

I. Pending Issues

Water Management

Water Quality Standards Triennial Review

Once every three years, the Department is required by the Federal Clean Water Act to review and amend, as necessary, its water quality standards. This process is known as the Triennial Review. The Department has conducted the review and identified needed additions, corrections, and updates to the water quality regulations. A number of new chemical parameter limits are proposed. The current Triennial Review is due as final to EPA by May 15, 2013. At the regularly scheduled WRAC meeting in January 2012, they voted to accept the Triennial as presented. The EQB approved the triennial review proposed rulemaking at the April 2012 meeting. The triennial review proposed rulemaking was published in the Pennsylvania Bulletin with a 45-day public comment period. *Two public hearings were held on the proposal.* Concurrently, the Department *also proposed* revisions to Chapter 16 Water Quality Toxics Management Strategy – Statement of Policy that are consistent with, and accommodate the proposed revisions to the water quality standards regulations. The Department’s Water Resources Advisory Committee (WRAC) held two Adhoc workgroup sessions in August 2012 to discuss Molybdenum and Sulfates. The Department presented the final rulemaking to WRAC in November 2012. WRAC endorsed taking the final rulemaking to EQB. The Department will present the final rulemaking to EQB *on April 16th.*

2012 Integrated Report

The Integrated Report includes both a narrative description of the Commonwealth's water quality management programs (formerly the 305(b) Report) and various lists depicting the status of Commonwealth surface waters as required by section 303(d) of the Federal Clean Water Act. The report is comprised of four parts and also includes a five-part list that collectively summarizes the designated use attainment status of Commonwealth surface waters.

Section 303(d) of the Federal Clean Water Act and 40 CFR Part 130 require states to identify waters which would still be impaired, even after the appropriate technology has been applied to point sources and requires best management practices are in place for nonpoint sources. Waterbodies that do not meet water quality standards after this evaluation are placed on Category 5 of the Integrated Waterbody List. The 2012 Integrated Report was submitted to EPA Region 3 for approval of Category 5 on January 29, 2013. *EPA will issue its decision on approving the list Spring of 2013.*

Planning and Permitting of onsite sewage systems in areas of High Quality (HQ) and Exceptional Value (EV) Streams.

The EHB in November 2011 in their Pine Creek decision ruled that the methodology or lack thereof relied upon by the DEP for the planning of onsite sewage treatment systems in HQ/EV areas was not sufficient. The SCRO DEP’s approval of the Pine Creek development plan was rescinded. The Pine Creek EHB decision, established a legal and scientific standard that is extremely difficult to meet, thereby jeopardizing any future development using septic systems in HQ and EV watersheds. DEP since that decision has been researching methodologies to address the EHBs concerns. DEP on March 2, 2013 released, for a 60 day public comment period, a guidance document to address the issue. It presents a Best Management Practices approach as a methodology for addressing antidegradation concerns when planning and permitting onsite sewage systems.

NPDES MS4 Permit (PAG-13)

PAG-13 was issued final on September 17, 2011, *the permit's effective date was March 16, 2013*. DEP is continuing its discussions with EPA Region III regarding provisions in PAG-13 particularly in regards to implementation of TMDLs and the implementation of the Chesapeake Bay TMDL. Fifteen work sessions reviewing the permitting requirements of federal MS4 program and the PAG-13 and individual permit applications were held in various locations of the Commonwealth from January 2012 through April 2012. Permit renewal applications or Notice of Intents (NOI) *were* required to be filed by September 14, 2012. *A number of permit applications were not received or were not received on time*. The DEP Bureau of Point and Non-Point Source Management continues to assist municipalities and the re-organized DEP regional offices in handling the renewal applications.

The majority of the renewal MS 4 permit applications were received and they are being processed by the regional office Clean Water program permitting staff. Those entities who did not submit applications were sent *two* reminder notices and, *if they still did not submit their application or NOI, a Notice of Violation*. The Department does not expect to notify any new municipalities assigned “urbanized areas” by EPA because of the 2010 census until the renewal permits are close to being through the re-issuance process. The expected time frame of notification to new MS4 entities is sometime in late 2013.

Standard Operating Procedures (SOPs)

Approximately 30 SOPs for permitting activities were developed by the Bureau of Point and Non-Point Source Management (BPNPSM) in November 2012 to ensure consistency in the implementation of DEP’s “Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee.” The SOPs cover review procedures for essentially all of the permits issued by the DEP regional Clean Water Program, and are available online at the following link:

http://www.portal.state.pa.us/portal/server.pt/community/Permit_Decision_Guarantee/21215/SOPs/1294992

BPNPSM is working on SOPs for the review of Sewage Planning applications will be posting SOPs to the website in the near future. In addition, BPNPSM is also working on SOPs for conducting inspections at permitted facilities.

Chesapeake Bay TMDL/WIP

EPA published a Total Maximum Daily Load (TMDL) for the Chesapeake Bay on December 29, 2010, which establishes a ‘budget’ for nitrogen, phosphorous and sediment loadings. As part of the process, EPA directed states to submit phased Watershed Implementation Plans (WIPs) intended to demonstrate “Reasonable Assurance” that TMDL objectives would be met. EPA requested Phase I WIPs in 2010; Phase 2 WIPs in 2012; and expects Phase 3 WIPs to be delivered in 2018. Over 125 individuals representing a broad range of organizations and interest volunteered to participate on a Management Team and workgroups that provided input throughout the development of the first two Pennsylvania WIPs.

The Pennsylvania WIP documents are posted at:

http://www.depweb.state.pa.us/portal/server.pt/community/chesapeake_bay_program/10513. EPA has established a website specifically for the TMDL, which can be accessed at <http://www.epa.gov/chesapeakebaytmdl/>

According to EPA's 2011 watershed model progress run, when compared to 1985, Pennsylvania has achieved 26% of the nitrogen reductions, 32% of the phosphorous reductions, and 46% of the sediment reductions needed to reach the 2025 restoration targets. This is real progress but more needs to be done. When compared to current 2011 progress reported by the watershed model, Pennsylvania needs to achieve an additional 33.64 million pound reduction in nitrogen, 1.2 million pound reduction in phosphorous, and 567.8 million pound reduction in sediment by 2025. This is real progress. Current progress and goals are identified in the below table.

Phase 5.3.2 Watershed Model Nitrogen, Phosphorus and Sediment Delivered Loads (Millions of Pounds)
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	Nitrogen	Phosphorus	Total Suspended Sediment
2011 Progress	112.47	4.8	2513
August 1, 2011 Phase 2 WIP Planning Targets	78.83	3.60	1,945
Remaining Reductions	33.64	1.2	568

It should be noted that EPA's watershed model can be a useful tool to help guide management actions and project their results. It is not, however, sufficiently precise to measure actual progress or lack thereof. It should not be used in a regulatory context to determine whether an enforcement action or other penalty is appropriate.

Pennsylvania WIPs

Phase 2 was addressed in a process similar to Phase 1. DEP staff re-convened the Management Team and held eight county workshops from October through early November to solicit input on the Phase 2 draft. DEP then held a 45 day public comment period on the Draft Phase 2 WIP. Many of the public comments received supported the issuance of local area targets to help inform county and municipal governments of the approximate level of effort necessary to reach Pennsylvania's TMDL allocations. EPA also called for local area targets. In response to these comments, DEP has posted on its website revised Draft County Planning Targets. These targets are for planning purposes only.

EPA provided their evaluation of the final Phase 2 WIP on May 30, 2012. The evaluation included the following:

- EPA appreciated the steps that Pennsylvania is taking to continue working with local partners, including providing draft county planning targets.
- EPA upgraded the wastewater sector from "enhanced" to "ongoing" oversight based on additional information in the final Phase 2 WIP and milestones.
- EPA stated that the proposed resolution in support of the Model Agriculture Compliance Policy from PACD and Pennsylvania's work with USDA NRCS on advanced manure technologies both show promise that the Commonwealth's agricultural strategies will be successful. However, EPA will maintain enhanced oversight for the agriculture sector until Pennsylvania more fully addresses issues identified in the evaluation. These include compliance, tracking and verifying unreported BMPs, and quantifying the reductions associated with manure technology.
- EPA will now conduct enhanced oversight for Pennsylvania's trading program until recommendations from the recent offset and trading program assessment are addressed, including EPA concerns with the baseline for credit generation.
- EPA is maintaining backstop actions for the urban stormwater sector as they do not feel that the final Phase 2 WIP and milestones provide clear strategies for how to achieve reductions in nutrient and sediment loads from existing urban lands.

