." 58 P.S. § 402.

The OGCL setback applies to the entire length of both the vertical and horizontal well bores when the well penetrates the Onondaga horizon. When the conservation well has only a vertical well bore that penetrates the Onondaga horizon, the OGCL setback applies only to that vertical well bore. The Department of Environmental (DEP) designates a well's vertical, deviated or horizontal well bores distinctly when they have separate origin and end points, distinguishing them from other well bores, which may be associated with the well. This distinction affords the well bore a separate well bore number as set forth in the American Petroleum System's (API) sidetrack code numbering convention, giving the well bore a unique number, specifically at the 11th and 12th digits of the API number. If the well bore with a distinct well number penetrates the Onondaga at a depth of 3800 feet or deeper, then the setback applies to the entire length of that specifically identified well bore.

Application Requirements

An applicant for a well permit must demonstrate that the requested well location complies with the setback requirements in Section 406 of the OGCL and 25 Pa.Code § 79.11 (relating to drilling permits). On the well permit application, indicate whether the proposed well will be subject to the OGCL and whether the well is at least 330 feet from the outside lease or unit boundary. If the proposed well is to be located on a voluntary unit, include a signed or certified copy of the voluntary unitization agreement unitizing all or a portion of the land on which the well is to be located with all other lands or portions thereof lying within 330 feet of the location of the proposed well. On the plat, the applicant must illustrate that the wellbore meets the distance restrictions by indicating the boundaries of the leased area of voluntary unit, including any unleased area contained within a voluntary unit.

An applicant may submit a request to waive the 330 foot setback in their application for a well permit. *See* 58 P.S. § 406(a), 25 Pa. Code § 79.11(b).

Waiver Request

DEP may waive the setback requirements upon request after notice and a public hearing.

To request a waiver an applicant must include the following in their application:

- (1) A request for a hearing before DEP.
- (2) An explanation of the reasons why a waiver should be granted. This explanation should include information about how the well will protect correlative rights (for example, the operator will not produce from the portion of the well within 330 feet of the nearest outside boundary line).

- (3) A list of the names and last known addresses of all property owners, including any operators or royalty owners, within 330 feet of the entire length of the well bore subject to the OGCL.

An application that fails to include the information above will be deemed incomplete.

When DEP receives a complete application it will schedule a public hearing and provide notice. The hearing will be scheduled within 30 days of receipt of the waiver request.

An application seeking to locate a well within the 330 foot setback that does not contain a waiver request may be denied pursuant to Section 3211(e.1)(1) of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3211(e.1)(1) as a violation of Section 406 of the OGCL.

Notice

DEP will publish notice of the public hearing in the *Pennsylvania Bulletin* at least two weeks in advance of the pending public hearing.

Additionally, in accordance with Section 410(d) of the OGCL, notice will be given by United States mail addressed, postage prepaid, to the last known mailing address of the property owners affected, including any operators or royalty owners. This notice will provide the time and place of the public hearing, the waiver request and information about the applicable statute and regulations. 58 P.S. § 410.

Hearing

The public hearing is a formal, structured proceeding that affords the public the opportunity to provide oral testimony on the waiver request under review by DEP. DEP will consider all public comments prior to making a determination on the waiver request.

The public hearing will be scheduled at the applicable District Oil and Gas Operations Office or other designated location. DEP will assign a representative (presiding officer) to preside at the public hearing (for example, the Director of District Oil and Gas Operations, Oil and Gas Program Manager).

At the public hearing, DEP will follow the following guidelines:

1. The presiding officer will clearly announce any specific ground rules and introduce all DEP employees present prior to the beginning of testimony. The presiding officer will outline the factual information related to the well permit application and the waiver request; the applicable statutory and regulation standards; and the steps in the DEP's review of the waiver request.
2. Witnesses who have pre-registered to testify will be called in the order they registered. After those witnesses have testified, and as time allows, other parties who wish to testify will be called in the order they signed in.

3. Witnesses who are not present when called, may be called again at the conclusion of all other testimony, should time permit.
4. Testimony is limited to no more than five minutes for each witness.
5. Witnesses may not yield their time to other witnesses; organizations are requested to designate one witness to present testimony on their behalf.
6. Witness may refer to charts, graphs and other relevant visual aids that can be reasonably included in the record, but may not use signs, props or advertisements while providing testimony. Witnesses may not submit physical evidence.
7. Each witness is asked, but not required, to submit copies of his or her testimony to aid in transcribing the hearing and so that comments are appropriately addressed in the Comment-Response Document.
8. To aid in accurately transcribing the hearing, it is important that witnesses remain quiet while testimony is being presented.
9. Witnesses should begin by stating their name and affiliation, if any, for the record, prior to presenting testimony. Spelling names and terms that may not be generally familiar is recommended so the transcription can be as accurate as possible. Witnesses who have not provided contact information during pre-registration should also provide such information.
10. Because the purpose of the hearing is to receive testimony on the proposal, DEP staff will not address questions about the waiver request during the hearing. DEP may allot time to address questions before or after the public hearing or schedule an informal public information meeting.

Transcripts from Public Hearings

An official record of the public hearing will be prepared by an independent court reporter. Transcripts will be available for review at the application Oil and Gas Operations District Office and on DEP's website.

Decision

DEP will consider the relevant information presented in the waiver request and public comments and either grant or deny the waiver request as part of the application review process. DEP will prepare a written final determination and a record of decision.