

**DRAFT FINAL RULEMAKING
25 PA.CODE CHAPTER 78 (RELATING TO CONVENTIONAL OIL AND GAS WELLS)
AND CHAPTER 78a (RELATING TO UNCONVENTIONAL WELLS)
SUMMARY OF CHANGES FROM ANFR PUBLISHED ON APRIL 4, 2015**

(NOTE: Unless specifically identified, the changes outlined below apply to BOTH Chapter 78 and Chapter 78a.)

MAJOR DELETIONS FROM APRIL 4, 2015 DRAFT FINAL RULE

§ 78a.41. Noise mitigation. The Department decided not to include this section in the draft final rulemaking. Instead, given the complex nature of the technical issues surrounding noise mitigation, the Department plans to develop a best management practices guidance document which may serve as the basis for future rulemaking on the topic.

§§ 78.57a/78a.57a. Centralized tank storage. The Department decided not to include this section in the draft final rulemaking. Instead, off-site management of wastewater from oil and gas operations will be regulated under the residual waste regulations in Title 25, Article IX rather than under Chapter 78. These changes parallel the changes in sections 78.59c/78a.59c regarding centralized wastewater impoundments. Under the draft final rulemaking, such impoundments must either be properly closed or permitted as residual waste impoundments under the Solid Waste Management Act.

SUMMARY OF OTHER CHANGES TO APRIL 4, 2015 DRAFT FINAL RULE

§§ 78.1/78a.1. Definitions.

- *Anti-icing, De-icing, Pre-wetting:* These terms are retained in the draft final rulemaking as they are used in section 78a.70a.
- *Centralized impoundment:* Added the number of the DEP permit these facilities received.
- *Common areas of a school's property, Playground:* Added these definitions to clarify the limit of screening required under section 78.15(f)(1)(vi)/78a.15(f)(1)(vi).
- *Well development impoundment:* Name change from "Freshwater" impoundment.
- *Gathering pipeline:* Clarifying language added to define the limits of the term in relation to jurisdiction exercised by the Pennsylvania Public Utility Commission and the United States Federal Energy Regulatory Commission.
- *Limit of disturbance:* Clarifying definition added, taken from the Glossary of the *Erosion and Sediment Pollution Control Program Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008.
- *Oil and gas operations:* "seismic operations" deleted from the definition in response to comments.
- *Other critical communities:* Clarifying amendment to reflect the types of information that an applicant receives on a PNDI receipt using the PNDI ER Tool today.

- *Containment system, Primary containment, Secondary containment*: The first definition is deleted and the second and third are added to help clarify the types of containment that must be used on well sites and when and where such containment must be used.

- *Pennsylvania Natural Diversity Inventory (PNDI) and PNDI receipt*: Definitions added to clarify the use of the PNDI ER Tool in permitting. No substantive change from the ANFR language is intended.

- *Public resource agency*: Although the list in this definition is exemplary and not limiting, added several additional entities who might be responsible for managing a section 78.15(f)(1) public resource.

- *Threatened or endangered species*: Deleted “proposed” listing of species under the Endangered Species Act of 1973.

- *Waters of the Commonwealth*: Added a definition cross-referencing the Clean Streams Law.

- *Wellhead protection area*: New definition to cross-reference the Department’s existing regulations on this topic in 25 Pa.Code Chapter 109.

§§ 78.15/78a.15. Application requirements.

- Added a reference to the bonding regulations in subsection (b).

- Scope of subsection (b.1) clarified.

- Operator’s obligations to protect threatened and endangered species clarified. No substantive change intended.

- Subsection (e) clarified as applying to new wells on existing well sites.

- Several changes were made to subsection (f):

- Reversion to the original language concerning drilling a well rather than constructing a new well to match the language in section 3215 of the 2012 Oil and Gas Act.

- Clarifying the language regarding “wellhead protection areas” in paragraph (vii).

- Renumbering the paragraphs in section 78a.15(f)(1) for consistency with Chapter 78.

