

CHAPTER 78. CONVENTIONAL OIL AND GAS WELLS

Subchapter A. GENERAL PROVISIONS

§ 78.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise, or as otherwise provided in this chapter:

Abandoned water well—**A water well that is no longer equipped in such a manner as to be able to draw groundwater. This term includes a water well where the pump, piping or electrical components have been disconnected or removed or when its use on a regular or prescribed basis has been discontinued. The term does not include a water well that is not currently used, but is equipped or otherwise properly maintained in such a manner as to be able to draw groundwater as an alternative, backup or supplemental water supply.**

ABACT—**Antidegradation best available combination of technologies – The term as defined in § 102.1 (relating to definitions).**

Accredited laboratory—**A laboratory accredited by the Department under Chapter 252 (relating to environmental laboratory accreditation).**

Act—**[The Oil and Gas Act (58 P.S. §§ 601.101—601.605)] 58 Pa.C.S. §§ 3201—3274 (relating to development).**

Approximate original conditions—**Reclamation of the land affected to preconstruction contours so that it closely resembles the general surface configuration of the land prior to construction activities and blends into and complements the drainage pattern of the surrounding terrain, and can support the land uses that existed prior to the applicable oil and gas operations to the extent practicable.**

Attainable bottom—The depth, approved by the Department, which can be achieved after a reasonable effort is expended to clean out to the total depth.

Body of water—**The term as defined in § 105.1 (relating to definitions).**

Borrow pit—**An area of earth disturbance activity where rock, stone, gravel, sand, soil or similar material is excavated for construction of well sites, access roads or facilities that are related to oil and gas development.**

Building—**An occupied structure with walls and roof within which persons live or customarily work.**

Casing seat—The depth to which casing is set.

Cement—A mixture of materials for bonding or sealing that attains a 7-day maximum permeability of 0.01 millidarcies and a 24-hour compressive strength of at least 500 psi in accordance with applicable standards and specifications.

Cement job log—A written record that documents the actual procedures and specifications of the cementing operation.

[*Certified laboratory*—A laboratory accredited by the Department under Chapter 252 (relating to environmental laboratory accreditation).]

***Certified mail*—Any verifiable means of paper document delivery that confirms the receipt of the document by the intended recipient or the attempt to deliver the document to the proper address for the intended recipient.**

Coal area—An area that is underlain by a workable coal seam.

Coal protective casing—A string of pipe which is installed in the well for the purpose of coal segregation and protection. In some instances the coal protective casing and the surface casing may be the same.

***Common areas of a school's property*—An area on a school's property accessible to the general public for recreational purposes. For the purposes of this definition, a school is a facility providing elementary, secondary or postsecondary educational services.**

Conductor pipe—A short string of large-diameter casing used to stabilize the top of the wellbore in shallow unconsolidated formations.

Conventional formation—A formation that is not an unconventional formation.

Conventional well **or well**—

(i) A bore hole drilled or being drilled for the purpose of or to be used for construction of a well regulated under 58 Pa.C.S. §§ 3201—3274 (relating to development) that is not an unconventional well, irrespective of technology or design.

(ii) The term includes, but is not limited to:

(A) Wells drilled to produce oil.

(B) Wells drilled to produce natural gas from formations other than shale formations.

(C) Wells drilled to produce natural gas from shale formations located above the base of the Elk Group or its stratigraphic equivalent.

(D) Wells drilled to produce natural gas from shale formations located below the base of the Elk Group where natural gas can be produced at economic flow rates or in economic volumes

without the use of vertical or nonvertical well bores stimulated by hydraulic fracture treatments or multilateral well bores or other techniques to expose more of the formation to the well bore.

(E) Irrespective of formation, wells drilled for collateral purposes, such as monitoring, geologic logging, secondary and tertiary recovery or disposal injection.

Deepest fresh groundwater—The deepest fresh groundwater bearing formation penetrated by the wellbore as determined from drillers logs from the well or from other wells in the area surrounding the well or from historical records of the normal surface casing seat depths in the area surrounding the well, whichever is deeper.

