TALKING POINTS, BACKGROUND & RECOMMENDATIONS:

Summary of Proposed Changes (with brief justifications)
Office of Oil and Gas Management (OOGM)
25 Pa. Code Chapter 78
Subchapter C. Environmental Protection Performance Standards

§ 78.2 Scope

- Propose amending the scope section to provide that Chapter 78 contains procedures and rules for activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

  Given the proposed changes herein to add sections regarding pipelines and water withdrawals, this amended scope section is needed to explain that Chapter 78 applies to not only the drilling, alteration, operation, and plugging of a well, but also to other oil and gas activities.

§ 78.15 Application Requirements

- Propose adding a requirement that a well operator identify on the well permit application whether the proposed well will be located within a Zone II wellhead protection area, as defined in 25 Pa. Code Chapter 109. If the proposed well will be located within a Zone II wellhead protection area, propose the operator must submit the name of the public water supplier to the Department with the well permit application.

  This requirement will ensure collaboration and coordination between the Oil and Gas Program and the Safe Drinking Water Program.

- Propose adding a requirement that a well operator identify on the well permit application the location of abandoned gas or oil wells within 1000 feet of the well bore.

  This requirement comports with a recommendation made by STRONGER to prevent communication between wells.

§ 78.52. Predrilling or prealteration survey.

- Propose to require in the report accompanying the survey, submission of chain-of-custody documentation and all field tests and observations including, pH, odor and color and the results of the laboratory analysis.

  The chain-of-custody submission would ensure the integrity of the samples at the point of submission to a third party certified laboratory.

Field tests are valuable parameters that usually have instantaneous holding times and could give insight to the water quality at that specific moment, when the samples were taken.

§ 78.53. Erosion and sediment control.

- Amend this section to include a cross reference to the requirements in Chapter 102 by stating that all earth disturbance activities associated with oil and gas activities must comply with Chapter 102.

  This would assist operators with identifying applicable regulatory requirements, and reinforce the applicability of Chapter 102's requirements to oil and gas activities under Chapter 78.

§ 78.55. Control and disposal plan.

- Propose changing the name of this Section to Preparedness, Prevention and Contingency (PPC) plan.

  This is to be consistent with § 102.5 (l) which requires a PPC Plan when storing, using or transporting industrial materials on or from the project site during earth disturbance activities.

- Propose requiring the development of a site-specific PPC plan that would also include elements of a Control and Disposal plan.

  This is to ensure an up-to-date and accurate PPC plan with all pertinent well site information is developed for each oil and gas site. This would also prevent the reliance by operators on generalized plans and the use of photo-copied older plans with out-of-date and inaccurate information.

- Propose establishing existing Department guidance as the preferred standard for PPC plans, by referencing the criteria outlined in the Department's Guidelines for the Development and Implementation of Environmental Emergency Response Plans (400-2200-001) and the Pennsylvania O&G Operator's Manual Chapter 4, Section 1.

  This will ensure the PPC plans include enough information to satisfy the requirements of § 91.34, and provide an acceptable set of criteria to use.

- Propose that copies of the PPC plan be available on site and a copy sent to the local County Emergency Management Director. Upon request, additional copies shall be sent to the Department and the land owner.

This is to ensure that the crucial information in the PPC Plans is made available to the County Emergency Management Committees and the Response Coordinators so they are aware of hazards present at each well site and the planned response prior to an incident.

- Propose adding the requirement for site specific location information, i.e. GPS coordinates and mapping, for the well site and location of hazardous materials, pollutional substances and wastes, both solid and liquid at the well site.

  This is to allow for easy location and identification of items of concern in case of darkness, smoke, power outages, poor weather or other causes of poor visibility.

§ 78.56. Pits and tanks for temporary containment.

- Propose that all modular, open-top waste containment structures with synthetic liner bottoms may not be utilized to store waste without written authorization from the Department.

  This is to ensure that these storage structures are sound. There are many different designs of this category of tank and they should be reviewed to ensure that they meet regulatory requirements prior to their use. Additionally, it is unclear how these structures should be regulated on a well site.

- Propose that a Secondary Containment is required for all tanks containing pollution substances and wastes from drilling activities, except freshwater.

  This is to provide an extra barrier of protection against pollution to the Waters of the Commonwealth.