Additional Wastewater Details

Following issuance of the Final Phase 2 WIP, on April 2, 2012 the Bureau of Point and Non-Point Source Management (BPNPSM) issued a point source supplement to the Final Phase 2 WIP to EPA. This supplementary document described the status of TMDL implementation for point sources through the establishment of TN and TP annual load limits in NPDES permits, and set forth an updated permitting strategy. Specifically, the document addressed the following:

- It determined that the issuance of permits to significant sewage dischargers is nearly complete, and that upon completion total cap loads in permits will exceed the wasteload allocations (WLAs) in the TMDL. However, the exceedance is generally due to the connection of retired on-lot sewage systems, and so DEP will need to shift some load from the non-point source septic load allocation (LA) to the point source WLAs.
- It estimated reserves for significant industrial waste dischargers following the initial round of permitting, and a strategy for managing these reserves.
- It modified the list of significant sewage and industrial waste dischargers based on updated information.

- It provided updated direction on permitting non-significant discharges, approving offsets, and certifying or verifying credits.

BPNPSM intends for the document to be dynamic, with frequent updates based on the collection of additional data and modifications due to new or changing circumstances that are encountered.

Milestones

EPA will be using two-year milestones to track Pennsylvania's progress toward the Year 2025 Chesapeake Bay goals. Pennsylvania's Final 2012 – 2013 Programmatic Milestones were submitted to EPA on March 30, 2012 and are posted to DEP's Chesapeake Bay Program website. BMP progress for Years 2009 through 2011 was announced at the Chesapeake Executive Council on July 9th, and posted to the DEP website.

Chesapeake Bay TMDL Midpoint Assessment

The Chesapeake Bay Program's Principals Staff Committee adopted the below Guiding Principles for the Chesapeake Bay TMDL Midpoint Assessment at their December 5, 2012 meeting.

Guiding Principles

1. Continue implementation, tracking progress and reporting results, with stable tools through at least 2017
2. Enhance decision support and assessment tools to enable successful engagement of local partners
3. Incorporate new or refined BMPs and verification of practices into existing accountability tools and reporting protocols
4. Address emerging issues that may impact current strategies and future plans
5. Prioritize midpoint assessment actions and use adaptive management to ensure water quality goals are met

What is the Midpoint Assessment?

- Review and incorporation of the latest science, data, tools, BMPs and lessons-learned to determine whether Partnership's strategies will result in all practices in place by 2025 necessary to attain water quality standards in the Bay
- Midpoint assessment includes:
 - Changes to modeling decision support tools
 - Integrated assessment of progress, including watershed monitoring and assessment of water quality standards attainment
 - Expectations and schedule for Phase III WIP development
- Why is a midpoint assessment necessary?
 - Partnership needs to be able to engage local partners in order to get practices on the ground
 - Current suite of modeling tools is pushing partners away
 - Changes to modeling inputs and assumptions will allow us to work with key partners
- TMDL allocations will remain in place through at least 2017
- Future changes to targets and allocations are a decision point, not a presumption. After the midpoint assessment is complete, including but not limited to any changes to decision support tools:
 - EPA will work with Partnership to set Phase III WIP planning targets. Note level of effort could change.
 - Based on midpoint assessment and Phase III WIPs, EPA will determine whether to modify Bay TMDL

BMP Verification Principles

The priority of the Chesapeake Bay Program (CBP) is the implementation of the Chesapeake Bay TMDL, the jurisdictions' Watershed Implementation Plans, and 2-year milestones. The CBP has committed to the development of a best management practice (BMP) verification framework for use by the seven watershed jurisdictions to assure data quality for BMP reporting for annual Model Progress runs. The framework is guided by the BMP Verification Principles approved by the PSC Principles' Staff Committee on December 5, 2012 (http://www.chesapeakebay.net/channel_files/19044/attachment_iv.c._final_draft_cbp_bmp_verification_principles_for_psc.pdf). The CBP sector workgroups were subsequently directed to develop Verification Protocols for agriculture, forestry, stormwater, wastewater streams and wetlands.

(http://www.chesapeakebay.net/groups/group/best_management_practices_bmp_verification_committee) Jurisdictions are expected to develop BMP Verification Programs to address the Protocol requirements. The current schedule is for these to be developed by Winter 2014.

The CBP has established a BMP Verification Review Panel which will examine the degree to which a jurisdiction's program meets the parameters established by the CBP BMP verification framework. This review will include an examination of existing BMP measurements, accounting, and inspection systems and any proposed improvements to those systems submitted for CBP review. The jurisdictions will build from existing practice tracking and reporting systems and work towards achieving or maintaining the following principles.

Nutrient Trading

DEP continues to implement the Nutrient Trading Program as designed in the regulations, 25 Pa. Code, Chapter 96, "Water Quality Standards Implementation." The Nutrient Trading Program regulations, Section 96.8, "Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed" were published in the Pennsylvania Bulletin and became effective on October 9, 2010. (Reference, 40 Pa. B. 5790.) The program has become very successful in providing a cost-effective means for facilities subject to limits for nitrogen, phosphorus and sediment to meet those limits by working with other facilities or with nonpoint sources, or both. It has become an integral part of Pennsylvania's Chesapeake Bay Program strategy to advance the restoration and protection of this very valuable water resource. However, DEP has recognized that there are a few program components that could be enhanced. As a result, Deputy Secretary for Water Management Kelly Heffner and Paul Marchetti, Executive Director for Pennvest sent notices to potential members of a stakeholder group comprised of buyers, sellers, governmental agencies, environmental groups and other interested parties asking them if they would be interested in participating in a series of meetings to further evaluate the need for revisions in the policies, guidance and regulations governing the Nutrient Trading Program. These meetings are now finished. Recommendations were provided relative to three major topic categories as follows:

1. Streamlining processes for certification, verification and registration of credits – including the creation of an Independent Review Team, the extension of the "true-up period", the role of the aggregator and 3rd party verification.
2. Nutrient Credit Clearinghouse – including interbasin and interstate trading, the PENNVEST Auction process, the credit reserve and the use of public funds for the generation of credits
3. Calculation of Credits and Practice Efficiencies – including the definition of baseline and threshold, the eligibility of practices for credit generation and the life of a credit

The Department met again with this group on November 15, 2012. An overview of the proposed enhancements to the program was provided. These enhancements were developed with the following goals in mind:

1. Maximize the use of existing technical and financial resources of the Department and the participants in the NTP.
2. Enhance program transparency and public involvement where appropriate.
3. Meet EPA expectations regarding program elements.
4. Minimize the perception of risk in the credit trading market and enhance certainty.

The key points from the presentation provided to the stakeholder group are:

- There are no proposed revisions to the credit certifications, verifications or credit registrations currently in place. However, all certifications currently in place would expire September 30, 2015. It is unclear at this point if those certifications with approval dates after this date would have to submit a complete new application for certification.
- Moving forward, the proposed adjustments for threshold would be applied to all credits generated after October 1, 2015. If a credit generator wants approval for credit generation after this date; the draft adjustments in place at the time of application would be applied to the DEP approval of the credit certification application.
- The adjustments to threshold would be phased in, starting in October 2014 for point sources and October 2015 for nonpoint sources.
- To trade, a credit generator must first demonstrate achievement of the threshold. This threshold is being adjusted in order to address EPA concerns.
- Adjustments to the threshold for nonpoint sources include:

