

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapter 78
(Oil and Gas Wells)

Preamble

The Environmental Quality Board (Board) proposes to amend 25 Pa. Code Chapter 78 (relating to Oil and Gas Wells). The proposed rulemaking would amend Chapter 78 to update the requirements related to surface activities associated with the development of oil and gas wells. Additionally, the proposed amendments would address recent statutory changes in Act 13 of 2012 (58 Pa.C.S. §§ 2301-3504). The new and amended sections are §§ 78.1, .2, .13, .15, .17, .18, .19, .21, .25, .28, .33, .51, .52, .52a, .53, .55, .56, .57, .58, .59, .59a, .59b, .59c, .60, .61, .62, .63, .64, .64a, .65, .66, .67, .68, .68a, .68b, .69, .70, .70a, .72, .73, .75, .76, .87, .91, .101, .103, .105, .121, .122, .123, .301, .302, .303, .306, .308, .309, .310, .402, .403, .404, .902.

The proposed regulations would update existing requirements regarding containment of regulated substances, waste disposal, site restoration and reporting releases. The proposed regulations would establish new planning, notice, construction, operation, reporting and monitoring standards for surface activities associated with the development of oil and gas wells. This includes requirements for freshwater impoundments, centralized impoundments, containment systems and practices for unconventional wells, wastewater processing, borrow pits, gathering lines, horizontal directional drilling, temporary pipelines, and road-spreading of brine. The proposed regulations would also add new requirements for addressing impacts to public resources, identifying and monitoring orphaned and abandoned wells during hydraulic fracturing activities, and water management planning. These additional requirements will provide increased protection of public health, safety, and the environment.

This proposed rulemaking was adopted by the Board at its meeting on _____, 2013.

A. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information contact Kurt Klappowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th floor, 400 Market Street, P.O. Box 8765, Harrisburg, PA 17105 8765, 717-772-2199; or Elizabeth Nolan, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal

is available electronically through the Department of Environmental Protection's (Department) website at www.dep.state.pa.us (select Public Participation).

C. Statutory Authority

This proposed rulemaking is being made under the authority of Sections 3215(e), 3218(a), 3218.2(a)(4), 3218.4(c), and 3274 of the 2012 Oil and Gas Act (58 Pa.C.S. §§ 3215(e), 3218(a), 3218.2(a)(4), 3218.4(c), 3274), Section 5 of the Clean Streams Law (35 P. S. §§ 691.5), Section 105 of the Solid Waste Management Act (35 P. S. §§ 6018.105), Section 5 of the Dam Safety and Encroachments Act (32 P.S. §§ 693.5), Section 104 of the Pennsylvania Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6062.104); and Sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17, 510-20).

D. Background and Purpose

The proposed regulations will amend the current oil and gas well regulations and add additional controls to the surface activities on a well site. Over the last several years, advances in drilling and completion technologies have attracted interest in producing natural gas from unconventional formations in Pennsylvania, including the Marcellus Shale formation. Compared to conventional oil and gas development in Pennsylvania, these recent advances involve larger well sites, larger centralized freshwater and waste storage facilities, mobile wastewater processing facilities, larger volumes of water for hydraulic fracturing activities, new pipelines systems, and increased amounts of regulated substances generated during drilling and hydraulic fracturing activities. Additionally, on February 14, 2012, Governor Corbett signed Act 13 of 2012 (58 Pa.C.S. §§ 2301-3504) into law. Act 13 repealed the act of December 19, 1984, P.L. 1140, No. 223, as amended, 58 P.S. §§ 601.101 et seq. (1984 Oil and Gas Act), amending and consolidating its provisions into Chapter 32 Title 58 of the Pennsylvania Consolidated Statutes (2012 Oil and Gas Act). The 2012 Oil and Gas Act contains new environmental protections for unconventional wells and directs the Board to promulgate specific regulations. For these reasons, the Department initiated this rulemaking.

