



Before the
Pennsylvania Environmental Quality Board re.
25 Pa. Code Chapter 78, Oil and Gas Wells
Proposed Rulemaking
Verbal Testimony
Tracy Carluccio, Deputy Director for Delaware Riverkeeper Network
Public Hearing, Chester County, January 9, 2014

Delaware Riverkeeper Network submits these verbal comments on behalf of the organization and its 12,000 members in addition to written comments that will be filed with the Environmental Quality Board during the public comment period on this proposed rulemaking.

We greatly appreciate that the Pennsylvania Department of Environmental Protection (DEP) recognizes the need for improvement of the regulations that govern oil and gas development in Pennsylvania. Delaware Riverkeeper Network (DRN) agrees that current regulations need changes regarding oil and gas activities. We feel this is particularly true in light of the unprecedented growth in unconventional natural gas extraction and its associated infrastructure for the development of shale gas-bearing formations and because conventional drilling impacts have adverse effects that have long been ignored on communities and the environment, including the water we drink.

Public Participation

First, we request an expansion of the opportunity for public comment. We consider this rulemaking to be of great importance for the communities that are experiencing the ill effects of oil and gas development, including infrastructure, transportation and processing impacts. Informed and meaningful public input into the decisions that the EQB will make regarding the proposed regulations require that people have enough time to review, research, and respond to the proposals. 60 days is simply not enough time, especially considering that major holidays, including 3 federal holidays, occur during the public comment period and that two weeks were

major holiday periods for many residents and families. It is a basic right of the public to take part in rulemaking; the activities governed by these rules have direct and substantial impact on Pennsylvanians so we should be able to take part in the decisions that will be made. It is also true that the public's participation benefits the government in its decisionmaking and inevitably improves the outcome of the rulemaking process. Also, more hearings need to be held – we think, to be fair, hearings should be held in every county that is experiencing drilling, fracking, or related infrastructure such as pipelines, compressors, gas processing facilities, and transportation systems. Seven counties are not enough; people should not have to travel hours to reach a hearing, they should be able to easily access the opportunity for verbal comment in their own county. Verbal testimony is a valuable means of collecting public input since many people don't have the time or means to write out and deliver written comment so the comment period should encourage that means of input; many people don't have a computer to submit comment electronically. To accomplish a successful public participation effort, we request that the comment period be extended to at least 120 days and that hearings be set over this extended time in every county that is experiencing oil and gas development impacts.

Comments

There are some improvements being proposed by DEP that are worthy of support but generally they don't go far enough and in some instances are completely ineffective because they are so deficient. Also, there are many areas in need of improvement that are not included in the proposed rules.

For tonight, I will touch on some of the key areas we are concerned about in this rulemaking that need changes:

Public Resources need greater protection: All species need their habitats identified and protected, not only threatened or endangered species and all oil and gas activities, including infrastructure such as pipelines and processing facilities, should be analyzed and negative impacts should be avoided and prevented, not just mitigated. Science tells us that once a natural resource like wetlands or mature forest is damaged, it will likely never be restored to original value through mitigation. In fact, studies show about 85% of all constructed wetlands are failures. The best way to protect the natural features at risk from gas and oil activities is to PREVENT the harm.

Water Supplies need greater protection: Today people are suffering because their water wells have been ruined by fracking and many have been left without remedy or with diminished water

quality because of existing loopholes in the law. DEP is not attempting to undo this unfair situation – for instance, a whole host of well site construction activities, not only drilling, can cause pollution but DEP is going to let drillers get away with all those other polluting activities; many people still have polluted water after the contamination is “fixed” because certain pollutants were either not tested for or are not proven to be connected with drilling or because the water quality is deemed to match “background conditions”; when water supplies are damaged they are not required to be restored fully but they should be restored to at least Safe Drinking Water Act standards and if the water was of higher quality, to prior condition - no degradation should be allowed. That’s not what DEP is proposing. DEP isn’t mandating a comprehensive list of parameters that must be tested for by a driller in the predrilling survey so it is still left up to the driller, leaving these loopholes intact and the well water user at a disadvantage. Under the proposed rules, the inequitable situation that allows drillers to escape responsibility for the pollution of private water wells through technicalities and lack of mandated requirements will still be the law of the land. That is wrong.

Orphan and abandoned wells must not only be identified but must also be located by survey, mapped on a public database, and plugged and sealed by the driller who wants to drill in the vicinity and this should be done BEFORE the site is disturbed and certainly before a new well is drilled, not just identified from paper reports (no field survey required) before fracking like DEP is proposing. We know there are about 200,000 abandoned wells in the state but we don’t know where most are; we know from accidents and blow outs in Clearfield County, Bradford County and other places that wells being drilled or fracked can connect with these old wells, resulting in pollution to both the subsurface and surface.