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Gel—A slurry of clay or other equivalent material and water at a ratio of not more than 7 barrels of water to each 100 pounds of clay or other equivalent matter.

Home or consumptive use well—A conventional well producing natural gas solely for consumptive use by the permitted or registered operator of the well.

Intermediate casing—A string of casing set after the surface casing and before production casing, not to include coal protection casing, that is used in the wellbore to isolate, stabilize or provide well control.

L.E.L.—Lower explosive limit.

Limit of disturbance—The boundary within which it is anticipated that earth disturbance activities (including installation of best management practices) will take place.

Mine influenced water—Water in a mine pool or a surface discharge of water caused by mining activities that pollutes, or may create a threat of pollution to waters of the Commonwealth. The term may also include surface waters that have been impaired by polluttional mine drainage as determined by the Department.

Noncementing material—A mixture of very fine to coarse grained nonbonding materials, including unwashed crushed rock, drill cuttings, earthen mud or other equivalent material approved by the Department.

Noncoal area—An area that is not underlain by a workable coal seam.

Nonporous material—Nontoxic earthen mud, drill cuttings, fire clay, gel, cement or equivalent materials approved by the Department that will equally retard the movement of fluids.

Observation well—A well used to monitor the operational integrity and conditions in a gas storage reservoir, the reservoir protective area or strata above or below the gas storage horizon.

Oil and gas operations—The term includes the following:

(i) Well site preparation, construction, drilling, hydraulic fracturing, completion, production, operation, alteration, plugging and site restoration associated with an oil or gas well.

(ii) Water withdrawals, residual waste processing, water and other fluid management and storage, used exclusively for the development of oil and gas wells.

(iii) Construction, installation, use, maintenance and repair of:

(A) Oil and gas gathering and transmission pipelines.

(B) Natural gas compressor stations.

(C) Natural gas processing plants or facilities performing equivalent functions.

(iv) Construction, installation, use, maintenance and repair of all equipment directly associated with activities in subparagraphs (i)↓(iii) to the extent that the equipment is necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant.

(v) Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Other critical communities—

(i) Species of special concern identified on a PNDI receipt, including the following:

(a) Plant or animal species in a proposed status categorized as proposed endangered, proposed threatened, proposed rare, or candidate.

(b) Plant or animal species that are classified as rare or tentatively undetermined.

(ii) This term does not include threatened and endangered species.

***Owner*—A person who owns, manages, leases, controls or possesses a well or coal property. [For purposes of sections 203(a)(4) and (5) and 210 of the act (58 P.S. §§ 601.203(a)(4) and (5) and 601.210), the term does not include those owners or possessors of surface real property on which the abandoned well is located who did not participate or incur costs in the drilling or extraction operation of the abandoned well and had no right of control over the drilling or extraction operation of the abandoned well.] The term does not apply to orphan wells, except [where] **when** the Department determines a prior owner or operator benefited from the well as provided in section [210(a)] **3220(a)** of the act (**relating to plugging requirements**).**

PCSM—Post-construction stormwater management↓the term as defined in § 102.1.

PCSM plan—Post-construction stormwater management plan↓The term as defined in § 102.1.

Pennsylvania Natural Diversity Inventory—PNDI—The Pennsylvania Natural Heritage Program’s database containing data identifying and describing this Commonwealth’s ecological information, including plant and animal species classified as threatened and endangered as well as other critical communities provided by the Department of Conservation and Natural Resources, the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission and the United States Fish and Wildlife Service. The database informs the online environmental review tool. The database contains only those known occurrences of threatened and endangered species and other critical communities and is a component of the Pennsylvania Conservation Explorer.

PNDI receipt—The results generated by the Pennsylvania Natural Diversity Inventory environmental review tool containing information regarding threatened and endangered species and other critical communities.

Perimeter area—An area that begins at the outside coal boundaries of an operating coal mine and extends within 1000 feet beyond those boundaries or an area within 1000 feet beyond the mine permit boundaries of a coal mine already projected and permitted but not yet being operated.