These proposed regulations would update 25 Pa. Code Chapter 78 with revised planning, performance, notice, operation, reporting, and monitoring standards to strengthen environmental protections associated with the development of oil and gas wells. The proposed amendments include new requirements for considering impacts to public resources, water supply restoration or replacement, identification of orphaned and abandoned wells, temporary storage of regulated substances, freshwater impoundments, centralized impoundments, waste management, containment systems and practices for unconventional wells, site restoration, borrow pits, gathering lines, horizontal directional drilling, temporary pipelines, water management plans, and road-spreading activities.

On February 16, 2012, the Department presented a conceptual summary of the proposed revisions to 25 Pa. Code Chapter 78 to the Oil and Gas Technical Advisory Board (TAB). After the enactment of Act 13 of 2012, this summary was revised and discussed with TAB on August 15, 2012. A draft of the proposed rulemaking was discussed at TAB meetings on February 20, 2013. In response to TAB's comments, the Department revised the draft proposed rulemaking and presented it to TAB on April 23, 2013 for their consideration. At the April 23 meeting, TAB

voted unanimously to recommend that the Board publish these regulations as a proposed rulemaking.

E. Summary of Regulatory Requirements

§ 78.1 Definitions.

The proposed regulation contains new or revised definitions for “Act 2”, “anti-icing”, “approximate original conditions”, “body of water”, “borrow pit”, “centralized impoundment”, “condensate”, “containment system”, “conventional formation”, “conventional well”, “de-icing”, “department”, “freeboard”, “freshwater impoundment”, “gathering pipeline”, “mine influenced water”, “oil and gas operations”, “PCSM plan”, “pit”, “pre-wetting”, “process or processing”, “PPC plan”, “regional groundwater table”, “regulated substance”, “stormwater”, “temporary pipelines”, “watercourse”, and “wetland” were added to reflect the proposed requirements. Pursuant to statutory changes in Act 13, this rulemaking provides new definitions for “Act”, “owner”, “public water supply”, “water management plan”, “water purveyor”, “water source”, and “well operator or operator.”

§ 78.15 Application requirements.

The proposed revisions to subsection (a) require well permit applications to be submitted electronically through the Department’s website.

Subsection (c) is proposed to be added to address statutory changes in Act 13 that require the Department review a well permit applicant’s parent and subsidiary corporations’ compliance history for operations in the Commonwealth.

Subsection(d) is proposed to be added to require well permit applicants to consult with the Pennsylvania Natural Heritage Program (PNHP) regarding the presence of State or Federal threatened or endangered species (T&E species) where the proposed well site or access road will be located and outlines a process to address any adverse impacts. Many well permit applicants address impacts to T&E species when fulfilling their permitting obligations under 25 Pa. Code Chapter 102. For that reason a new subsection is proposed to specify that compliance with Chapter 102.5 and 102.6(a)(2) is deemed to comply with the requirements to address T&E species as part of the well permit application process.

Subsection (e) is proposed to be added to outline a process for the Department to consider the impacts to public resources when making a determination on a well permit in accordance with requirements in the 2012 Oil and Gas Act.

Subsection (g) proposes to require well permit applicants to identify when the proposed well site or access road may impact a listed public resource, notify applicable jurisdiction agencies, and provide the Department and the jurisdictional agencies with a description of the functions and uses of the public resources and avoidance or mitigation measures to be taken, if any. This section also provides applicable jurisdictional agencies the opportunity to submit comments to the Department, including any recommendations to avoid or minimize impacts, during a 15-day timeframe.

Act 13 directed the Board to promulgate regulations for the Department to condition a well permit based on its impact to public resources. Subsection (g) is a new section proposed to implement this new statutory requirement providing that the Department may condition a well permit if it determines that the proposed well site or access road poses a probable harmful impact to a public resource. Section 3215(e) of Act 13 requires the Department to consider the impact of the condition on the applicant's ability to exercise its property rights to ensure optimal development of the resources, and provides a mechanism by which the operator may appeal the Department's determination.

§ 78.18. Disposal and enhanced recovery well permits.

Subsection (d) is a new provision that would specify that storage and waste processing requirements apply to disposal and enhanced recovery well sites.