- Clarifying the criteria in subsection (g). No substantive change is intended.

- Adding subsection (h) to section 78.15 to address existing anti-degradation requirements under the Clean Streams Law to parallel language added at ANFR in section 78a.15(h). This is consistent with the current well permit application requirements.

- Noting in subsection (h) that earth disturbance must be conducted in accordance with the approved erosion and sediment control plan.

§§ 78.17/78a.17. Permit expiration and renewal.

- In subsection (b), clarification that a single 2-year renewal is available.

§ 78a.23. Time for filing objections by owner or operator of coal mine.

- Minor change deleting “oil or gas” before “well” as only gas wells can be unconventional.

§§ 78.51/78a.51. Protection of water supplies.

- Clarifying amendment to subsection (c)(2). No substantive change intended.
- Replacing “oil and gas activities” with “oil and gas operations” for consistency.

§§ 78.52/78a.52. Predrilling or prealteration survey.

- Subsection (d) amended to allow for submission of the survey 10 business days prior to the commencement of drilling, rather than from when the Department assigns an API number to the well. This will allow operator control over the completion of the survey based on drilling schedules while still providing a fixed date for submission of the survey.

§§ 78.52a/78a.52a. Area of review.

- Plugged wells added to the list of wells that must be identified in the area of review survey.
- “Surface and bottom hole” locations added to subsection (a) to clarify which wells need to be included in the area of review survey.
- Use of certified mail to provide the necessary landowner questionnaires to clarify how operators must contact these individuals.
- Subsection (e) added to outline actions the Department may take to address incomplete survey or an inadequate monitoring action plan.

§§ 78.55/78a.55. Control and disposal planning.

- Subsection (b) amended for clarity.
- 78a.55(c) amended to reflect the distinction between primary and secondary containment.

§§ 78.56/78a.56. Temporary Storage.

- Subsection (a) re-written to provide clarity to the requirements related to waste management. No substantive change is intended.
- Paragraph (a)(15) amended to allow for a de minimis amount of condensate to be stored along with flowback water in an open top structure or, in section 78.56, a pit.
- Subsection 78.56(e) additional language to allow for waiver of notification requirements prior to construction of a pit.

§§ 78.57/78a.57. Control, storage and disposal of production fluids.

- Language added to subsection (a) to provide clarity to the requirements related to waste management. No substantive change is intended.
- Subsections (c) and (d) language is added to clarify when primary and secondary containment must be used.
- Subsection (e) language added requiring notification to the Department whenever a new underground storage tank is installed.
- Subsection (h) requires deficiencies identified during the routine inspections to be addressed and in accordance with manufacturers specifications and applicable engineering design criteria.
- Subsection 78.57(h) changes the monthly routine inspection requirement to a quarterly routine inspection to parallel the integrity obligations of operators. For unconventional operators, the monthly routine inspection requirement is retained.

§§ 78.58/78a.58. Onsite processing.

- Subsection (d) now requires operators processing fluids or drill cuttings on a well site to develop an action plan specifying procedures for monitoring for and responding to radioactive material produced by the treatment processes. This will bring onsite processors in line with off-site waste treatment facilities, and ensure public health and safety through the proper handling, transportation and disposal of radioactive materials.

§§ 78.59b/78a.59b. Well development impoundments.

- Term used changed from “freshwater impoundments” to “well development impoundments” to reflect that these facilities may contain surface water, fresh groundwater and other fluids approved by the Department even though such fluids would typically be close to freshwater in quality.
- Subsection (b) clarified to indicate that existing well development impoundments that do not meet the requirements for new well development impoundments relating to liners, security and mine influenced water plans must be upgraded or restored within twelve months.

§§ 78.59c/78a.59c. Centralized impoundments.

- Language added to subsection (a) clarifying that these impoundments must either be closed or obtain a residual waste permit to continue operating. No substantive change intended.

§§ 78a.62 and 78a.63. Disposal of residual waste—pits; Disposal of residual waste—land application.