- Propose that for all storage structures:

  - Have proper signage, including national hazard placards, shall be displayed on or near the storage structures identifying the stored substance.
  - Gated fences shall completely surround pits to prevent unauthorized acts by third parties.
  - Warning signs shall be place on all sides of the pit.
  - All tank valves and access lids shall be locked to prevent unauthorized acts by third parties.

  These measures are to properly identify the storage of waste on oil and gas related sites and to prevent accidents and acts of vandalism.

- Propose, upon request of the Department, that the operator produce documentation of the liner's physical and chemical characteristics compatibility with the waste stored within it.

This is to ensure that liners are exposed to only approved materials. .

- Propose that the owner or operator shall notify the Department at least 3 business days before the installation of the pit liner. This notice shall be submitted to the Department electronically through its website.

  This will allow for inspections of the pit to ensure that the sidewalls, including the slopes, are properly constructed and that the sub base is free of obstructions and properly lined with acceptable bedding material.

- Propose that operators demonstrate that pit bottoms are kept 20 inches above the seasonal high groundwater table. Existing rule that allows seasonality to be considered will be maintained.

  This will ensure that pits always meets the 20 inch seasonal high groundwater table requirement year-round for the primary purpose of preventing stored wastes from entering the groundwater table.

§ 78.57. Control, storage and disposal of production fluids.

- Propose that all tanks have proper signage, including national hazard placards. Propose that all tank valves and access lids shall be locked to prevent unauthorized acts by third parties.

  These measures are to properly identify the storage of waste on oil and gas related sites and to prevent accidents and acts of vandalism.

- Propose that all tanks have proper signage, including national hazard placards.

  The purpose of this requirement is to aid Department staff in conducting inspections and to aid emergency responders in the event of a spill, explosion, or other hazardous situation.

- Propose that for all above ground storage tanks containing fluids produced during operation, servicing, or plugging of the well, that the owner or operator shall construct and maintain a dike, or other method of secondary containment, which satisfies American Petroleum Institute Standards or equivalent around the tank or tanks that will prevent the tank contents from entering Waters of the Commonwealth. Use of a double walled tank meeting API standards or equivalent, can be used in lieu of a dike or other method of secondary containment.

  The purpose of this section is to require minimum secondary containment standards for all permanent storage tanks containing all produced fluids, not just oil. There are tens of thousands of tanks containing produced fluids that contain no adequate secondary containment, which has resulted in numerous spills and releases of produced fluids to the environment over many decades. Many tanks that do have secondary containment have

ineffective diking systems that provide little or no containment of spilled produced fluids. One example would be dikes that are constructed out of high permeability fill material that is often times conveniently obtained during well site preparation and construction.

- Propose that the containment area provided by the dikes or other method of secondary containment shall have containment capacity sufficient to hold the volume of the largest tank plus a reasonable allowance for precipitation based on local weather conditions.

  Minimum secondary containment volumes are critical to ensure the effectiveness of the containment and to prevent spills and releases entering Waters of the Commonwealth.

- Propose that for underground storage tanks (regardless of their volume) containing fluids produced during operation, servicing, or plugging of the well, that the owner or operator shall provide corrosion control and leak detection and meet all construction standards outlined in API standards or equivalent.

  Currently underground produced fluid tanks have no regulatory standards and the Department has no way of determining if these underground storage tanks are leaking. Current API standards for underground storage tanks will be used as the benchmark for future underground storage tanks.

- Propose that all tank valves and access lids shall be locked to prevent unauthorized acts by third parties.

  These measures are to properly identify the storage of waste on oil and gas related sites and to prevent accidents and acts of vandalism.

§ 78.59. Centralized Impoundment Standards. [New Section]

- Propose that no well operator shall construct or operate a centralized freshwater or wastewater impoundment associated with oil and gas activities without permit or written authorization from the Department.

  The purpose of this proposed provision is to require written authorization for the construction of centralized freshwater impoundments. Currently, unless a centralized freshwater impoundment triggers the Chapter 105 permit requirements, these facilities are constructed without notice to the Department. Centralized wastewater impoundments currently require a Chapter 105 permit. This proposal codifies that requirement in Chapter 78.

- Propose that all impoundments (freshwater and wastewater) meet specific standards for construction, restoration and site location registration.