§ 78.51. Protection of water supplies.

The proposed amendments clarify that the presumption of liability established in 58 Pa.C.S. § 3218(c) does not apply to pollution resulting from well site construction activities.

Act 13 established a new provision that specifies a restored or replaced water supplies must meet Pennsylvania Safe Drinking Water Act standards or be comparable to the quality of the water supply before it was affected if that water was of a higher quality than those standards. This section has been amended to reflect this statutory language.

§ 78.52. Predrilling or prealteration survey.

The revisions to subsection (d) propose to establish a new process for submitting predrill sample results to the Department and applicable water users. Under this proposed process, an operator electing to preserve its defenses under sections 3218(d)(1)(i) and 3218(d)(2)(i) shall submit all sample results taken as part of a survey to the Department within 10 business days of receipt of all the sample results taken as part of that survey. A copy of sample results must be provided to water users within 10 business days of receipt of the sample results.

Subsection (g) is a new provision reflecting new Act 13 requirements that unconventional well operators provide written notice to water supply owners that the presumption established in 58 Pa.C.S. § 3218(c) may be void if the landowner or water purveyor refuses to allow the operator access to conduct a predrilling or prealteration survey and provided that the operator submits proof of such notice to the Department.

§ 78.52a. Abandoned and orphaned well identification.

This new section proposes to require operators to identify orphaned and abandoned wells in proximity to the vertical and horizontal well bore prior to hydraulically fracturing a well. The section outlines how operators must conduct this identification, including consulting with the Department's database, farm line maps, and submitting a questionnaire to surface landowners. The results of this survey must be provided to the Department.

§ 78.53. Erosion and sediment control.

The amendments to this section cross-reference the requirements of 25 Pa. Code Chapter 102 (relating to erosion and sediment control). This section also specifies that best management practices for erosion and sediment control for oil and gas activities are listed in the Erosion and Sediment Pollution Control Program Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008, as amended and updated, and the Oil And Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001, as amended and updated.

§ 78.55. Control and disposal planning; emergency response for unconventional wells.

The amendments to this section clarify Preparedness, Prevention and Contingency (PPC) plan requirements for oil and gas operations. Persons conducting oil and gas operations shall prepare and implement site-specific PPC plans according to the requirements in Chapter 91.34 (Activities Utilizing Pollutants) and Chapter 102 (Erosion and Sediment Control). Further proposed changes provide that the well operator must prepare and develop a site-specific PPC plan prior to storing, using, generating or transporting regulated substances to, on or from a well site from the drilling, alteration, production, plugging or other activity associated with oil and gas wells.

Proposed changes to this section would further require that the unconventional well operator's PPC plan describe containment practices to be utilized and the area of the well site where containment systems will be employed as required in section 78.64a as well as a description of equipment to be kept onsite during drilling and hydraulic fracturing activities that can be used to prevent spills. The proposed amendments also provide that a PPC plan developed in conformance with the *Guidelines for the Development and Implementation of Environmental Emergency Response Plans*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001, as amended and updated, shall be deemed to meet the requirements of this section.

§ 78.56. Temporary storage.

The amendments to this section include changing the name of the section from "Pits and tanks for temporary containment" to "Temporary Storage" to clarify the difference between storage requirements and containments requirements in § 78.64a.

Paragraph (a)(2) is proposed to be added to specify that modular aboveground storage structures may be used to temporarily contain regulated substances upon prior Department approval and notice prior to installation. This paragraph also proposes that the Department will maintain a list of approved modular structures on its website.

The amendments to this section also include new monitoring requirements for pits and tanks at unconventional well sites or, in the alternative, fencing requirements for pits and valve and access lid requirements for tanks. Additionally, this section proposes new signage requirements for tanks at unconventional well sites. The amendments also propose new construction standards for pits at unconventional well sites, including liner compatibility testing, liner seam testing,

inspection requirements, notification to the Department prior to pit liner installation, and a demonstration that the pit bottom is 20 inches above the seasonal high groundwater table.

