

FREQUENTLY ASKED QUESTIONS

Environmental Protection Performance Standards at Oil and Gas Well Sites

Application Requirements and Public Resources

(§§ 78a.15)

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) Will a well drilling permit be special conditioned so that no drilling is allowed if the Area of Review (AOR) survey report is not submitted with the permit application?

No. Submission of the AOR survey report and monitoring plan contemporaneous with the permit application is only required under section 78a.52a(d) when drilling will commence less than 30 days after the permit is issued. Although failing to submit the AOR report in this situation will place the operator in violation of Section 78a.52a. Issuance of the permit is not dependent on submission of the AOR report and monitoring plan. (posted 10/11/16)

- 2) Can the Department of Environmental Protection (Department or DEP) review a permit application concurrent with the Pennsylvania Natural Diversity Inventory (PNDI) environmental review being conducted by the resource agency?

Concurrent review is permitted under DEP's [Policy for Pennsylvania Natural Diversity Inventory \(PNDI\) Coordination During Permit Review and Evaluation. Document No. 021-0200-001](#), see pages 7-8). The final-form rulemaking does not change that Policy in terms of concurrent review. (posted 10/11/16)

- 3) What happens if a public resource agency objects to the permit application after they are given advance notice?

Under section 78a.15(f)(2), public resource agencies have 30 days from the date of notification to provide written comments to the Department. The Department will condition well permits as necessary to avoid probable harmful impacts to listed public resources. In reaching the conclusion to condition or not condition a permit, the Department will consider the criteria listed in Section 78a.15(g), as well as any comments or objections from the public resource agency. In accordance with Section 3251 of the 2012 Oil and Gas Act, a public resource agency may also "request that a conference be held to discuss and attempt to resolve by mutual agreement a matter arising under [the 2012 Oil and Gas Act]." (posted 10/11/16)

- 4) Is there a definitive and complete list of species that may be identified as species of special concern on a PNDI receipt, and thereby be included in the definition of “other critical communities” in Section 78a.1?

The [Pennsylvania Natural Heritage Program](http://www.naturalheritage.state.pa.us/docs/PNDI_SpeciesList_Jan2014.pdf) maintains a list of species and communities used as the basis for Environmental Review within the PNDI Tool at http://www.naturalheritage.state.pa.us/docs/PNDI_SpeciesList_Jan2014.pdf. This list covers plant and animal species included in the definition of “other critical communities” in Section 78a.1. (posted 10/11/16)

- 5) For wellhead protection areas, can you further define Zone II?

Section 78a.1 defines a “wellhead protection area.” The definition cross-references the definition of the phrase in the Department’s drinking water regulations in 25 Pa.Code § 109.1. That Section includes the following in the definition of “wellhead protection area”:

- (ii) Zone II. The zone encompassing the portion of the aquifer through which water is diverted to a well or flows to a spring or infiltration gallery. Zone II shall be a 1/2 mile radius around the source unless a more detailed delineation is approved.

The Department notes that in order to receive approval of a wellhead protection program under 25 Pa.Code § 109.713 (relating to wellhead protection program), the water supplier must develop a program that includes:

- (3) Zone II and Zone III wellhead protection area delineation performed in accordance with methodology provided by the Department. Methods applicable to that hydrogeologic setting shall be utilized and site-specific hydraulic and hydrogeologic information shall include, but is not limited to, pumping rate or yield, aquifer properties, water table or potentiometric surface configuration and hydrogeologic mapping.

The Zone II areas for each approved wellhead protection program are outlined in the documentation for each individual approved program. (posted 10/11/16)

- 6) Will there be a technical guidance document issued on Public Resources? If so, will it be available for public comment and in advance of the regulations being finalized?

Because the public resources review is so site-specific, the Department will not be preparing a guidance document prior to the publication of the final-form rulemaking. As specific public resource impact issues are raised and addressed, the Department will collect that information into an information repository, which may take the form of a technical guidance document or statement of policy, if appropriate. (posted 10/11/16)

- 7) If DEP determines after a public resource objection that a well pad could not be built, will the application fee be returned?

The requirements in section 78a.15 are not grounds for denial of a permit; rather, they provide a tool for the Department to condition a well permit upon issuance as is necessary to avoid a probable harmful impact on the public resource. The Department will not return a permit fees based on the outcome of the public resource impact screening process. (posted 10/11/16)

- 8) What is considered an “enhanced drilling” under Section 78a.15(h).