  The purpose of this proposal is to codify existing construction standards for centralized wastewater impoundments in Chapter 78. Currently there are no construction or

registration standards for certain centralized freshwater impoundments. This provision will give the Department the ability to track these facilities and ensure their proper construction.

§ 78.59a Onsite Wastewater Processing [New Section]

- Propose that written approval is required on forms provided by the Department to process wastewater on the well site that was either generated by the drilling of the well on that well site or used to stimulate wells on that well site. Propose that all other onsite wastewater processing facilities must comply with the requirements under the Solid Waste Management Act.

  The purpose of this proposed amendment is to clarify the permit requirements for onsite mobile wastewater processing facilities.

§ 78.61. Disposal of drill cuttings.

- Propose that no drill cuttings be imported or transported from another well site for the purpose of treatment of the imported cuttings on the site unless approved by the Department.

  This is to prevent the proliferation of well sites becoming waste treatment facilities.

- Propose that the owner or operator notify the Department at least 3 business days before such use of solidifiers, dusting, unlined pits, attenuation or other alternative practices for the disposal of uncontaminated drill cuttings. This notice shall be submitted to the Department electronically through its website.

  This will allow for inspections to ensure that the site specific OG-71 and conditions set forth in this authorization are properly followed.

- Propose that drill cuttings from the horizontal portion of unconventional wells cannot be disposed of on-site.

  This will prevent contaminated cuttings from being encapsulated on well sites.

§ 78.62. Disposal of residual waste—pits.

- Propose that the owner or operator notify the Department at least 3 business days before the installation of the pit liner. This notice shall be submitted to the Department electronically through its website.

  This will allow for inspections of the pit to ensure that the sidewalls, including the slopes, are properly constructed and that the sub base is free of obstructions and properly lined with acceptable bedding material.

- Propose that the owner or operator notify the Department at least 3 business days before the encapsulating the waste within the pit liner. This notice shall be submitted to the Department electronically through its website.

  This is to ensure that all conditions and tests required in § 78.62 are met prior to encapsulation and that the site specific OG-71 (if applicable) and conditions set forth in it are properly followed.

- Propose that owner/operator provide documentation of compliance with § 78.62(b) (1-4) on forms provided by the Department prior to on-site disposal of the waste.

  This is to ensure that all tests required in § 78.62(b) (1-4) are conducted and that the sample results are satisfactory to the Department prior to encapsulation.

- Propose that landowner consent be obtained prior to encapsulation of residual waste on the well site.

  This is to ensure that the land owner is aware of and approves the encapsulation of residual waste as part of the restored well site.

§ 78.63. Disposal of residual waste—land application.

- Propose that operators demonstrate that pit bottoms are kept 20 inches above the seasonal high groundwater table. The existing rule that allows seasonality to be considered will be maintained.

  This is to ensure that the proper soil conditions are met for land farming of drill cuttings and that the seasonal high groundwater table is at a minimum, of 20 inches from the surface.

- Propose that documentation of compliance with § 261.24 Table I on forms provided by the Department shall be submitted prior to on site disposal of the waste.

  This is to ensure that all tests required in § 261.24 Table I are conducted and that the sample results are satisfactory to the Department prior to land farming of drill cuttings.

- Propose that the land application area shall be restored to conditions that support the same potential uses of the land that existed prior to earth disturbance.

  This is to prevent the loss of potential uses of land in the future.

- Propose that landowner consent be obtained prior to land application of residual waste on the well site.

  This is to assure that the land owner is aware of and approves the encapsulation of drill cuttings as part of the restored well site.

§ 78.65. Site restoration.

- Propose that one extension of the restoration period be granted and not exceed the statutory timeframe for an extension.

  This is to ensure that well pads are reclaimed within a reasonable timeline and avoids the allowance for a well pad to remain open indefinitely, without applying for a new well permit or renewal of a well permit.

- Propose that stone borrow pits obtain all necessary Department non-coal mining permits. If permits are not required, the stone borrow pit owner or operator must still follow Department construction and restoration standards, including erosion and sedimentation control best management practices.

  This is to prevent borrow pits from converting into unpermitted mining operations after the associated well site has been restored.