- Language added to clarify that an unconventional operator wishing to dispose of drill cuttings in a pit or through land application must obtain an individual permit under Chapter 78 to do so.

§§ 78.64/78a.64. Secondary containment around oil and condensate tanks.

- Changes made in these sections to clarify the use of the term “secondary containment.” No substantive change intended.

§ 78a.64a. Secondary containment at well sites.

- Changes made in this section to clarify the use of the terms “primary containment” and “secondary containment.” No substantive change intended.

- Deletion of provisions relating to subsurface containment, which while allowed, did not qualify as “secondary containment” as required by the 2012 Oil and Gas Act and was therefore superfluous.

§§ 78.67/78a.67. Borrow pits.

- Amendment to more clearly outline the applicability of the Clean Streams Law and 25 Pa.Code Chapter 102 to borrow pits, including consideration of the borrow pit area as part of the erosion and sediment control permit disturbance calculations.

§ 78a.68. Oil and gas gathering pipelines.

- Language added to subsection (g) to clarify that operators of natural gas and hazardous liquids pipelines must only comply with the Subparts addressing corrosion control in 49 CFR Part 192 and Part 195, respectively.

§ 78a.68a. Horizontal directional drilling for oil and gas pipelines.

- Subsection (e) amended to allow for the staging of materials in the floodway or within 50 feet of a body of water with written approval from the Department.

§ 78a.68b. Well development pipelines for oil and gas operations.

- Subsection (f) amended to allow for the use of markers or signs as options to flagging the location of the well development pipeline.

- Clarifying language added to subsection (i); inspections must be conducted each day that the pipeline is “not emptied and depressurized.” The phrase replaces “in use.”

- Subsection (j) amended to clarify that well development pipelines that are not being used to transport fluid for more than seven consecutive days must be emptied and depressurized. Clarifying language also added to make clear that well development pipelines may not be used to store or transport fluids for more than a year without approval from the Department.

§ 78a.69. Water management plans.

- Changes are made to the application requirements subsection to clearly outline the requirements for surface and groundwater sources to meet the Department’s obligations under section 3211(m)(2) and (3) of the 2012 Oil and Gas Act. For surface water sources, this includes an invasive species plan and for groundwater sources, this includes proper well construction and abandonment.

- In subsection (d), clarifying the scope of the presumption related to approval of a proposed water withdrawal by the listed entities.

§ 78.73. General provision for well construction and operation.

- Plugged wells added to the list of wells that must be addressed in the monitoring plan. For plugged wells with a known operator, only notice must be provided to that operator. For plugged wells without a known operator, the plugged well must be monitored if it falls within the Table 2 limits.

- Added language regarding the timing of notice to known operators and the Department where a naturally produced well is later subject to hydraulic fracturing.

- Added volume changes to the list of potential indicators of abnormal fracture propagation.

- Added language indicating that operators who become aware of a communication event from other sources (for example, an active well operator reporting a problem with that well to the stimulating operator), must immediately notify the Department about that information.

§ 78a.73. General provision for well construction and operation.

- Plugged wells added to the list of wells that must be addressed in the monitoring plan. For plugged wells with a known operator, only notice must be provided to that operator. For plugged wells without a known operator, the plugged well must be monitored if it likely penetrates within 1500 feet of a formation intended to be stimulated.

- Added volume changes to the list of potential indicators of abnormal fracture propagation.

- Added language indicating that operators who become aware of a communication event from other sources (for example, an active well operator reporting a problem with that well to the stimulating operator), must immediately notify the Department about that information.

§ 78a.76. Drilling within a gas storage area.

- Minor change deleting "or oil" as only gas wells can be unconventional.

§§ 78.111/78a.111. Abandonment.

- Language added to the draft final rulemaking to correct an outdated cross-reference.

§ 78a.301. Scope.

- Reference to section 1606-E of the Fiscal Code (72 P.S. § 1606-E) deleted because that section only applies to bonding for conventional wells.