- a. Application of a trading ratio based on EPA technical memorandum. This ratio will be in addition to the credit reserve and edge of stream/delivery ratios.
- b. This ratio will not be applied to technologies where actual quantification of reductions can be quantified through sampling.
- c. Phase-in of a performance-based approach pending availability of a tool to simulate actual farm practices. Further analysis is needed to determine whether one allocation for each sector within the Pennsylvania portion of the Chesapeake Bay basin or allocations for each sector within smaller watersheds is more equitable.
- Adjustments to the threshold for point sources include:
 - a. Elimination of the ability to generate credits solely on the fact that the wastewater treatment facility discharged less wastewater than their permit allows starting October 1, 2013.
 - b. Credits would be calculated based on a threshold of effluent concentration of 8 mg/L total nitrogen and 1 mg/L total phosphorus. This threshold would be reduced to 6 mg/L total nitrogen and 0.8 mg/L total phosphorus starting October 1, 2014.
- There are a couple proposed options for changes to the business processes including:
 - a. Locational – Certification applications for credit generation would be submitted for each site where the pollutant reduction activity would be installed. This is the current process.
 - b. Pollutant Reduction Activity – Certification applications for credit generation would be submitted for each pollutant reduction activity. Once approved, any credit generator could install the practice on a site without further application. Submittal of locational information would be done at verification.
 - c. Generator Approval Program – Any entity could apply to be a credit generator, describing the types of pollutant reduction activities they plan to utilize and the general area they plan to work. Details on actual pollutant reduction activities installed and location would be submitted at verification.
 - d. Tailored – Approval for credit generation would be based on whether or not the seller wants to sell the credits during the current year, or in future years. Applications for credit generation for future years would need to supply additional locational information and would be subject to more detailed review. In essence, this is a combination of options a and b above.
- Before adjustments can be made to the existing business processes, questions to still be answered include:
 - a. Which option is the best option; or is a combination of options a more appropriate approach?
 - b. When should DEP approval of a credit certification application (regardless of option taken) expire, or should it expire at all?
- Other proposed enhancements:
 - a. Extension of the “true-up” period to 90 days
 - b. Add an additional 5% reserve to credits generated through inter-basin trading where the location of the credit generator is not in the same basin as the entity buying the credits
 - c. Creation of a Compliance Monitoring & Inspection Audit Program
- Other input received that resulted in no changes to the program
 - a. An Independent Review Team will not be created
 - b. Existing policies on the use of public funds for the creation of credits will not change
 - c. For the purpose of determining compliance, credits cannot be averaged over a 3 year period
 - d. The department is continuing to evaluate edge of stream and delivery ratio factors. However, for now, the edge of stream and delivery ratios from Version 4 of the Chesapeake Bay Watershed Model will continue to be the ones used in the credit calculation methodologies.

While most of these proposed enhancements can be done through guidelines DEP is planning to propose comprehensive revisions to the existing regulations to implement these enhancements in order to provide sufficient opportunity for outreach and training to ensure the final program enhancements will meet the goals of the program. In addition, to minimize confusion with other proposed revisions to Chapter 96, the existing regulations will be rescinded and replaced with a new, separate Chapter 98. It is estimated that these regulations can be in place by May, 2015.

Before draft regulations are developed DEP intends to implement a comprehensive outreach strategy to ensure the proposed enhancements are comprehensive and will achieve the intended outcomes. This strategy is now under development.

Another important component to facilitate the nutrient trading market involves Pennvest. Pennvest has been serving as the Nutrient Credit Clearinghouse for nutrient credit trading transactions. In this context, credit buyers and sellers

contract with Pennvest rather than directly with each other. These transactions occur through periodic credit auctions. The next Pennvest auction will take place on *June 12, 2013*. *Results from the March 20 auction and additional information about the auction can be found at:*

http://www.pennvest.state.pa.us/portal/server.pt/community/pennvest_internet/9242 .

The nutrient trading regulations provide for three distinct activities regarding the generation of credits: certification, verification and registration. Certification is written approval by DEP that a proposed nutrient reduction activity will generate credits. Verification is the process of confirming that the certified activity took place. Registration is the accounting mechanism used by DEP to track and associate the use of credits for permit compliance. Detailed information on this process and specific projects can be found on the DEP website at www.depweb@pa.state.pa.us. (Keyword: Nutrient Trading) The true-up period for 2012 Water Compliance Year was completed. Table 1 is summary of the number of credits certified, verified and registered for this water year.

Table 1. Summary of Credit Transactions for 2012

Activity	Certified		Verified		Registered as Sold	
	TN	TP	TN	TP	TN	TP
WWTFs with New Concentration Criteria	300,229	28,391	298,345	28,068	212,518	10,041
WWTF Under Cap Load	873,913	75,313	811,584	47,448	222,787	16,520
Nonpoint Source Ag BMP	68,743	221	22,494	433	26,472	0
Nonpoint Source Manure	1,357,580	167,370	176,845	21,138	161,804	6,510
NPS Treatment w/Permit	1,720,454	54,315	0	0	0	0
TOTALS	4,338,919	327,810	1,309,268	97,087	623,703	33,203
TOTAL TRADES					50	

DEP is in the process of updating the individual spreadsheets posted on the website to describe each project involved in the three process steps that participated in the program in 2012.

Based on data made known to DEP, the price of nitrogen has been in the range of \$2.50 to \$15 per pound. The price of phosphorous has ranged from \$1.50 to \$10 per pound.

Related to the efforts to implement the Phase 1 Chesapeake bay WIP, there have been several significant activities to enhance compliance with PA’s environmental regulations that address agriculture (Ag).

Extensive education and outreach activities have been undertaken to ensure farm operators are aware of their regulatory requirements under Pennsylvania’s Erosion Control regulations and the Manure Management Manual. Beginning in July 2011, County Conservation Districts in the Chesapeake Bay watershed have engaged in over 6,200 site visits. DEP exceeded the 4,000 site visits target established for the fiscal year ending June 2012. With the completion of the “Manure Management Manual,” DEP organized regional trainings on the DEP Manure Management Manual. Dr. Doug Beegle and Jerry Martin from Penn State Extension prepared “train-the-trainer” format presentations that allowed participants to both learn the manual and prepare to deliver this information to farm operators and others in their local jurisdictions. Using federal Chesapeake Bay funds and PA Clean Water Funds, DEP supported mini-grants for conservation districts to conduct local training/workshops for farmers, consultants, and others to improve awareness of the revised Manure Management Manual and to assist farmers in completing manure management plans. Forty Seven conservation districts held 152 manure management manual training programs. This training included 2,966 farmers, 30 consultants and 246

“others” and followed the format developed by Penn State. Through this effort, 717 plans were completed at these training sessions. Additional sessions are expected in FY 2013-14.

To support Pennsylvania’s expanded outreach to the Ag community to increase compliance with Chapter 102 and manure management requirements, DEP worked with the Lancaster County Conservation District and the Ag Ombudsman program to develop and produce outreach materials. Pennsylvania has prepared several easy to read materials on Pennsylvania’s existing regulatory programs. This series of information includes the “Am I in Compliance” brochure which has a distribution of ~20,000 copies since January 2011; the “Ag E&S Barn sheet” which was prepared in July 2011; and the “Manure Barn Sheet” which was prepared in November 2011. At least 8,000 of each barn sheet have been distributed. These materials were prepared for general distribution and for use in conservation district site visits. The fourth item in this series was completed and mailed by the USDA-NASS to over 80,000 farm operators and related businesses.

As part of Pennsylvania Ag compliance efforts, DEP evaluated and modified several regulatory tools that aide in implementation of the existing Manure Management and Ag E&S requirements.

The Concentrated Animal Feeding Operations General Permit (PAG-12) was published as draft in 2012. Seven commentators provided comments. *These comments were evaluated and final PAG-12 was published on March 23, 2013.*

Chapter 105 Regulation Revisions

The EQB adopted the final-form rulemaking of the Chapter 105 Dam Safety and Waterway Management regulations which updates the existing fees and includes additional fees for activities performed by the Department at its meeting of October 16, 2012 meeting. In addition, the final-form regulations were deemed approved by the House and Senate Committees on November 30, 2012 and IRRC on December 13, 2012. The final regulations were published in the Pennsylvania Bulletin on February, 16, 2013. The Department held two Webinars on the new fees; one for the Department and delegated county conservation districts February 14, 2013, and one for consultants and general public on February 22, 2013. As a result of the webinars a frequently asked questions (FAQ) document will be developed and updated as additional questions are answered.

Revisions to the Construction Stormwater General Permit PAG-02

The Department released the final construction stormwater general permit (PAG-02) on December 7, 2012. The final PAG-02 incorporates requirements from the updated Chapter 102 regulation revision, but did not include numeric effluent limitations for turbidity which were proposed and then stayed by EPA. *There are two trainings scheduled, one in the eastern and one in the central areas of the state with an additional training session to be held in the western area of the state to be announced soon. The dates and locations of the two scheduled trainings are as follows:*

April 16 - Holiday Inn Conference Center, 7736 Adrienne Drive, Breinigsville

April 23- Ramada Hotel and Conference Center, 1450 South Atherton Street, State College

All trainings will start at 8:00 AM and will conclude at 12:00 PM. Pre-registration is required; PDHs will be awarded. Please contact the Bureau of Waterways Engineering and Wetlands at 717-787-3411 for more information.