- Propose that well site restoration includes reducing the size of the well site. This reduced well site may contain necessary production supplies and equipment and service vehicle access including 3 point turn around.

  This is to prevent to cumulative loss of watershed lands and infringement on property owners' rights. Additionally, this provision provides clarity regarding what constitutes well site restoration.

§ 78.66. Reporting releases.

- Propose adding requirements establishing a remediation procedure to be used in the event of spills and releases of pollutional substances and wastes associated with oil and gas activities.

  The purpose of this provision would be to establish clear and explicit procedural guidelines for operators to demonstrate compliance with the standards in the Land Recycling and Environmental Remediation Standards Act (Act 2).

- Propose that PA Code § 299.217 (relating to residual waste transportation incidents causing or threatening pollution) be cross referenced in this section.

  This is to ensure the proper reporting of the spill to the Department and other agencies happens when a spill occurs during transportation of oil and gas related wastes.

- Propose that PA Code § 299.218 (relating to wastes from accidents and spills) be crossed referenced in this section.

  This is to ensure the proper containment, clean up, storage and disposal of residual wastes generated from a spill during transportation of oil and gas related wastes.

§ 78.67. Waterways and Wetlands Encroachments. [New Section]

- Propose that when a waterway or wetland is crossed or encroached, the operator shall comply with all requirements prescribed in Chapters 102 and 105.

  This is to notify operators that all applicable regulations in Chapters 102 and 105 must be followed.

§ 78.68. Pipelines [New Section]

- Propose a new section that provides that in addition to the requirements in Chapter 78, all applicable regulations and requirements in Chapters 102 and 105 apply to pipelines associated with oil and gas activities.

  This is to notify operators of these necessary regulatory obligations.

- Propose that ground disturbance associated with pipeline installation be limited to the construction right-of-way, work space areas, pipe storage yards, borrow and disposal areas, access roads and other identified areas necessary for the scope of work.

  This is to ensure awareness of these necessary regulatory obligations, including making sure that any earth disturbance activities associated with pipelines are narrow in scope, regardless of the project size and compliance with existing requirements for earth disturbance activities less than five acres in size that may not be subject to Departmental review prior to construction.

- Propose requiring the use of highly visible flagging and/or signage marking the boundaries of sensitive resource areas, including water bodies, wetlands, cultural areas, agricultural drain tiles and locations of threatened/endangered species, within the limit of disturbance, prior to land clearing.

  The reason for requiring highly visible flagging and signage is to prevent the unnecessary destruction of Commonwealth resources.

- Propose requiring that all water diversion structures and trench dewatering discharge points be diverted away from all sensitive resource areas, waterbodies, wetlands, cultural areas, agricultural drain tiles and locations of threatened/endangered species.

  This measure is to prevent pollution of the Waters of the Commonwealth and destruction to sensitive habitat and cultural areas.

- Propose requiring the need to test topsoil and subsoil for compaction at regular intervals in areas disturbed by construction activities to determine the need for corrective action.

Testing for compaction is required to ensure the water infiltration rates of the soil have not been adversely impacted and also to ensure that subsidence/compaction will not occur in the future. This is consistent with FERC regulations. This proposal needs to be discussed with the Chapter 102 program staff prior to drafting it as a regulation.

- Propose requiring the separation of topsoil and subsoil during excavation. Topsoil and subsoil must remain segregated until restoration. Topsoil cannot be used as bedding for pipelines. Native topsoil or imported topsoil of equal or greater quality must be used to ensure the land is restored to the potential uses that existed prior to earth disturbance.

  This measure is to promote the conservation of topsoil.

- Propose requiring a plan to identify agricultural drain tiles and irrigation systems prior to construction activities with measures to prevent their damage or loss of use during construction activities. A qualified drain tile specialist would be required to monitor the repair of any damaged drain tile systems. Damaged drain tile systems must be repaired to their original or better condition.

  This is to prevent the alteration of established drainage patterns in agricultural areas and loss of use of irrigation systems.

- Propose follow-up inspections by the permitee of all disturbed areas to be conducted after the first and second growing seasons to ensure the success of revegetation. Copies of these reports shall be made available to the Department upon request.

  This measure will require that the permitee documents the true success of their revegetation program and would be held responsible for its success.