Open Pits must be banned. It is irresponsible for DEP to continue to allow open frack pits, even for what they term “temporary storage”. The industry regularly releases pollution from these pits throughout the state—in fact, it is one of the largest number of violations over the years since shale gas extraction has ramped up here. DEP has new standards they are proposing which are good but, bottom line, they are still allowing their use. In fact, DEP should regulate the hazardous materials that are used and stored on well sites under the US Resource Conservation and Recovery Act, which would tighten up the handling of these highly dangerous materials used and produced by extraction activities. To prevent groundwater, surface water, and stormwater and air pollution prohibiting open pits is one of the most effective actions that DEP can take and they should do that in this rulemaking. As it is they are allowing pits with liners only 20” above the

seasonal high groundwater; they are not providing adequate safe separation distances for pits or tanks from sensitive features such as water wells, waterways, and homes; and they allow open tanks for temporary storage and for condensate, which releases toxic pollutants such as VOCs to the air because no filtration requirement is required. Frack pits are unsafe and should be prohibited; open pits and tanks release pollutants that cannot be controlled and must also be prohibited.

On site processing of drilling and fracking waste creates pollution pathways. Again, US RCRA standards should be enforced here. What DEP does propose is far from that and does not ensure safe handling. There are no specific standards, testing, inspection regimes, etc. that define how an operator will keep pollution from occurring, as DEP says they must, and how DEP will be able to verify that. Drill cuttings and other solids are known to contain high levels of radioactivity from the Marcellus Shale and yet DEP will allow these to be processed on site without testing for these properties. Dangerous chemicals and other pollutants can bind with solids and sludges and yet no sampling or recording of testing is required to assess the levels of these pollutants in the materials being processed at the well site. There are no standards for the quality of the fluids or “water” that DEP is encouraging drillers to “recycle” for fracking, leaving this area completely lacking in water quality regulation, threatening greater pollution from the use of “water” that contains dangerous constituents in addition to the chemicals being added and the toxic materials being produced by the fracking process. This is a giant hole in regulation and militates that on site processing is too dangerous and should not be allowed as proposed.

Open centralized freshwater and waste impoundments should not be allowed as proposed. This is because even if classified as a freshwater impoundment, DEP does not define “freshwater” so other fluids that are used for fracking such as mine influenced water, effluent, cooling water from other facilities, and other contaminated liquids all could make their way into these less regulated freshwater impoundments despite the pollutants they may contain. The standards that DEP does propose will actually keep open current pathways for pollution and in some cases allow new ones because of the weak provisions. By encouraging the use of mine influenced water or AMD, for instance, the water stored in these impoundments will likely be more highly contaminated due to the known high levels of pollutants in AMD. Freshwater impoundments should not be allowed to hold any polluted substances, including AMD and other “recycled” fluids. Again, US RCRA standards are the appropriate regulatory regime here, not a patchwork of testing

and monitoring as is proposed. Also, no mention of air emissions from these impoundments is made and it is known that pollutants can volatilize from some of the fluids that would be allowed.

Land Application of solid and liquid wastes (including topsoil water) and burial of waste pits on well sites must be banned. Large amounts of toxic waste are produced by drilling and fracking, in both conventional and unconventional formations. DEP does not make this outdated and dangerous method of getting rid of this toxic waste safe. US RCRA would not allow this. DEP doesn't even propose testing of the materials to be disposed of, there is no leak detection afterwards, no field markers so future land users know what is buried where, no monitoring of the buried or land applied area to see what happens over time to these buried wastes, inadequate setbacks and even a waiver of the minimum soil depth to seasonal high groundwater is allowed. Much of the activity is streamlined into what is basically performance standards that cannot be tracked. There is no public disclosure of any of this and no requirements to record this burying or land application on the property's deed. This allows the current poorly regulated disposal of this waste in what is essentially people's backyards and farm fields to continue, creating a very dangerous condition – sort of like a lot of small superfund sites. Considering that oil and gas activities are exempt from federal CERCLA (Superfund) regulations, this practice ensures a legacy of pollution that the taxpayers will ultimately have to pay for, and allows the responsible party, the driller, to allude accountability.

There are many more areas of this rulemaking that need great improvement and DRN will be providing extensive written comment. But overall, this rulemaking needs vast improvement that reflects the charge the PA Supreme Court gave us in the recent Robinson Township ruling: Article 1 Section 27 is the standard DEP must meet in its regulatory scheme. The people are entitled to clean air, pure water, and the preservation of the environment for all, including future generations. This rulemaking should not be constrained by special interests or faint-hearted agency policies. It must strive to protect and prevent the pollution and avoid the degradation from the oil and gas industry that now escapes control.

Thank your for the opportunity to testify here tonight.