Stormwater Offsetting Workgroup

The Department has organized a workgroup to address issues related to offsetting stormwater through permits at an offsite location. The group will be working through the winter and spring to provide structure to the Department in developing a stormwater offsetting policy. It is anticipated that a draft policy will be available for public comment in summer of 2013.

Publication of the Erosion and Sediment Control Pollution Manual

The final Erosion and Sediment Control Pollution Manual was announced as final in the Pennsylvania Bulletin on March 31. Three trainings were held for county conservation district and Department staff in multiple programs. Additional

trainings were held throughout the summer and fall of 2012 and continue into 2013 for the regulated community due to the high demand. These additional training sessions for 2013 are as follows:

March 19 and 20; Holiday Inn, Williamsport
May 29 and 30; Villanova University, Villanova

Safe Drinking Water

From July to December 2012, the Safe Drinking Water Program accomplished the following:

- Administered the Drinking Water Program and protected public health at nearly 9,200 public water systems serving 10.7 M people (86% of population). With nearly 9,200 PWSs, PA is ranked 4th in the Nation.
- Maintained the surveillance program:
 - Total # sanitary surveys conducted = 1,232
 - Total # other inspections conducted = 1,322
- Maintained the enforcement program:
 - Total # enforcement actions taken = 84
 - Total fines/penalties assessed = \$71,235
 - Total fines/penalties collected = \$149,625
- Continued work to implement and ensure compliance with recently enacted rules, including:
 - Stage 2 Disinfectants/Disinfection By-products Rule
 - Revisions to the Lead and Copper Rule
 - Long-term 2 Enhanced Surface Water Treatment Rule
 - Ground Water Rule
 - General Update to Chapter 109
- Managed the Source Water Assessment and Protection Program, including oversight of various grants/contracts (SWPTAP, WREN, PRWA and WMON), and support for the development of local source water protection programs.
- Provided Capability Enhancement/Technical Assistance:
 - Provided on-site assistance to 41 water system owners, administrators and operators.
 - Conducted 37 filter plant performance evaluations.
- Administered the Operator Training and Certification Program:
 - Approved 8 new training providers and 94 training events. Currently, there are 232 approved training providers and 2,562 approved training courses.
 - Administered examinations to 1,119 individuals, and processed 2,567 applications for new/upgraded/renewed certifications.
 - Developed and/or delivered several regulatory-based training courses, including Public Notification and Stage 2 Disinfectants/Disinfection By-products Rule.
- Managed the inventory and compliance/enforcement records for all 9,200 public water systems, processed approximately 600,000 sample records, and updated automated compliance programs, as needed. As of September of 2012, all laboratories and public water systems are required to comply with mandatory electronic reporting requirements for the reporting of sample results. The public may access inventory data, sample results, and compliance/enforcement records for any PWS on the Department's website via the Public Drinking Water Reporting System. Here is the link: <http://www.drinkingwater.state.pa.us/dwrs/HTM/Welcome.html>
- Administered the permitting program:
 - Total # construction permits issued = 246
 - Total # operation permits issued = 420
- New Rulemaking:
 - Unregulated Contaminant Monitoring Rule (UCMR) 3: The federal rule was published as final on May 2, 2012. The purpose of the rule is to gather occurrence data (for not more than 30 contaminants), refine analytical methods, and gather additional health effects data in order to make a regulatory determination.
 - Monitoring will occur during 2013 – 2015 at all large water systems and select medium and small water systems.
 - Monitoring will include 21 chemicals (VOCs, SVOCs, metals, chlorate, PFCs), seven hormones, and two viruses.

- The UCMR rules are direct implementation rules with EPA as the lead agency. DEP assists through a Partnership Agreement.
 - Revised Total Coliform Rule (RTCR): The revised federal rule was published as final on February 13, 2013.
 - The rule establishes a health goal and an MCL for E.coli and eliminates the MCLG and MCL for total coliforms, replacing it with a treatment technique for coliforms that requires assessment and corrective action.
 - PWSs and states must comply with the federal requirements beginning April 1, 2016. The Department will be initiating the rulemaking process to ensure state regulations are as stringent as the federal regulations.

II. Pending Issues

Waste Management

Recycling Fund and Solid Waste Advisory Committees

The next meeting of the Solid Waste Advisory Committee is scheduled for Thursday, May 16, 2013, at 10:00 a.m. in room 105 of the Rachel Carson State Office Building.

Municipal and Residual Waste Regulation Revisions

The Bureau of Waste Management (BWM) is currently revising the Municipal and Residual Waste Regulations to update the chapters relating to Infectious and Chemotherapeutic Waste. While most of the revisions are being made to Chapter 284, other affected chapters that contain references to infectious and chemotherapeutic waste include Chapters 271, 272, 273, 285, 287, 288, and 299. The revisions largely aim to replace all references to “infectious waste” with “regulated medical waste.” The global change in terminology will allow Pennsylvania’s requirements for the management of infectious and chemotherapeutic waste to be consistent with federal requirements and the requirements of other states. In addition, the revisions allow persons who generate, transport, process, or dispose of infectious waste to use standard business documentation, including electronic tracking systems in lieu of the currently mandated paper manifest system to track waste through the shipping process to disposal. Recent revisions to the Regulatory Review Act pertaining to small businesses required extensive analysis and outreach, thus requiring additional time to develop the Regulatory Analysis Form (RAF). The proposed regulations are scheduled for Environmental Quality Board consideration on April 16, 2013.

General Permits

General permits (GPs) are regional or statewide permits which authorize the processing and/or beneficial use of municipal or residual waste. The following residual waste GPs are currently being modified by BWM:

- *General Permit Number WMGR081 – This GP authorizes the disassembly and recycling of waste electronic devices. Amendments to WMGR081 are proposed and include:*
 1. *Certification requirements under the CDRA for processing covered devices.*
 2. *Flexibility in permitting for small volume waste electronic device disassembly facilities.*
 3. *A transfer of authority from the Department’s central office to the regional offices to approve the determination of applicability.*
 4. *Clarification that General Permit Number WMGR081 can cover electronic waste transfer facilities.*
 5. *A requirement that processing and storage takes place in an enclosed facility.*

The 60-day public comment period runs through June 5th.

- *General Permit Number WMGR097 – This GP authorizes research and development (R&D) activities to demonstrate the beneficial use of residual waste and/or municipal waste. Amendments to WMGR097 are proposed and include the following:*

1. *Reorganization of the general permit for overall clarity and ease of use.*
2. *Clarification of the registration process and specification of the forms and information required for a person proposing to operate under WMGR097.*
3. *Clarification of the requirements to justify large-scale projects and projects with a proposed duration greater than 1 year.*
4. *Clarification of the operating conditions, recordkeeping requirements and reporting requirements of WMGR097.*

The public comment period for this GP closed December 5, 2012. BWM is in the process of drafting the Comment/Response document and revising the permit where necessary.

Identification, Assessment and Disposal of TENORM Waste at Landfills

TENORM is a material in which radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. The many sources of TENORM include residual wastes from industrial and resource extraction activities, demolition wastes, and wastes resulting from municipal and industrial wastewater treatment.

During the past year as part of its routine tracking procedures, BWM noticed an increase in the amount of TENORM waste going to landfills. After further investigation, it was determined that this increase was largely due to the development of the Marcellus Shale in Pennsylvania and the resulting wastes containing TENORM—specifically, the sludges resulting from the treatment of wastewaters associated with drilling activities. In addition, while monitoring Marcellus waste disposed in landfills, BWM has learned that these particular waste streams, in regards to TENORM, are not consistent over time or on any production or geographic basis.

BWM, in conjunction with the Bureau of Radiation Protection (BRP), is developing a strategy for further evaluation and management of these TENORM-containing wastes. Led by BRP, the Department ultimately will be conducting a comprehensive study of the radioactive materials (TENORM) generated during the development of oil and gas resources. The study would last 12 to 14 months after the date of implementation and should provide the Department with the information necessary to continue to effectively manage these materials and ensure that public health and the environment continue to be protected. In the short term, the Department is reviewing its existing management approach regarding the disposal of TENORM waste, with the objective of developing additional tools for testing, tracking and monitoring.