- Propose that the operator is responsible to reclaim all points of access and to place reasonable security measures (i.e. locked gates, jersey barriers, earth mounds), in conjunction with the property owner, to limit motor vehicle access to the pipeline right-of-way. Permanent features, i.e. signs, gates, markers and access roads shall be maintained throughout the life of the pipelines.

  This promotes safety and helps prevent future erosion by denying unauthorized motor vehicle access to the pipeline right-of-way.

Horizontal Directional Drilling of Pipelines

- Propose that horizontal directional drilling associated with oil and gas activities be conducted according the requirements in this section as well as according to the requirements in Chapter 102 and 105.

- Propose that a 24 hour notification be made to the Department prior to commencement of all horizontal directional drilling activities. This notification will require actual contact with and/or verbal recognition of the notification by an appropriate DEP Oil and Gas employee and information on where and when the horizontal directional drilling will commence.

  This is to ensure that the Department is aware of the drilling activity and can make timely proactive inspections of such activities instead of reacting to inadvertent returns.

- Propose requiring an inadvertent return control plan be present and implemented during horizontal drilling activities.

  This is to help mitigate the impact of inadvertent returns and allow the Department to evaluate the preventative measures being taken.

- Propose that staging areas be outside of the jurisdictional floodway or edge of a wetland or waterbody.

  This will help preserve the structural integrity of the waterway, preserve the riparian buffer and prevent drilling fluids from impacting the water resource.

- Propose that the all required permits and Material Safety Data Sheets (MSDS) are available on site upon request.

  This is to aid the inspector in determining all activities and chemicals used during the operation are approved by the Department.

- Propose that all drilling fluid additives, other than Bentonite, used for horizontal drilling activities must be approved by the Department prior to their use.

  This will help prevent to introduction of potentially toxic additives to the Waters of the Commonwealth.

- Propose requiring all inadvertent returns be immediately reported to the Department § 91.33 and establishing the Oil and Gas Spill Policy as the standard process that is acceptable to the Department.

  This is to clarify that the Department views all inadvertent returns as a potential pollution threat to the Waters of the Commonwealth as must be treated as such.

- Propose that the product of an inadvertent return be considered as a waste product and must be contained, stored, transported and disposed of as such. Onsite treatment and

disposal of the waste product may be approved by the Department prior to the release of the liquid fraction of the treated waste to the environment in a responsible manner.

This designation is to prevent the reincorporation of the waste product into the surrounding landscape without proper treatment as approved by the Department.

- Propose that horizontal drilling activities must cease when an inadvertent return is discovered until the Department is notified and reviews the inadvertent return control plan with the operator.

  This will help reduce the potential impact of future inadvertent returns.

- Propose that any excess water produced in the staging areas either be physically removed from the site and properly disposed of or be filtered prior to it being discharged onto the ground in a manner approved by the Department.

  This will prevent unnecessary discharges of sediment latent water into the Waters of the Commonwealth.

Temporary Pipelines

- Propose that well operators construct and operate temporary pipelines associated with oil and gas activities according the requirements in this section as well as according to the requirements in Chapter 102 and 105.

  The purpose of this provision is to notify operators of the applicable regulatory requirements.

- Propose that the locations of all temporary pipelines used for oil and gas activities be submitted to the Department on topographical maps with GPS coordinates for all crossings of Waters of the Commonwealth. Approximate timelines for their intended use should also be included.

  This will allow the Department time to inspect these installations.

- Propose requiring weekly inspections of temporary pipelines by the operator and that documentation of the inspection results are made available to the Department upon request.

  The permitee has to verify and document that the temporary pipelines are properly functioning as designed on regular intervals.

- Propose that shut off valves be located at regular intervals throughout the entire length of a temporary pipeline. Interval lengths shall be determined by the diameter of the temporary pipeline.

This is to allow the ability to isolate any section of a leaking temporary pipeline.

- Propose that highly visible flagging be placed at regular intervals along the entire length of the temporary pipeline.

  This is so unaware parties can safely identify the presence of a temporary pipeline to avoid incidental encounters, which may compromise the integrity of the temporary pipeline.

- Propose that weather resistant signage identifying the responsible party's contact information; the product being transported; and the initial source and final destination locations of the temporary pipeline; be located at regular intervals along the entire length of the temporary pipeline.