§ 78.57. Control, storage and disposal of production fluids.

The amendments to this section propose to prohibit the use of open top structures and pits to store brine and other production fluids generated during the production operations of a well. If new, refurbished or replaced tanks are used to store these fluids, these tanks must be equipped with secondary containment. This section also proposes new performance and technical standards for tanks storing brines and other production fluids generated during production operations. Additionally, this section proposes a process for identifying and removing or obtaining approval to use underground or partially buried storage tanks that are used to store brine and other fluids produced during operation of the well.

§ 78.58. Onsite Processing.

This section proposes to delete provisions related to the approval of pits that existed prior to July 29, 1989. The amendments to this section also propose new provisions relating to wastewater processing at well sites. Subsection (a) proposes to allow operators to process fluids generated by oil and gas wells at the well site where the fluids were generated, or at the well site where all of the fluid is intended to be beneficially used to develop, drill or stimulate a well upon Department approval. Subsection (e) proposes a process for using approved processing facilities at subsequent well sites. Subsection (b) proposes specific activities that do not require Department approval, including mixing fluids with freshwater, aerating fluids, or filtering solids from fluids. New proposed subsection (c) specifies that drill cuttings may only be processed at the well site where those drill cuttings were generated, if approved by the Department.

§ 78.59a. Impoundment embankments.

This newly added section contains design and construction standards for both freshwater and centralized impoundments, including construction and stabilization requirements for embankments.

§ 78.59b. Freshwater impoundments.

This newly added section creates registration, performance and safety and security requirements for freshwater impoundments. This proposed section would require freshwater impoundments to be 20 inches above the seasonal high groundwater table and requires operators to document the depth of the seasonal high groundwater table, the manner that it was ascertained, and the distance between the seasonal high groundwater table and the impoundments. This section also proposes a restoration requirement for freshwater impoundments. Additionally, this section contains a process for storing mine influence water in freshwater impoundments to ensure that it will not result in pollution to waters of the Commonwealth.

§ 78.59c. Centralized impoundments.

This is a newly added section that would establish permitting requirements for centralized impoundments in Chapter 78. This section proposes restrictions to the location of centralized impoundments, setback requirements and design and construction standards, including sub-base, secondary liner, leak detection system, and primary liner requirements. Additionally, this section proposes that persons seeking to construct a centralized impoundment must complete a baseline hydrological investigation to document background conditions. Centralized impoundment operators must also install, operate and maintain a water quality monitoring system. Further, this section proposes new requirements for oversight by professional geologists and licensed engineers. Additionally, this section proposes new restoration requirements for centralized impoundments.

§ 78.60. Discharge requirements.

The proposed amendments to this section specify that operators discharging tophole water by land application must document compliance with the regulatory requirements, including those under the Dam Safety and Encroachments Act, make such records available to the Department upon request, and submit the relevant information in the well site restoration report. In addition, the proposed amendments add fill or dredged material to this section.

§ 78.61. Disposal of drill cuttings.

The proposed amendments to this section would specify the loading and application rate for the land application of drill cuttings. Additionally, this section provides that the Department will maintain a list of approved solidifiers for the disposal of uncontaminated drill cuttings in pits. Further, this section specifies that the operator must notify the Department prior to disposing drill cuttings pursuant to this section.

§ 78.62. Disposal of residual waste—pits.

The proposed amendments to this section clarify that solid waste generated by hydraulic fracturing of unconventional wells or processing wastewater pursuant to section 78.58 (Onsite Processing) may not be disposed of in a pit on the well site. However, residual waste, including contaminated drill cuttings, can be disposed of in a pit on the well site. Additionally, the amendments to this section require the operator to notify the Department prior to disposing residual waste. This section also proposes a requirement that operators determine that the pit bottom is 20 inches above the seasonal high groundwater table prior to using the pit and that the determination be certified by a soil scientist or other similarly trained person using accepted and documented scientific methods. Compliance with this section must be documented and made available to the Department upon request as well as be submitted in the well site restoration report.