BWM has formed a work group to develop procedures and guidance for testing, tracking and monitoring TENORM-containing waste relative to the following:

- *Recordkeeping and reporting requirements for generators.*
- *Improved tracking of rejected loads. BWM is working towards developing a mechanism through which information on rejected loads is automatically sent to the Department.*
- *Revised Residual Waste Codes.*
- *Development of waste acceptance criteria for landfills.*
- *Waste characterization at the point of generation.*
- *Clarification/finalization of 26R requirements for well sites, centralized impoundments and processing facilities.*

Chrin Landfill Slope Failure (Williams Township, Northampton County)

On March 13, 2013, representatives from the Department's Northeast Regional Office responded to reports of a major slope failure at the Chrin Sanitary Landfill. Upon inspection, those representatives observed that almost the entire waste mass and cap in cell 3D and a portion of cell 3E, totaling approximately 15 acres, broke away from the rest of the landfill and slid or shifted tens of feet in a northerly/northwesterly direction to the edge of Industrial Drive.

This event damaged critical components of the internal workings of the landfill, buried certain constructed features and caused material to encroach onto Industrial Drive, causing its closure for safety reasons. Power lines, utility poles and trees were knocked over; portions of internal perimeter haul roads were buried with waste and cover material; significant portions of the storm water and leachate conveyance system were compromised; groundwater monitoring wells were buried; cap, gas management and liner systems in this section of the landfill were damaged and/or destroyed; and Pump Station 6 of the leachate collection system was buried and rendered non-operational.

On March 15, 2013, the Department sent a letter to Chrin outlining 10 areas of concern that need to be addressed. These areas include storm water controls, landfill gas controls, groundwater monitoring, assessment of the stability of the remaining unaffected areas of the landfill and a plan for stabilizing the landfill. The letter also tasked Chrin with providing the Department with a root cause analysis in 30 days.

On March 20th, the Department set up its mobile air monitoring vehicle around the perimeter of the landfill and in the surrounding area to detect any odors or methane levels coming from the landfill. The focus of the Department's efforts to date relate to construction and implementation of environmental and safety controls. Waste removal activities have commenced.

Emergency Response Procedures

BWM recently drafted procedures for responding to catastrophic events including hurricanes, flooding, earthquakes, man-made disasters, or any emergency situation where large quantities of disaster debris are generated and disposed of within a short time period. The emergency response procedures facilitate the management of disaster debris by outlining the roles and responsibilities of both Regional and Central Office staff.

In general:

- Central Office Staff will confer with Executive Staff to determine the necessity for fee waivers and notify the Regional Offices and waste industry when fee waivers are approved. Central Office staff will also track and compile any authorizations and/or approvals granted to Pennsylvania waste disposal facilities and prepare information for Emergency Response personnel and Executive Staff.*
- Regional Office staff will modify impacted facilities' permit conditions as necessary, maintain communication with waste haulers and Central Office staff, draft and submit situational reports, and acquire any other information as needed from impacted facilities within their respective regions.*

The draft procedures are currently being reviewed by Regional and Central Office staff and comments are expected by May 1.

Permit Decision Guarantee

BWM continues to work to "eliminate the queue" of permit applications received prior to the implementation of Permit Decision Guarantee (PDG). Regional Office staff provides updates on their respective projects to Central Office on a regular basis.

In the coming months, BWM will begin to develop SOPs and permitting checklists for those permits not included in PDG, as well as review and modify, as necessary, the associated applications for these permits.

Radiation Protection

Comprehensive Oil and Gas Development Radiation Study

Generation of technologically enhanced naturally occurring radioactive material (TENORM) has increased significantly. This is mainly due to the recent expansion in natural gas exploration and production in Pennsylvania. There are many issues with TENORM that must be managed effectively. These issues include potential worker radiation exposure, public radiation exposure, environmental (water, etc.) contamination, and waste disposal. On January 24, 2013, DEP announced it will undertake a study to assess naturally occurring levels of radioactivity in by-products associated with oil and natural gas development. *On April 4, 2013, DEP released detailed sampling and quality assurance plans for this comprehensive study.*

The purpose of the study is to gather data necessary to ensure the existing protocols and management approaches continue to be effective, and to determine if any modifications are necessary. Using standard scientific protocols, DEP's contractor, Perma-Fix Environmental Services, Inc., will collect samples of flowback water, rock cuttings, treatment solids and sediments at well pads and wastewater treatment and waste disposal facilities. The study will also analyze the radioactivity levels in pipes and well casings, storage tanks, treatment systems and trucks. Perma-Fix, of Pittsburgh, has worked with the agency as a consultant on health physics and radiological issues for more than a decade.

It is noteworthy that Pennsylvania is the only state that requires *through regulation that* landfills monitor radiation levels incoming wastes to ensure public health and the environment are protected. Should waste trigger a radiation monitor, the landfill must use a conservative and highly protective protocol that DEP developed to determine if the amount and concentration of the radioactive material can be accepted. This protocol ensures that TENORM does not pose a risk to public health from disposal at an approved site.

DEP will manage and fund the study, which *will begin in April 2013 and* is expected to take 12 to 14 months. The study proposal, summary *and sampling and quality assurance plans* are posted at www.dep.state.pa.us at the “Oil and Gas Development Radiation Study” *banner #4 at the top of the front page.*

Environmental Cleanup and Brownfields

Land Recycling Program Technical Guidance Manual

The Cleanup Standards Scientific Advisory Board has established a new Process Workgroup to review the Land Recycling Program Technical Guidance Manual and provide recommendations for pending revision. The existing Vapor Intrusion Workgroup is reviewing the existing vapor intrusion guidance and will provide recommendations on development of a revised vapor intrusion section to the Land Recycling Program Technical Guidance Manual. These workgroup recommendations will be made to the full Cleanup Standards Scientific Advisory Board in May 2013 and final recommendations of the Board will be forwarded to the Department. The Department is planning to have a final draft document available for public comment by December 2013.

Land Recycling Cleanup Standards Regulation Revisions

DEP intends to update the Statewide health standard Medium-Specific Concentrations (MSCs) based on any new toxicological data published since the last revisions to the MSCs. DEP is required to update the MSCs every three years so the standards include the most current scientific data. DEP intends to provide draft revisions to the Cleanup Standards Scientific Advisory Board in May 2013 and to the Storage Tank Advisory Committee in June 2013.

Air Quality

Revision to the General Plan Approval and/or General Operating Permit (GP-5) for Natural Gas Compression and/or Processing Facilities: On February 1, 2013, the Department finalized the revision to the General Plan Approval and/or General Operating Permit (GP-5) for Natural Gas Compression and/or Processing Facilities. The notice of availability of the final GP-5 along with related documents, including the instructions, application form, fact sheet, comment/response document, and technical support document were published in the Pennsylvania Bulletin on Saturday, February 2, 2013. The final GP-5 represents a significant work effort by the staff and will result in lower emissions at well sites and more efficient compressor stations, resulting in cleaner air as development, production and transmission take place.

Proposed Exemption Criteria for Compressed Natural Gas Fueling, and Oil and Gas Exploration, Development, Production Facilities and Associated Equipment: The Department has published a notice in the Pennsylvania Bulletin proposing revisions to the technical guidance document, which lists sources or classes of sources that may be exempt from the plan approval and permitting requirements of 25 Pa. Code Chapter 127. This includes Category No. 33, pertaining to compressed natural gas fueling, and Category No. 38, pertaining to oil and gas exploration, development, production *facilities and associated equipment. The public comment period on the proposed revisions closed on March 19, 2013. The Department has received a total 653 comments, including 11 comments from environmental groups, 6 comments from owners/operators of industrial sources, 634 comments from concerned citizens, 1 letter from EPA and 1 letter from State House Representative Greg Vitali. The Bureau of Air Quality is summarizing the comments and preparing a comment/response document.*

Proposed Revision to Title V Emission Fee: On February 2, 2013, the Environmental Quality Board published for public comment the proposed revision to the Title V emission fee. The proposed rulemaking would amend §127.705 (relating to emission fees) to establish a base Title V annual emission fee of \$85 per ton for up to 4,000 tons of regulated pollutant, beginning with the fees due by September 1, 2014, for emissions from Title V facilities in the 2013 calendar

year. The initial base Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the base Title V annual emission fee has not been revised since 1994. The Title V annual emission fee due September 1, 2012, for emissions occurring in calendar year 2011 was \$56 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant.

