

FREQUENTLY ASKED QUESTIONS

Environmental Protection Performance

Standards at Oil and Gas Well Sites

General Chapter 78a Questions

The purpose of this Frequently Asked Questions (FAQ) document is to highlight changes in and address questions about the new regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa. Code Chapter 78a and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.

This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.

1) How does the Marcellus Shale Coalition's (MSC) challenge in Marcellus Shale Coalition v. Commonwealth, Docket No. 573 MD 2016, impact the implementation and enforcement of this rulemaking?

On October 13, 2016, the MSC filed a petition for review in the nature of a complaint seeking declaratory and injunctive relief in the Commonwealth Court challenging 25 Pa. Code §§ 78.1 and 78a.15(f) and (g) (relating to public resource protection); 78a.52a and 78a.73(c)-(d) (relating to area of review), 78a.58(f) (relating to onsite processing), 78a.59b and 78a.59c (relating to well development impoundments and centralized wastewater impoundments); 78a.65 (relating to well site restoration), 78a.66(c) (relating to the remediation of spills at well sites), and 78a.121(b) (monthly waste reporting).

On October 14, 2016, MSC filed an Application for Expedited Special Relief to enjoin the Commonwealth's enforcement of the challenged regulations. On October 25 and 26, 2016 the Commonwealth Court held a hearing on MSC's Application.

On November 8, 2016, the Commonwealth Court granted, in part, and denied, in part, MSC's Application for Expedited Special Relief, preliminarily enjoining Sections 78a.1, 78a.15(f), 78a.15(g), 78a.52a(c)(3), 78a.59b(b), 78a.59c, 78a.65(d), 78a.73(c), 78a.73(d) in limited respects. Judge Brobson filed an unpublished Memorandum Opinion along with the Order. The Order states, in relevant part:

1. DEP is hereby ENJOINED preliminarily from implementing and enforcing the following provisions of the Chapter 78a Regulations:
 - (a) COUNT I: Sections 78a.1 and 78a.15(f) and (g) of the Chapter 78a Regulations, only to the extent that they include "common areas on a school's property or a playground" and "species of special concern" as "public resources" and include "playground owners" in the definition of "public resource agency";
 - (b) COUNT II: Section 78a.52(c)(3) and Section 78a.73(c) and (d) of the Chapter 78a Regulations, only to the extent that they impose monitoring and remediation obligations on owners and operators with respect to wells identified in the area of review survey owned and/or operated by others;

- (c) COUNT IV: Sections 78a.59b(b) and 78[a].59c in their entirety; and
- (d) COUNT V: Section 65(d) in its entirety.

An excerpt of the Order is available on page 6 of the Docket Sheet at <https://ujportal.pacourts.us/DocketSheets/AppellateCourtReport.ashx?docketNumber=573+MD+2016> .

On December 6, 2016, the Department filed a Notice of Appeal of the Commonwealth Court's November 8, 2016 Memorandum Opinion and Order to the Pennsylvania Supreme Court. The appeal resulted in an automatic stay of the enjoined provisions. In order to retain the result of the Commonwealth Court injunction, Judge Brobson quashed the stay on December 9, 2016. Accordingly, the preliminary injunction is still in effect. The preliminary injunction may be overturned on appeal to the Pennsylvania Supreme Court or upon the Commonwealth Court's final determination of the underlying petition.

The Department's implementation and enforcement of the enjoined provisions may change depending on the outcome of the litigation. While the Department is temporarily enjoined from implementing and enforcing the enjoined provisions the Department recommends that unconventional operators follow the standards outlined in the enjoined provisions as best practices. (posted 12/23/16)