  This will help to immediately inform all concerned parties as to who, what and where to focus their attention if the situation calls for immediate response.

§ 78.69. Water Management and Use (Water Management Plans) [New Section]

- Propose to create a new section in the Chapter 78 regulations in order to clarify, strengthen and give regulatory framework to Water Management Plans (WMPs) in order to protect Waters of the Commonwealth in accordance to the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Stream Law; and to otherwise protect public health, safety and welfare.

  The purpose of this new section is to codify existing WMP requirements in regulation. This is critical in order to better facilitate the requirements of WMPs and aid in enforcement.

- Propose that *all* well operators have a Department approved water management plan prior to drilling, completion, or servicing of any oil or gas well in any unconventional formation.

  The purpose of this section is to clearly define what type of well operators will need to have a WMP and for what types of activities. Currently, a WMP is only required prior to hydraulically fracturing an unconventional well. This proposed requirement is necessary because the Department has determined that the water used to drill, complete, and service an unconventional well has the potential to cause pollution by diminution.

- Propose requiring Water Management Plan applicants to demonstrate that the requested withdrawals are reasonably related to drilling, completion or servicing needs in their WMP application.

  This proposed requirement is necessary because some operators are requesting to withdraw for large quantities of water that cannot reasonably be used in the drilling,

completion and servicing of that operator's wells. Obtaining the operator's proposed use of the water will enable the Department to properly assess the requested withdrawal amounts and water uses, especially during times of low-flow conditions. .

- Propose requiring those well operators that are subject to a Water Management Plan to conduct continuous monitoring and recording of all water source withdrawals and purchases (via continuous-recording device or a flow meter) and monitoring of instream flows as required.

  Necessary to prevent excessive withdrawals during critical low flow periods and potentially causing the water source to not meet its attained use. This ensures real time accountability for withdrawals. Further, documentation of this information is necessary to ensure appropriate tracking of water and is an important tool for compliance and enforcement.

- Propose requiring those well operators that are subject to a Water Management Plan to submit monthly reports, consisting of daily withdrawal volumes, in-stream flow measurements and/or water source purchases, to the Department.

  This requirement is to ensure timely withdrawal accountability and to ensure withdrawals in violation of the WMP are responded to in a timely manner by DEP. Documenting this information is necessary to ensure appropriate tracking of water and is an important tool for compliance and enforcement.

- Propose maintenance and protection of groundwater and water supply wells and require that new groundwater sources, especially wells, meet specific construction standards and will be required to undergo and complete either the Susquehanna River Basin Commission (SRBC) aquifer testing standards or the Department's Public Water Supply Manual (ID#383-2125-108, Chapter III, Section D. Groundwater Sources, items 1 through 3) for groundwater.

  This requirement is being proposed in order to protect groundwater aquifers from excessive withdrawal rates past the safe yield of an aquifer thus causing permanent damage to the aquifer by permanently reducing storability and permeability of aquifers where ground water wells are constructed. Also by requiring minimum well construction standards that will help prevent aquifer contamination through a poorly constructed water well. Improper water well construction can act as a conduit of pollution into the aquifer in much the same way a poorly constructed gas well does. Further, this promotes consistency on how groundwater withdrawals and protections are conducted and documented throughout the Commonwealth.

- Propose appropriate coordination of efforts with federal-interstate compact agencies, including the Susquehanna River Basin Commission, the Delaware River Basin Commission or the Great Lakes Commission regarding the proposed Water Management Plan.

This requirement ensures coordination and cooperation between all relevant regulating organizations, which obviously improves efficiency and prevents duplication of efforts between regulating entities.

- Propose requiring an Operations Plan (including, but not limited to: intake design, flow schematic showing how water is to be withdrawn, site layout and footprint) for each surface water withdrawal along with each Water Management Plan.

  The Operations Plan requirement will compel the operator to give a detailed account of how the water will be physically withdrawn from the approved source. This way the Department can ensure that the actual withdrawal mechanism is not causing harm to the source.

- Propose the posting of appropriate signage at surface water withdrawal locations.

  Clearly marking the withdrawal point makes it easy for Department staff (and other agencies) to determine where the approved withdrawal point actually is and that it is being properly maintained.

