



## PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION MOVING FORWARD WITH CHAPTER 78 REGULATIONS

Chapter 78 is rulemaking which covers oil and gas operations in the Commonwealth of Pennsylvania. Pennsylvania Oil and Independent Gas Association has been tracking the rulemaking and issued information on the latest proposed revisions to the rulemaking, which are presented below.

In the Advanced Notice of Rulemaking (ANFR), DEP listed several new sections of the draft final rules that it considers to be "significant changes" from the 2013 proposed rule. Such changes applicable to both convention- al and unconventional wells include:

- The requirement to restore impacted drinking water supplies to Safe Drinking Water Act standards or predrill quality (whichever is better).
- The elimination of the use of pits to store production fluids at well sites.
- A new proposal to authorize centralized tank storage.
- The expansion of predrilling assessments to include the identification of nearby active and inactive wells.
- Revisions to the obligation to identify abandoned and orphan wells.
- New obligations for site restoration beyond the requirements of Chapter 102.
- A new requirement to remediate spills or releases at well sites in accordance with Act 2 under a timeframe uniquely created for oil and gas operations.

Changes specific to unconventional operators include an entirely new noise mitigation provision, a

prohibition on the use of temporary waste storage pits and the option to obtain approval for disposal of waste at unconventional well sites.

One significant revision that applies to both conventional and unconventional operations is the new definition of "other critical communities," which would be defined as:

(1) Plant and animal species that are not listed as threatened or endangered by a public resource agency, including:

- (i) Plant and animal species that are classified as rare, tentatively undetermined or candidate;
- (ii) Taxa of conservation concern; and
- (iii) Special concern plant populations.

(2) The specific areas within the geo- graphical area occupied by a threatened or endangered species designated in accordance with the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., that exhibit those physical and biological features essential to the conservation of the species and which may require special consideration or protections; and

(3) Significant non-species resources, including unique geological features, significant natural features or significant natural communities. This definition-which expressly includes all species that are not listed as threatened or endangered, as well as various non- species resources-would come into play in the well permit application process, where applicants would be required to give notice to public resource agencies "responsible for managing" the locations of these critical communities. See proposed §78.15 (f)(1-4).

Presumably, one will be informed of the presence of these non-listed species and non-species resources by utilizing the Pennsylvania Natural Diversity Index (PNDI) database and obtaining a PNDI receipt with a hit for such non-listed species and non-species resources. PNDI, however, does not use the term "critical communities," but when certain non-listed species come up in the PNDI database, a PNDI receipt indicates that "special concern" species may be impacted by the project. "Special concern" species, however, are not defined in any state or federal statute or regulation, and no agency or entity that populates the PNDI database utilizes a consistent or public standard or process for the categorization of such species. These decisions are made without public notice, input, rulemaking or peer review.

Thus the proposed list of "critical communities" to be newly protected through the creation of well permit conditions, pursuant to a new process that would have agencies other than DEP create well permit obligations, cannot create certainty or predictability for those who would obtain well permits in Pennsylvania because the definition incorporates lists of species and non-species resources that can change without notice on a daily, weekly or monthly basis.

For more information, you can go the PIOGA PRESS at [www.pioga.org/](http://www.pioga.org/) which has an in-depth article on the Rulemaking in its April 2015 Edition.



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