Permanently cemented—Surface casing or coal protective casing that is cemented until cement is circulated to the surface or is cemented with a calculated volume of cement necessary to fill the theoretical annular space plus 20% excess.

Person—An individual, association, partnership, corporation, political subdivision or agency of the Federal Government, State government or other legal entity.

Playground—An outdoor area provided to the general public for recreational purposes. The term includes community-operated recreational facilities.

Private water supply—A water supply that is not a public water supply.

Production casing—A string of pipe other than surface casing and coal protective casing which is run for the purpose of confining or conducting hydrocarbons and associated fluids from one or more producing horizons to the surface.

Public resource agency—An entity responsible for managing a public resource identified in § 78.15(d) or (f)(1) (relating to application requirements) including the Department of Conservation and Natural Resources, the Fish and Boat Commission, the Game Commission, the United States Fish and Wildlife Service, the United States National Park Service, the United States Army Corps of Engineers, the United States Forest Service, counties, municipalities and playground owners.

Public water supply—[A water system that is subject to the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).] A source of water used by a water purveyor.

Regional groundwater table—

(i) The fluctuating upper water level surface of an unconfined or confined aquifer where the hydrostatic pressure is equal to the ambient atmospheric pressure.

(ii) The term does not include the perched water table or the seasonal high groundwater table.

Reportable release of brine—Spilling, leaking, emitting, discharging, escaping or disposing of one of the following:

(i) More than 5 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is equal or greater than 10,000 mg/l.

(ii) More than 15 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is less than 10,000 mg/l.

Retrievable—When used in conjunction with surface casing, coal protective casing or production casing, the casing that can be removed after exerting a prudent effort to pull the casing while applying a pulling force at least equal to the casing weight plus 5000 pounds or 120% of the casing weight, whichever is greater.

Seasonal high groundwater table—The saturated condition in the soil profile during certain periods of the year. The condition can be caused by a slowly permeable layer within the soil profile and is commonly indicated by the presence of soil mottling.

Sheen—An iridescent appearance on the surface of the water.

Soil mottling—Irregular marked spots in the soil profile that vary in color, size and number.

Stormwater—Runoff from precipitation, snowmelt, surface runoff and drainage.

Surface casing—A string or strings of casing used to isolate the wellbore from fresh groundwater and to prevent the escape or migration of gas, oil or other fluids from the wellbore into fresh groundwater. The surface casing is also commonly referred to as the water string or water casing.

Threatened or endangered species—Those animal and plant species identified as a threatened or endangered species as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544), the Wild Resource Conservation Act (32 P.S. §§ 5301—5314), 30 Pa.C.S. (relating to Fish and Boat Code) and 34 Pa.C.S. (relating to Game and Wildlife Code).

Tophole water—Water that is brought to the surface while drilling through the strata containing fresh groundwater and water that is fresh groundwater or water that is from a body of surface water. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man induced conditions.

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Water protection depth—The depth to a point 50 feet below the surface casing seat.

Water purveyor—**[The owner or operator of a public water supply.]****Either of the following:**

(i) The owner or operator of a public water system as defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.3).

(ii) Any person subject to the act of June 24, 1939 (P.L. 842, No. 365), known as the Water Rights Law.

***Waters of the Commonwealth*—The term as defined by the Clean Streams Law (35 P.S. § 691.1).**

Water supply—A supply of water for human consumption or use, or for agricultural, commercial, industrial or other legitimate beneficial uses.

***Watercourse*—The term as defined in § 105.1.**

***Well development impoundment*—A facility that is:**

(i) Not regulated under § 105.3 (relating to scope).

(ii) A natural topographic depression, manmade excavation or diked area formed primarily of earthen materials although lined with synthetic materials.

(iii) Designed to hold surface water, fresh groundwater, and other fluids approved by the Department.

(iv) Constructed for the purpose of servicing multiple well sites.