“Unconventional formation” is defined in Section 3203 of the 2012 Oil and Gas Act as shale formations “where natural gas generally cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore.” An “unconventional well” is defined by that section to be a well drilled to produce natural gas from an “unconventional formation.” By definition, the Department considers all “unconventional wells” to require “enhanced drilling” and are covered by this subsection. (posted 10/11/16)

- 9) How will newly permitted wells on existing pads be addressed?

Wells permitted after the effective date of the regulations must follow the Chapter 78a requirements. Section 78a.15(e) does allow PNDI requirements to be met through a prior but recent PNDI Environmental Review. (posted 10/11/16)

- 10) Are other alternate notice methods (other than United States Postal Service certified mail) acceptable for use for required notices? Are those other methods going to be accepted in the future? If so, which methods/forms of notice proof work?

Section 78a.1 contains a definition for “certified mail” that expands acceptable methods for providing notice beyond United States Postal Service certified mail. “Certified mail” is defined as “any verifiable means of paper document delivery that confirms the receipt of the document by the intended recipient or the attempt to deliver the document to the proper address for the intended recipient.” (posted 10/11/16)

- 11) If we have a project between one and five acres that does not have an ESCGP-2, will the review of the E&S plan be a condition of receiving the well permit?

Yes, but only if the project is located “in a watershed that has a designated or existing use of high quality or exceptional value under Chapter 93 (relating to water quality standards).” (posted 10/11/16)

- 12) Are all critical communities covered by the PNDI review?

Section 78a.1 defines “other critical communities” as:

(i) Species of special concern identified on a PNDI receipt, including plant or animal species:

(A) In a proposed status categorized as proposed endangered, proposed threatened, proposed rare or candidate.

(B) That are classified as rare or tentatively undetermined.

- (ii) The term does not include threatened and endangered species.

The Department developed this definition through coordination with the resource agencies that oversee the PNDI environmental reviews and this definition covers all of the species currently include in the PNDI Environmental Review. (posted 10/11/16)

- 13) Regarding the eWell submission, is the current eWell application going to change to allow types of permits besides "new" and will it include some of the new forms, processes discussed today?

For permits to drill and operate unconventional wells, eWell will include references to the new forms and regulatory requirements. Other permit processes, such as "drill deeper" permits, permit renewals and other permit modifications will be processed through eWell by indicating the permit modification and attaching a scanned .pdf of the proper form. The Department's goal is to eventually have all documents related to the application for a permit to drill or operate a well in the form of an electronic application, as eWell is now for new well permits. (posted 10/11/16)

- 14) Payment of Permit Fees. eWell accepts credit card payments, but can an operator also pay by check?

For the time being, yes. An operator can pay the required permit fee by check when submitting an electronic permit application through eWell. The permit application is submitted through eWell, and the check in the proper amount should be sent to the proper permitting District Office (Meadville or Pittsburgh, depending on the county where the unconventional well will be drilled). The check should be sent via certified mail as defined in section 78a.1 and reference the permit application submitted through eWell. (posted 10/11/16)

- 15) Is a "public" golf course count as a public resource even though they charge for access to the course?

No, because access to the course is limited to those who pay the necessary fee for access, the golf course is not included in the public resources listed in section 78a.15(f). If the golf course is contained within one of the listed resources (for example, a state park), it would be included as a public resource under that provision. (posted 10/11/16)

- 16) If an operator has a lease on Commonwealth property, and there are already clauses in the surface agreement establishing conditions, will the Department review those agreements before conditioning the permit to limit development?

The Department will take any existing agreement between a public resource property owner and the operator when determining whether or not a permit condition is "necessary" to avoid, mitigate or minimize a "probable harmful impact" to the public resource. The Department's permitting authority is different than a resource agency's authority as a surface property owner or mineral interest lessee, and as a result it may still be appropriate to condition the permit even if there is an agreement in place. (posted 10/11/16)

17) Why are “critical communities” added to the regulation when threatened or endangered species are already included in section 78a.15?

Section 3215(c)(4) of the 2012 Oil and Gas Act requires the Department to consider impacts to habitats of “rare and endangered flora and fauna and other critical communities.” The Department added definitions of “threatened and endangered species” and “other critical communities” in 78a.1. These definitions seek to clarify that sections 78.15(d) and 78a.15(d) apply to threatened and endangered species and section 78.15(f) and 78a.15(f) applies to other critical communities. (posted 10/11/16)