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Changes In Marcellus Shale Gas Well Permitting Are Being Evaluated As A Result Of Chesapeake Bay Foundation Case Settlement

A number of changes are being evaluated as a result of a settlement with the Chesapeake Bay Foundation, over the issuance of Marcellus Shale gas well permits. A problem arose when the Chesapeake Bay Foundation complained that DEP was not completing anti-degradation analyses as applied to high quality and exceptional value streams during review of permits. Erosion and Sedimentation Control Plans were also being approved without substantive review. Other issues involving wetlands encroachments were also indicated to be of concern.

Key items are:

- The settlement will include obtaining a state permit for disturbances more than five acres, under Chapter 102.
- A new ESCGP-2 will be issued by DEP, to be used for the expedited review permitting process. There will be a 60 day public comment period.
- Certain projects, including those located in high quality or exceptional value waters, those where a pad is to be constructed in the floodplain, and on lands known to be contaminated, will no longer be eligible for the expedited review process.
- Unless waived, a pre-construction meeting is now required to be held, for oil and gas projects covered by the ESCGP.
- Sites with steep slopes, highly erodible soils, located in sensitive watersheds, in areas with special geologic risks, floodplains, and contaminated lands, will be priority for holding pre-construction meetings.
- There will be new priorities for inspections.
- DEP is to propose a policy regarding how 100 foot setbacks from streams and other bodies of water will be interpreted, and a public comment period on that policy statement will be provided. Project sites will not be eligible for waivers if they will have a pit containing cuttings, flowback or produced water, or waste within the floodplain; OR tanks containing condensate, flowback or produced water within the floodway; OR tanks containing condensate, flowback or produced water in the flood fringe, unless adequately flood-proofed.

The settlement does not represent the end result, as it is now up to DEP to provide changes in guidance, forms, and policies for public comment.

Should there be any questions, call Gary R. Brown, at 800-725-0593.

More detail on the Chesapeake Foundation settlement can also be found in the Pennsylvania Independent Oil and Gas Association Newsletter dated July 2011 (Issue 15).

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