Minor clarifying amendments are proposed for § 127.701 (relating to general provisions). The proposed rulemaking would revise § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The proposal would also make additional editorial changes to this section.

Three public hearings were held in March. The public comment period closed on April 8, 2013.

Long-Term Marcellus Shale Monitoring: In July 2012, the DEP launched a one-year ambient air monitoring project with an emphasis on characterizing near-source concentrations of criteria and hazardous air pollutants from permanent facilities related to the Marcellus Shale gas industry (compressor stations, gas processing). Based on the results of the three DEP short-term studies undertaken in 2010, this long-term study is focused on permanent gas facilities located in Washington County.

The study consists of four monitoring sites including a primary site and three satellite sites as well as a background site. During the long-term study, DEP will collect samples of the following to assess potential emissions: VOC's, NOx, particulate matter, carbon monoxide and hydrogen sulfide. The Department is also collecting meteorological data at each site. The long-term study is expected to end in July/August 2013; a final report will be prepared in fall 2013.

The Department has installed a monitoring site in Bradford County to measure ambient concentrations of ozone and nitrogen oxides. The site is located in the Towanda area and has been chosen because of the local topography (ridge and valley) and the numerous wells and compressor stations to the west. This site is specifically located to determine if Pennsylvania is experiencing similar winter-time ozone issues to those being seen in states like Wyoming and Colorado. Site operations will be performed by the Pennsylvania State University (PSU). The DEP/PSU collaboration ozone site near Gleason (Tioga County) has been upgraded with a nitrogen oxide monitor. With the installation of the Bradford County monitor, PA DEP will have air monitors in 18 of the 37 counties included in the Marcellus Shale region.

SO2 NAAQS: EPA adopted a revised 1-hour SO2 National Ambient Air Quality Standard (NAAQS) in June 2010. EPA set the standard at 75 parts per billion (ppb). In June 2011, PA submitted recommendations to EPA for area designations, recommending four counties be designated as nonattainment (Allegheny, Beaver, Indiana, and Warren) based on ambient air quality data. On February 7, 2013, EPA notified the states of EPA's response to the recommendations. States have 120 days to review EPA's response and provide any additional data. *DEP responded to EPA's 120-day letter on April 8, 2013.* EPA plans on making the final designations this spring. The nonattainment areas would be required to achieve attainment within 5 years of the designation.

Climate Change: The Department is required under Act 70 of 2008 to prepare a climate impacts assessment and action plan and update those reports every three years. The impacts assessment report has been prepared by researchers at the Pennsylvania State University. The report is undergoing review by the Department. The Climate Change Advisory Committee (CCAC) is reviewing draft action plans that will be included in the Department's report to the legislature. The next meeting of the CCAC is scheduled for May 21, 2013.

Energy Initiatives

Natural Gas Vehicles

The Department of Environmental Protection accepted applications from Dec. 1, 2012 until Feb 1, 2013 for its Natural Gas Vehicle Grant program. This program will provide up to \$20 million over three years to help pay for the incremental purchase and conversion costs of heavy-duty natural gas fleet vehicles. In this first year, \$10 million in grants are available, \$5 million of which is slated for local transportation organizations, including non-profit agencies providing public transportation services and public transportation, port and redevelopment authorities. An additional \$7.5 million

will be available the second year, with \$2.5 million the third year. Entities eligible to apply include; non-profit organizations, for-profit companies, local transportation organizations, state owned or state related universities, Commonwealth or municipal authorities, and the Pennsylvania Turnpike Commission. Eligible vehicles include those fueled with compressed natural gas (CNG), liquefied natural gas (LNG) or bi-fuel vehicles weighing 14,000 pounds or more. Grant awards are capped at 50 percent of the incremental purchase or retrofit cost per vehicle, with a maximum total of \$25,000 per vehicle. Forty-nine applications were received and grants are expected to be awarded *in mid-April*.

Alternative Fuel Vehicles

Approximately \$10 million in grants will be made available in *early-May* through the Alternative Fuels Incentive Grant Program (AFIG). Eligible entities include; non-profit agencies, for profit companies, commonwealth or municipal authorities and local transportation organizations. The grant funds available will include an opportunity to propose projects which will convert or purchase natural gas vehicles weighing less than 14,000 pounds as well as convert or purchase electric, propane, or other alternative fuel vehicles of any size. As done with the Natural Gas Vehicle Program, applicants interested in purchasing or converting one or two alternative fuel vehicles will be encouraged to join forces and aggregate into a single application to satisfy the five vehicle minimum required for application. Applications will also be accepted for innovation in alternative fuel transportation.

Vehicle Rebates

The Alternative Fuel Vehicle (AFV) Rebate program was extended in February when it reached the milestone of awarding 500 rebates at \$3,500 for large-battery system plug-in hybrid electric vehicles and battery-electric vehicles. The AFV program is now offering \$3,000 for the next 500 large battery system vehicles. *The AFV rebate program has provided 44 of these \$3,000 rebates since mid-February.* With this commitment, the total investment in alternative fuel vehicles for residents will total over \$3.35 million since 2011. The Department of Environmental Protection also offers rebates of \$1,000 for battery-electric vehicles with battery system capacity less than 10 kWh, as well as, for natural gas, propane, hydrogen or fuel-cell vehicles. *The AFV program has provided 11 of these rebates since mid-February.*

PA Sunshine Program

The PA Sunshine Program together with the Department of Environmental Protection (DEP) Grant Center is nearing completion of payments to the completed Photovoltaic and Solar Thermal Projects which had been awaiting payment since last year. Due to the provision of the final \$7.25 million in funds from the Commonwealth Financing Authority (CFA), the Sunshine Program together with the Grant Center on January 28, 2013, began processing over 500 approved and completed projects for payment. Over \$3 million in payments have been processed since that time. The Grant Center and the Sunshine Program are currently working on the last 40 payments from the initial 500. Once paid, the current available balance for projects yet to be completed will be approximately \$3.5 million. The Sunshine Program currently has over 130 approved rebate reservations totaling \$1.1 million in the system which must produce a completed system by June 1, 2013, to be guaranteed payment. The PA Sunshine Program staff received and processed the first completed project under the new one step, first-come first-served process the week of March 11, 2013. Interest in the program is up and staff expects a busy summer processing rebate applications and making payments. The PA Sunshine Program will close, upon the exhaustion of the final \$7.25 million in funds before or by December 31, 2013, whichever occurs first.

Energy Efficiency Outreach

On March 15, 2013, Office of Pollution Prevention and Energy Assistance (OPPEA) staff gave two presentations at the annual conference of the Pennsylvania Association of Environmental Educators (PAEE). The morning presentation focused on state incentives for green schools. Approximately 35 people attended the afternoon presentation, entitled "Greening your Building and Grounds," during which OPPEA detailed various green features of a school and ways to incorporate those features into curriculum, as well as, use traditional building features such as insulation and energy usage in curriculum. State incentives for green schools, including Growing Greener, Alternative and Clean Energy Program, and Alternative Fuels Incentive Grants, were also explained in the afternoon session. The audience for the afternoon presentation consisted of environmental educators, in addition to middle school and high school students. Overall, the conference had approximately 80 attendees from various environmental education nonprofits along with K-12 schools. An environmental leadership summit for students was also held in conjunction with the PAEE conference.

Office of Pollution Prevention and Energy Assistance (OPPEA) staff attended a workshop in Concordville, Delaware County on the 2009 International Energy Conservation Code (IECC) for commercial buildings. The instructors were from the Pennsylvania Housing Research Center, based at Penn State University, and the workshop was the result of a partnership with the Pennsylvania Construction Codes Academy. Funding for the workshop was from U.S. Department of

Energy's State Energy Program (SEP). Approximately 40 code enforcement officials and architects were in attendance. Another 2009 IECC workshop for commercial buildings was held in Bethlehem on February 21, 2013, and a final workshop held in Allegheny County on March 21, 2013. Three more workshops for the 2009 IECC for residential buildings will be held in May, 2013.