***Wellhead protection area*—The term as defined in § 109.1 (relating to definitions).**

Well operator or operator—**Any of the following:**

(i) The person designated as the [well operator or] operator or well operator on the permit application or well registration.

(ii) If a permit or registration was not issued, **[the term means]** a person who locates, drills, operates, alters or plugs a well or reconditions a well with the purpose of production **[therefrom], from the well.**

[In cases where] (iii) If a well is used in connection with the underground storage of gas, **[the term also means]** a storage operator.

Well site—The area occupied by the equipment or facilities necessary for or incidental to the drilling, production or plugging of a well.

Wetland—The term as defined in § 105.1.

Workable coal seam—One of the following:

(i) A coal seam in fact being mined in the area in question under the act and this chapter by underground methods.

(ii) A coal seam which **is**:

(a) laterally extensive (one of the thirteen potential bituminous coal seams (listed from shallowest to deepest): Washington, Waynesburg, Sewickley, Redstone, Pittsburgh, U. Freeport, L. Freeport, U. Kittanning, M. Kittanning, L. Kittanning, Clarion, Brookville, and Mercer);

(b) at least 28 inches thick; and,

(c) deeper than 100 feet from the ground surface.

(iii) **A coal seam which is,** in the judgment of the Department, **otherwise** reasonably [can be] expected to be mined by underground methods.

§ 78.2. [Scope] (Reserved).

[This chapter specifies procedures and rules for the drilling, alteration, operation and plugging of oil and gas wells, and for the operation of a coal mine in the vicinity of an oil or gas well.]

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Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

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§ 78.13. Permit transfers.

(a) No transfer, assignment or sale of rights granted under a permit or registration may be made without prior written approval of the Department. Permit transfers may be denied for the reasons set forth in section [201(e)(4) and (5) of the act (58 P.S. § 601.201(e)(4) and (5))] 3211(e.1), (4) and (5) of the act (relating to well permits).

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§ 78.15. Application requirements.

(a) An application for a well permit shall be submitted [on forms furnished by the], electronically to the Department on forms provided through its web site and contain the information required by the Department to evaluate the application.

(b) The permit application will not be considered complete until the applicant submits a complete and accurate plat, an approvable bond or other means of complying with section [215 of the act (58 P.S. § 601.215)] 1606-E of the Fiscal Code (72 P.S. § 1606-E) and Subchapter G of this Chapter (relating to bonding requirements), the fee in compliance with § 78.19 (relating to permit application fee schedule), proof of the notifications required under section 3211(b.1) of the act (relating to well permits), necessary requests for variance or waivers or other documents required to be furnished by law or the Department, and the information in subsections (b.1), (f) and (h). The person named in the permit shall be the same person named in the bond or other security.

(b.1) If the proposed limit of disturbance of the well site is within 100 feet measured horizontally from any watercourse or any high quality or exceptional value body of water or any wetland one acre or greater in size, the applicant shall demonstrate that the well site location will protect those watercourses or bodies of water. The applicant may rely upon other plans developed under this chapter or permits obtained from the Department to make this demonstration, including:

(1) An erosion and sediment control plan or permit consistent with Chapter 102 (relating to erosion and sediment control).

(2) A water obstruction and encroachment permit issued pursuant to Chapter 105 (relating to dam safety and waterway management).

(3) Applicable portions of the PPC plan prepared in accordance with § 78.55(a)-(b) (relating to control and disposal planning).

(b.2) For purposes of compliance with section 3215(a) of the act (relating to well location restrictions), an abandoned water well does not constitute a water well.

(c) The applicant shall submit information identifying parent and subsidiary business Corporations operating in this Commonwealth with the first application submitted after _____. (Editor's Note: The blank refers to the effective date of adoption of this

proposed rulemaking.) **and provide any changes to this information with each subsequent application.**

(d) The well permit application shall include a detailed analysis of the impact of the well, well site and access road on threatened and endangered species. This analysis shall include:

(1) A PNDI receipt.