§ 78.63. Disposal of residual waste—land application.

The proposed amendments to this section clarify that solid waste generated by hydraulic fracturing of unconventional wells or processing fluids pursuant to section 78.58 may not be

disposed of by land application at the well site. However, residual waste, including contaminated drill cuttings, can be disposed of on the well site by land application. The amendments to this section include a new provision that requires the operator to notify the Department 3 business days prior to land application. This notice shall be submitted electronically to the Department through its website and include the date the residual waste will be disposed. Compliance with this section must be documented and made available to the Department upon request as well as submitted in the well site restoration report.

§ 78.64a. Containment systems and practices at unconventional well sites.

This proposed rulemaking would add this section to require that unconventional well sites be designed and constructed using containment systems and practices that prevent spills to the ground surface and off the well site, in accordance with new Act 13 requirements. This section specifies when such systems and practices must be employed. Further, this new section specifies secondary containment requirements. Additionally, this section proposes provisions related to subsurface containment systems.

§ 78.65. Site restoration.

The proposed amendments to this section would clarify the well site restoration requirements, including when restoration is required if there are multiple wells drilled on a single well site and what constitutes a restoration after drilling.

Act 13 created a new provision that allows for a two-year extension of the restoration requirements upon approval of a plan that demonstrates that the extension will result in less earth disturbance, increased water reuse or more efficient development of the resource. This section describes the information that must be submitted in order to obtain a two-year extension under section 3216.

This section also proposes that written consent of the landowner satisfies the restoration requirements so long as the operator complies with the post construction stormwater management requirements in 25 Pa. Code Chapter 102. Additionally, this section proposes amendments to the well site restoration report requirements, including forwarding a copy to the surface landowner.

§ 78.66. Reporting and remediating releases.

The amendments to this section include amending the title of the section to include remediating releases. Proposed amendments to this section also clarifies the requirements related to spills and releases of regulated substances on or adjacent to well sites and access roads. This proposed section further specifies what spills or releases must be reported to the Department; when and how such a report must be made; what information needs to be reported; and necessary corrective measures.

This proposed section also clarifies that the operator or responsible party must remediate an area affected by a spill or release, in accordance with subsection (c), which outlines three different remediation options.

§ 78.67. Borrow Pits

This newly added section provides requirements for noncoal borrow areas for oil and gas well development, including performance, registration and restoration requirements.

§ 78.68. Oil and gas gathering lines

This newly added section contains requirements related to the construction and installation of gathering pipelines, including a limit on the extent of associated earth disturbance, flagging requirements and topsoil/subsoil standards. Pursuant to new Act 13 requirements, this section also contains corrosion control requirements for buried metallic gathering lines.

§ 78.68a. Horizontal directional drilling for oil and gas pipelines.

This newly added section contains proposed requirements for horizontal directional drilling associated with gathering and transmission pipelines, including planning, notification, construction, and monitoring requirements. This section contains cross references to other applicable regulatory requirements in 25 Pa. Code Chapters 102 and 105. This section proposes that Department approval is required prior to using drilling fluid other than bentonite and water. Additionally, this section specifies that horizontal directional drilling activities may not result in a discharge of drilling fluids to waters of the Commonwealth. In the event of a discharge, this section outlines the steps that an operator must take to report and address that discharge. This section also proposes that any water supply complaints obtained by the operator be reported to the department within 24 hours.

§ 78.68b. Temporary pipelines for oil and gas operations.

This newly added section contains the requirements for temporary pipelines associated with oil and gas operations, including installation, construction, flagging, pressure testing, inspection operation, recordkeeping, and removal requirements. This section also contains cross references to applicable regulatory requirements in 25 Pa. Code Chapters 102 and 105.

§78.69. Water management plans.

The proposed regulation would add this section to address posting, monitoring, and reporting in the Ohio River Basin; reuse planning requirements; WMP expiration and renewals. This proposed section also outlines the circumstances under which the Department may deny a WMPs application or suspend, revoke, or terminate an approved WMP.