Oil and Gas Issues

Draft Proposed Rulemaking – Chapter 78, Subchapter C (relating to environmental protection performance standards)

The Department developed a proposed rulemaking concept paper outlining potential changes to the Oil and Gas regulations in Chapter 78, Subchapter C. The environmental protection performance standards in Subchapter C primarily address surface activities related to oil and gas exploration and production. These topics include protection of water supplies, erosion and sediment control, waste management, pits and tanks for temporary containment of drill cuttings and production fluids, containment of polluttional substances (such as hazardous substances stored on a well site), site restoration and spill reporting and remediation.

A concept paper was presented to the Oil and Gas Technical Advisory Board in February 2012 but was significantly updated to address both changes to the regulations that are necessary as the result of enactment of Act 13 as well as implementation issues identified by the Department since that meeting. The Department presented a revised concept paper for discussion at the August 15, 2012 Oil and Gas Technical Advisory Board meeting; however, the TAB members were not prepared to discussed the document.

A special meeting was held with TAB on October 15, 2012 to discuss the draft proposed rulemaking and the board met again on Wednesday, February 20, 2013 and will begin at 10:00 AM. This meeting included a discussion of the actual draft proposed Chapter 78, Subchapter C rulemaking language and adjustments that were incorporated since the last TAB meeting. The Department also accepted public comment on this draft proposed rulemaking during the meeting.

The DEP is scheduled to present the revised draft proposed rulemaking package to the TAB on Tuesday, April 23, 2013, in Room 105 of the Rachel Carson State Office Building. Following TAB's review of the rulemaking package, the Department anticipates presenting the proposed regulations to the Environmental Quality Board (EQB) during the third quarter of 2013.

Erosion and Sediment Control General Permit (ESCGP-2)

On January 21, 2012, the Department published a draft Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities (ESCGP-2) with a 60-day public comment period. This General Permit is intended to provide coverage under the Clean Streams Law to operators who conduct earth disturbance associated with oil and gas exploration, production, processing or treatment operations or transmission facilities where the total disturbance of the project is 5 acres or greater.

On February 16, 2012 the Department met with stakeholders to allow individuals an opportunity to clarify and provide additional input on any comments that were submitted to the Department for consideration during the comment period.

The public comment period closed on March 21, 2012. The Department received and reviewed a total of approximately 450 comments from the public and prepared a Comment Response Document.

A special meeting of the Oil & Gas Technical Advisory Board (TAB) meeting was held on September 17, 2012 to discuss the Erosion and Sediment Control General Permit (ESCGP-2) and related documents.

The ESCGP-2 was published in the Pennsylvania Bulletin as final on December 29, 2012 (42 Pa.B 7863). The final date that the ESCGP-1 permit was accepted by the Department was January 28, 2013 since the permit expires on April 12, 2013. Given this expiration date, January 28 was the latest the Department could accept ESCGP-1 applications and still meet the timelines established by the Department's Permit Decision Guarantee Policy and the regulations in Chapter 102.

The Department developed a transition plan to facilitate a smooth transition from the use of the ESCGP-1 to the ESCGP-2 permit.

The Department is providing internal training to Oil and Gas staff located in each of its District Oil and Gas Offices and is also scheduled to provide training to the regulated community. Specifically, industry training is scheduled for the following locations and dates: Greensburg (April 24), in Harrisburg (May 23) and in State College (July 10). A schedule has been made available on DEP's website at:

http://www.portal.state.pa.us/portal/server.pt/community/training_workshops/20302

Workload Report

The following is the Oil and Gas Workload Report for the week ending *March 22, 2013*:

OFFICE OF OIL AND GAS MANAGEMENT							
WEEKLY WORKLOAD REPORT – WEEK of 03/18/2013 to 03/22/2013							
WELL PERMIT APPLICATIONS¹							
Year to Date	Received	Issued	Other ⁴				
Conventional	320	273	10				
Unconventional	578	628	15				
Total YTD	898	901	25				
For Week 03/18 to 03/22	Received	Issued	Other ⁴				
Conventional	8	19	3				
Unconventional	13	47	0				
Total for Week	21	66	3				
Unconventional Shale Permit Applications – 2005 to Present							
	Received	In Process	Issued	Denied	Withdrawn	Returned	Entered in Error
2005 – Present	13,602	301	13,039	51	167	13	59
WELL PERMIT APPLICATIONS IN PROCESS							
	Total In Process	< 45 Days	45 to 180 Days	> 180 Days			
Conventional	160	109	22	29			
Unconventional	301	269	15	17			
Total	461	378	37	46			
Note: There are 35 Applications (NWRO-35/SWRO-0) that were received at the Regional Offices that have not been accepted for review and are not included in the weekly statistics.							
INSPECTIONS²							
Year to Date	Inspections	Wells Inspected	Violations	Enforcements			
Conventional	3,336	2,200	297	111			
Unconventional	2,858	1,906	151	52			
Total YTD	6,194	4,106	448	163			
For Week 03/18 to 03/22	Inspections	Wells Inspected	Violations	Enforcements			
Conventional	196	155	11	3			
Unconventional	121	119	3	0			
Total for Week	317	274	14	3			

WELLS DRILLED³				
	2013 Year to Date	Week 03/18 to 03/22	2005 – Present⁵	
Conventional	201	3	24,431	
Unconventional	214	1	6,457	
Total	415	4	30,888	

¹Source: eFacts; permit may have been applied for during prior year and issued in current reporting period.

²Inspections count each individual inspection. Inspected wells count how many individual wells were inspected. Some wells may be inspected more than once during the time period.

³Source: Spud Data Report

http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas_reports/20297#InteractiveReports

⁴Other: Applications withdrawn, denied, returned, or entered in error.

Note: The Unconventional Shale numbers may fluctuate as we continue to refine the Unconventional Shale Wells data in the eFacts Database.

⁵Figures have been adjusted to reflect data cleanup.

Act 9 of 2012

The Department worked with PEMA on the development of draft regulatory language to implement Act 9 (formerly SB995) that requires operators of each permitted unconventional well in Pennsylvania to post certain 911 response information at the entrance to each unconventional well site. The three main provisions of Act 9 include:

Registration: A drilling operator must register the address of the well pad location with the DEP, PEMA and county emergency response organization in which the drill site is located.

Signage – A reflective sign must be posted at the entrance of a well site that identifies a variety of information including the operator name, site name, street address of well site entrance, and GPS coordinates for each well located on the well site.

Emergency Response Planning – The operator must develop an emergency response plan that provides for equipment, procedures, training and documentation to properly respond to emergencies that threaten human health and safety for each well site or planned well site.

A presentation of Act 9 was provided to the members the oil and gas Technical Advisory Board on August 15, 2012 and the Department requested the TAB to provide formal comments to the Department by the end of August. The final-omitted emergency rulemaking was presented to TAB on September 17, 2012.

The Environmental Quality Board approved the emergency regulations at the Board’s November 20, 2012 meeting. The final regulations were published in the Pennsylvania Bulletin on January 26, 2013 (43 Pa.B 526). Operators of new well sites will be required to comply with the regulations after January 26, while operators of existing well sites will have phased-in compliance dates of February 26 (addresses), April 26 (emergency response plans) and July 26 (signs).

The Department is working with PEMA, industry stakeholders and county emergency management agencies to develop a Frequently Asked Questions document which should be available on the Department’s Oil and Gas website in early February. The FAQ document is now available on the Oil and Gas Management website at http://files.dep.state.pa.us/OilGas/BOGM/BOGMPortalFiles/IndustryResources/InformationalResources/Act_9_Emergency_FAQ.pdf. The Department will update this FAQ as necessary. The Department is also developing an enterprise solution to allow operators to register the 911 addresses and GPS coordinates of access road entrances and well sites. Notice of that system and training will be provided to operators when it is complete.

Oil & Gas Technical Advisory Board Meeting, Dauphin County

A special meeting of the Oil & Gas Technical Advisory Board (TAB) meeting was held on September 17, 2012 to discuss the Erosion and Sediment Control General Permit (ESCGP-1) and related documents, the draft technical guidance

document titled “Addressing Spills and Releases from Oil & Gas Wells and Related Operations” and other time sensitive policy matters.