- Propose that the Department shall have the authority to suspend or revoke a Water Management Plan if the conditions set forth in the DEP approved WMP are violated.

  In order to protect water resources from non-compliers the Department must have the authority to suspend or revoke a Water Management Plan.

- Propose that the Department shall have the authority to deny a Water Management Plan if the application is deemed incomplete, or the proposed activity poses a potential threat to the environment, or the operator has demonstrated continued non-compliance with Department rules and regulations.

  In order to protect water resources, the Department must have the discretion to deny a Water Management Plan.

§ 78.70. Roadspreading of Brine for Dust Control and Road Stabilization [New Section]

- Propose elevating to regulatory status current policies in the Oil and Gas Operators Manual.

  Purpose is to raise the current policy, including submittal of a Brine Spreading Plan on an annual basis, to the level of regulations thus allowing for consistent regulation and enforcement from the Department. Propose requiring that roadspreading operations do not result in pollution of the Waters of the Commonwealth in accordance with Section 401 of the Clean Streams Law.

  Purpose of this section is to provide the legal standard from the Clean Stream Law that these activities must achieve.

- Propose requiring that the well owner or operator who spreads brine from oil and gas wells must submit a plan on forms provided by the Department (5500-PM-OG82), on a yearly basis, to the Department for approval before roadspreading can begin.

  Purpose of requiring a plan is to ensure that brine is spread in a manner that does not pose a threat of pollution to the Waters of the Commonwealth.

- Propose that all initial and annual plan submittals should include mapping of the spreading route on both the most current USGS 7.5 Minute Topographic Mapping and the most current National Wetland Inventory (NWI) 7.5 Minute Mapping. Both can be included but if only one mapping format is submitted it must be the NWI.

  It is critical that the Department be able to determine where brine is actually being spread in relation to streams and wetlands in order to protect the Waters of the Commonwealth.

- Propose requiring a chemical analysis of the brine using a list of parameters currently under development.

  The purpose of this section is to ensure that brine is chemically characterized by what type of elements/contaminants it contains, not just by formation. Currently brine is sampled for only a few parameters.

- Propose stipulating that all plans will expire on December 31 for the calendar year roadspreading was requested.

  This is to ensure that the information contained in a Brine Spreading Plan is current and to reflect any changes in land use in the Plan (i.e. dirt road relocations or additions).

- Propose specifying detailed spreading requirements including rate and frequency, spreading equipment, maximum grades, and weather conditions at time of spreading.

  This is to ensure that sufficient detail is provided to the Department to ensure that brine is spread in a manner (rate, grades, freq. weather conditions, etc.) that will not pollute the Waters of the Commonwealth.

- Propose stipulating that only production brines may be used from approved formations (OG-82).

  The purpose of this section is to ensure that concentrated brines from certain formations that contain unacceptable levels of one or more contaminants are not used for road spreading. This provision also eliminates the use of brines obtained during flowback.

- Propose stipulating that brine shall not be applied within 150 feet of a stream, creek, lake or other body of water.

Minimum isolation distance for spreading is necessary to protect Waters of the Commonwealth.

- Propose requiring that each vehicle utilized to spread brine shall have a clearly legible sign identifying the applicator on both sides of the vehicle.

  Vehicles marking requirements are required for accountability and visibility for the Department and the public's benefit.

- Propose requiring that the operator spreading the brine shall notify the appropriate regional DEP Oil and Gas Office during normal business hours at least 24 hours before spreading brine. This notification will require actual contact with and/or verbal recognition of the notification by an appropriate DEP Oil and Gas employee and information on where and when the spreading will start if it varies from the approved plan.

  The purpose of spreading notification is to alert the Water Quality Specialist (WQS) of brine spreading in his or her area to facilitate more effective surveillance of this activity by the Department.

- Propose requiring that the operator who received the approval of the roadspreading plan shall submit a monthly report on forms provided by the Department (5500-FM-OG0046) to the DEP indicating the location and the amount of brine spread during the month.

  Monthly reporting is necessary to ensure timely accountability for spreading activities and to allow the Department to respond to discrepancies in a timely manner.

- Propose that failure to comply with all these conditions may result in the Department rescinding the plan approval.

  The Department must have the authority to rescind or revoke the plan, when justified, in order to protect the Waters of the Commonwealth.