§ 78.70. Road-spreading of brine for dust control and road stabilization.

This newly added section proposes requirements relating to road-spreading of brine from oil and gas wells for dust suppression and road stabilization. This section does not apply to fluids generated from unconventional wells, including Marcellus wells.

This section proposes that use of brine for dust suppression and road stabilization must only be conducted pursuant to an annual plan approved by the Department. This section further proposes

planning, notification, operation, performance, reporting, and recordkeeping requirements. This section also specifies that activities conducted pursuant to this section are deemed to have a residual waste permit by rule.

§ 78.70a. Pre-wetting, anti-icing and de-icing.

This newly added section proposes requirements for use of brine from conventional oil and gas wells for pre-wetting, anti-icing and de-icing. This section does not apply to fluids generated from unconventional wells, including Marcellus wells.

This section proposes that use of brine for pre-wetting, anti-icing and de-icing activities must only be conducted pursuant to an annual plan approved by the Department. This section proposes plan requirements, operation standard, constituent concentration limits, and application rates. Additionally, the section proposes sampling procedures of brine sources and recordkeeping requirements for the analytical evaluations as well as monthly reporting requirements. This section further specifies that activities conducted pursuant to this section are deemed to have a residual waste permit by rule.

§ 78.73. General provision for well construction and operation.

Subsections (c) and (d) are new proposed subsections requiring operators to visually inspect orphaned and abandoned wells identified pursuant to section 78.52a during hydraulic fracturing activities. This subsection proposes to require operators to notify the department of any changes to those wells and to take action to prevent pollution or discharges to the surface. The amendments codify the requirement that an operator that alters an abandoned and orphaned well by hydraulic fracturing must plug that well.

§ 78.122. Well record and completion report.

The proposed amendments to this section address new Act 13 statutory requirements, including new well report and stimulation record requirements.

§ 78.123. Logs and additional data.

The proposed changes address new Act 13 requirements and clarify when industry logs and data collected during drilling activities need to be submitted to the Department.

§ 78.309. Phased deposit of collateral.

This section is proposed to be deleted in response to new bonding requirements in Act 13.

F. Benefits, Costs and Compliance

Benefits

Both the residents of this Commonwealth and the regulated community will benefit from these regulations.

The proposed process for identifying and considering the impacts to public resources will ensure that any probable harmful impacts to public resources will be avoided or mitigated while providing for the optimal development of oil and gas resources. The proposed provisions that require operators to identify orphaned and abandoned wells and monitor such wells during hydraulic fracturing activities will minimize potential impacts to waters of the Commonwealth. The proposed containment systems and practices requirements for unconventional well sites will minimize spills and releases of regulated substances at wells site and ensure that any spills or releases are properly contained. The proposed amendments to the reporting requirements for releases will ensure state-wide consistency for reporting and remediating spills and releases.

New planning, notification, construction, operation, testing, and monitoring requirements for pits, tanks, modular aboveground storage structures, freshwater impoundments, centralized impoundments and pipelines will help prevent releases or spills that may otherwise result without these additional precautions. Additionally, the proposed monitoring and fencing requirements for pits and impoundments and tank valve and access lid requirements for tanks ensure protection from unauthorized acts of third parties and damage from wildlife. Further, the proposed requirements related to wastewater processing at well sites will encourage the beneficial use of wastewater for drilling and hydraulic fracturing activities.

The proposed amendments contain several new notification requirements which will enable Department staff to effectively and efficiently coordinate inspections at critical stages of pit construction, modular aboveground storage facility installation, drill cutting or residual waste disposal, horizontal directional drilling, and road-spreading activities. Additionally, proposed electronic submission requirements for well permits, notifications and predrill surveys will enhance efficiency for both the industry and the Department.

As new areas of the Commonwealth are developed for natural gas, these proposed regulations will avoid many potential health, safety and environmental issues as well as provide a consistent and efficient approach to oil and gas development in Pennsylvania.

Compliance Costs

There are compliance costs associated with the additional environmental protection measures in these proposed regulations. These additional costs primarily fall on unconventional well operators due to the passage of the 2012 Oil & Gas Act (Act 13).