An additional special meeting of TAB was held on October 15, 2012 to review and discuss of the draft proposed Chapter 78, Subchapter C rulemaking.

The latest TAB meeting was held in the Rachel Carson State Office Building (Room 105) on Wednesday, February 20, 2013. The Department presented the draft proposed Chapter 78, Subchapter C rulemaking and adjustments that were incorporated since the last TAB meeting. TAB members commented on several sections of the draft proposed rulemaking. The Department also accepted public comment on this draft proposed rulemaking from four commentators at the meeting. Also included on the agenda was the Department’s presentation on the draft final policy titled “Addressing Spills and Releases at Oil and Gas Well Sites” (see above).

The Department is revising the draft proposed Chapter 78, Subchapter C rulemaking as a result of these comments and will present a final draft proposed rulemaking at the next TAB meeting for formal action by TAB. The next TAB meeting is scheduled for Tuesday, April 23, 2013 at 10:00 a.m. in Room 105 of the Rachel Carson State Office Building. After that meeting, the proposed Chapter 78, Subchapter C rulemaking will be presented to the Environmental Quality Board (EQB), where the Department will seek approval to publish the proposed rulemaking for public comment.

Mining/Reclamation/AMD Issues

ABS BF Discharge Treatment

Progress is being made in systematically approaching the problem, with designs underway for many of the treatment facilities. Operation and maintenance continues for the facilities that are in place. Progress reports are being provided to the Office of Surface Mining to assist them in their oversight of the project. Act 157 of 2012 provides for additional funding sources to pay for the required operation and maintenance of the treatment facilities. The structural elements regarding site and operator eligibility regarding funding through Act 157 are being developed via a collaborative process with the Mining and Reclamation Advisory Board. *Approval to initiate the rulemaking process was received in April 2013.*

Noncoal Program Fees

The final rulemaking was published in the Pennsylvania Bulletin on October 13, 2012. Permit application fees were effective upon publication and the annual administration fees were effective January 1, 2013. The noncoal fees are designed to provide full funding to support the noncoal regulatory program (between \$2.5 and \$3 Million per year). Annual administration fees are collected throughout the year based on the anniversary of the mine operator’s renewal of their mining license. The Bureau of Mining Programs has been conducting extensive outreach to the regulated community to explain the new annual fees. The regulations require DEP to report to the EQB within three years regarding program costs and any proposed changes to the fee schedule. *DEP committed to IRRC to provide a status report in one year. We are monitoring the revenue and expenses. For January through March 2013, the annual administrative fees have generated \$325,800. It was estimated that these fees would generate about \$1.7 M per year.*

NPDES Permitting for Mine Sites

The mining program has focused its attention on improving the documentation for NPDES permit reviews. This is necessary due to recent initiatives by EPA and OSM. Efforts will focus on dealing with the conductivity/TDS requirements and reasonable assurance of meeting the state water quality standards. EPA has conducted a permit quality review for NPDES permits for mine sites. The Department has engaged EPA in discussions intended to improve NPDES permitting for mining permits. New issues continue to be raised by EPA. The Department has focused its attention on the regulatory requirements. Some of EPA’s objections seem to go beyond the regulations. Comments have been received on about 167 of the 276 permits sent to EPA as of January 2013. A new NPDES application form for mining activities has been developed and implemented. The draft guidance was published for comment in November 2012. Comments were received from 3 commentators. Work is progressing on responding to the comments and finalizing the guidance. *A SOP is being developed in order to implement the permit requirements and a fact sheet has been drafted specifying the requirements for permittees.*

Act 54 Report

The Department has executed the documents with the contractor (University of Pittsburgh) to begin data collection in September 2012 for the 2008-2013 reporting period. The contract period is two years. Data collection and evaluation is underway. Bureau of Mining Program and California District staff are meeting regularly with University of Pittsburgh personnel to manage the contract and provide guidance.

Pending Guidance Documents

The guidance for Reclamation Fill for active noncoal mines was published for comment on March 23. Work is progressing on the comment and response document for the conventional bond TGD. As noted in the NPDES section the TGD for NPDES permitting for mining was published for comment and is nearing finalization.

Permit Decision Guarantee

The mining program has developed and posted standard operating procedures for permit application review in order to implement the permit decision guarantee (PDG). The Bureau of Mining Program is systematically reviewing existing guidance documents to identify revision required to reflect the elimination of the money-back guarantee and the implementation of the PDG. There are about a dozen guidance documents in need of revision, most of which have not been updated since the mid 1990's. In addition, the Large Noncoal Permitting process was evaluated for efficiency using the LEAN process. This process identified improvements that could be made, some of which can be done immediately, while others require continuous effort. The improvement of the Large Noncoal Application form is the current focus of attention. While the LEAN process was initiated independently from the PDG, it is clear that the result of LEAN process will be applicable to implementing the PDG.

2013 OSM Title IV Abandoned Mine Land (AML) Program Grant

On February 21, the federal Office of Surface Mining (OSM) announced the total Title IV AML Grant to be awarded to Pennsylvania for 2013. The grant will become effective April 1. Pennsylvania's total Title IV Grant Distribution is just over \$65 million, however due to uncertainty concerning federal budget sequestration OSM is withholding 10% or just over \$6.5 million. The initial AML grant award (90% of the total) is approximately \$58.5 million. DEP will set aside the maximum amount for AMD problems which equates to a little over \$15.1 million. The remaining AML funds will be used to address AML hazards throughout the anthracite and bituminous coal regions of the state. Should sequestration be averted at the federal level, Pennsylvania would anticipate receiving award of the remaining \$6.5 million now being held back yielding an additional \$1.67 million set aside for AMD problems and \$4.82 million for AML hazards. The 2013 grant was originally to have become effective on January 1 but was pushed back, at the request of OSM, due to uncertainty concerning the "Fiscal Cliff" and budget sequestration issues. Pennsylvania avoided a gap in funding by extending the 2012 Title IV AML Grant performance period three additional months to March 31.

Office of Homeland Security

The PA Criminal Intelligence Center (PaCIC) has sent the Department an MOU for signature that will allow the DEP subject matter experts to begin working at the Commonwealth's Fusion Center to assist in the analysis of intelligence received in order to prepare for all hazards. The DEP must execute a memorandum of understanding (MOU) before the actual work begins.

The Pa. Department of Agriculture is developing a team to provide a rapid response to food and feed contamination in the Commonwealth, and DEP is participating in this endeavor. The DEP members of this Rapid Response Team will assist with issues concerning safe drinking water, groundwater contamination, waste disposal, etc.

Environmental Education

Outreach Energy Education Exhibit: *The award-winning, educational, interactive DEP at Home exhibit was taken on the road to several events throughout the state. Fashioned into a home structure, the exhibit features practices and products promoting energy efficiency and sustainable building materials as well as environmentally friendly and Pennsylvania-produced products for the home. The team worked more than nine months to plan, design, create and illustrate the three-room exhibit. It has a bathroom and laundry area; kitchen; and living room that showcase décor, appliances and building materials that help improve energy efficiency, water conservation, radon awareness, air quality and other staples of environmental awareness. Each of the rooms can be displayed on their own, providing maximum*

flexibility for use at upcoming home shows, agricultural fairs and other environmental outreach activities. The exhibit made its debut during the 2013 Pennsylvania Farm Show, where nearly 585,000 visitors interacted with it. Here, it was awarded the “Best Educational Exhibit” at the week-long event and was featured in more than a dozen newspaper and TV news features around the state. Since then, it has traveled to the Pittsburgh Home and Garden Show, where it was on display for hundreds of thousands of onlookers, and the Erie Home and Garden Expo, where 10,000 visitors enjoyed it. The exhibit’s next stop will be the East Wing Rotunda of the State Capitol for Earth Week, April 22 to 26.

Office of Program Integration

Permit Review Process/ Permit Decision Guarantee Implementation of the “Policy for Implementing the Department of Environmental Protection (Department) Permit Review Process and Permit Decision Guarantee” began in November 2012. The effectiveness of the new process and guarantee will be evaluated on at least a quarterly basis during the first year. The first evaluation was completed on February 14, 2013 and the second evaluation will be completed in May 2013. Information pertaining to the Department’s Permit Review Process and Permit Decision Guarantee can be found on the Department’s web site at www.depweb.state.pa.us (DEP Search/Keyword: Permit Decision Guarantee).