The estimated total compliance costs of this regulation on all unconventional operators are between \$75,002,050 and \$96,636,950 annually. The estimated savings of this regulation on unconventional operators is approximately \$21,734,700 annually. Taken together, the estimated net cost of this proposed regulation on unconventional operators is between \$53,267,350 and \$74,902,250 annually.

The estimated compliance costs of this regulation on conventional operators are between \$5,389,360 and \$12,006,000. The estimated savings of this regulation on conventional operators is approximately \$36,680 per year. The estimated net cost of this proposed regulation on conventional operators is between \$5,352,680 and \$11,969,320.

Compliance Assistance Plan

The Department has worked extensively with representatives from the regulated community and leaders from several industry organizations have attended the advisory committee meetings where the proposed regulations have been discussed. Therefore, the requirements proposed in this rulemaking are well known.

The Department plans to schedule training sessions for the regulated community to address the new regulatory requirements when the regulation is finalized. Additionally, DEP field staff are the first points of contact for technical assistance and will be able to provide guidance to the regulated community through technical information and direct field-level assistance.

The Department also plans to provide training when the regulation is finalized on how to identify and document the seasonal high groundwater table as required in Sections 78.56(a)(11) and 78.62(a)(9), of the proposed amendments and 78.63(a)(9) of the existing Chapter 78 regulations.

Paperwork Requirements

The proposed amendments contain several new planning requirements, when applicable, including a site characterization and groundwater testing plans for centralized impoundments; a mine influenced water storage plan; and remedial action plans for spill and releases.

New notification requirements are proposed for the following, when applicable: receipt of water supply complaints, installation of modular storage structures, use of previously approved wastewater processing facilities, centralized impoundment leakage, disposal of drill cuttings, disposal of residual waste, horizontal directional drilling, and road-spreading activities. These notifications are proposed to be submitted electronically through the Department's website, thereby reducing paperwork.

Additionally, the proposed amendments require the development and submission of forms relating to the following activities, when applicable: consideration of public resources, location of orphaned and abandoned wells, certification by licensed professionals related to pits, removal of underground or partially buried tanks, registration of freshwater impoundments, plans for mine-influenced water storage, extensions for well site restoration, and planning and reporting of road spreading.

The amendments propose that a permit is required prior to the construction of a centralized impoundment. However, this is not a new requirement. Additionally, there is a new proposed requirement that well permits be submitted electronically.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can

provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking will continue to assure that the citizens and the environment of this Commonwealth experience the advantages of our oil and gas resources. The proposed regulations will minimize impacts to waters of the Commonwealth.

The proposed amendments include new requirements to identify and monitor orphaned and abandoned wells to minimize the potential impacts to waters of the Commonwealth from such pathways. New material specifications and performance standards for containment systems and practices will ensure that spills and releases are properly contained, thereby preventing regulated substances associated with oil and gas operations from escaping into the environment. Additionally, new planning, notification, construction, operation, inspection, and monitoring requirements for pits, tanks, freshwater impoundments, centralized impoundments, processing activities, disposal methods, and pipelines provide an additional degree of protection for waters of the Commonwealth.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

In accordance with Section 5(a) of the Regulatory Review Act (71 P.S. §§ 745.5(a)), on _____, 2013, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions, or objections must be received by the Board by _____, 2013,

(within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by _____, 2013 (within 60 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments – Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by _____, 2013, (within 60 days of publication in the *Pennsylvania Bulletin*). A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within two working days, the comments should be retransmitted to ensure receipt.

K. Public Hearings

The Board will hold public hearings for the purpose of accepting comments on this proposal. The hearings will be held at _____ p.m. on the following dates:

- | | |
|--------------|--------------|
| _____ , 2013 | _____ , 2013 |
| _____ , 2013 | _____ , 2013 |
| _____ , 2013 | _____ , 2013 |

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

E. CHRISTOPHER ABRUZZO,
Acting Chairman