(2) If any potential impact is identified in the PNDI receipt to threatened or endangered species, demonstration of how the impact will be avoided or minimized and mitigated in accordance with state and federal laws pertaining to the protection of threatened or endangered species and critical habitat, the applicant shall provide written documentation to the department supporting this demonstration, including any avoidance/mitigation plan, clearance letter, determination or other correspondence resolving the potential species impact with the applicable public resource agency.

(e) If an applicant seeks to locate a well on an existing well site where the applicant has obtained a permit under § 102.5 (relating to permit requirements) and complied with § 102.6(a)(2) (relating to permit applications and fees), the applicant may comply with subsections (b.1) and (d) if the permit was obtained within two years from the receipt of the application submitted under this section.

(f) An applicant proposing to drill a well at a location that may impact a public resource as provided in paragraph (1) shall notify the applicable public resource agency, if any, in accordance with paragraph (2). The applicant shall also provide the information in paragraph (3) to the Department in the well permit application.

(1) This subsection applies if the proposed limit of disturbance of the well site is located:

(i) In or within 200 feet of a publicly owned park, forest, game land or wildlife area.

(ii) In or within the corridor of a State or National scenic river.

(iii) Within 200 feet of a National natural landmark.

(iv) In a location that will impact other critical communities.

(v) Within 200 feet of a historical or archeological site listed on the Federal or State list of historic places.

(vi) Within 200 feet of common areas on a school's property or playground.

(vii) Within zones 1 or 2 of a wellhead protection area as part of a wellhead protection program approved under § 109.713 (relating to wellhead protection program).

(2) The applicant shall notify the public resource agency responsible for managing the public resource identified in paragraph (1), if any. The applicant shall forward by certified mail a copy of the plat identifying the proposed limit of disturbance of the well site and information in paragraph (3) to the public resource agency at least 30 days prior to submitting its well permit application to the Department. The applicant shall submit proof of notification with the well permit application. From the date of notification, the public resource agency has 30 days to provide written comments to the Department and the applicant on the functions and uses of the public resource and the measures, if any, that the public resource agency recommends the Department consider to avoid, minimize or otherwise mitigate probable harmful impacts to the public resource where the well, well site and access road is located. The applicant may provide a response to the Department to the comments.

(3) The applicant shall include the following information in the well permit application on forms provided by the Department:

(i) An identification of the public resource.

(ii) A description of the functions and uses of the public resource.

(iii) A description of the measures proposed to be taken to avoid, minimize or otherwise mitigate impacts, if any.

(4) The information required in paragraph (3) shall be limited to the discrete area of the public resource that may be affected by the well, well site and access road.

(g) The Department will consider the following prior to conditioning a well permit based on impacts to public resources:

(1) Compliance with all applicable statutes and regulations.

(2) The proposed measures to avoid, minimize, or otherwise mitigate the impacts to public resources.

(3) Other measures necessary to protect against a probable harmful impact to the functions and uses of the public resource.

(4) The comments and recommendations submitted by public resource agencies, if any, and the applicant's response, if any.

(5) The optimal development of the oil and gas resources and the property rights of oil and gas owners.

(h) An applicant proposing to drill a well using enhanced drilling or completion technologies that involves 1 to less than 5 acres of earth disturbance over the life of the project and is located in a watershed that has a designated or existing use of high quality or

exceptional value pursuant to Chapter 93 (relating to water quality standards) shall submit an erosion and sediment control plan consistent with Chapter 102 with the well permit application for review and approval, and shall conduct the earth disturbance in accordance with the approved erosion and sediment control plan.

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§ 78.17. Permit expiration and renewal.

(a) A well permit expires one year after issuance if drilling has not commenced. If drilling is commenced within a year after issuance, the well permit expires unless drilling is pursued with due diligence. Due diligence for the purposes of this subsection means completion of drilling the well to total depth within 16 months of issuance.

(b) A permittee may request an extension of the 16-month expiration from the Department for good cause. This request shall be submitted electronically to the Department through its web site.

(c) An operator may request a single 2-year renewal of an unexpired well permit. The request shall be accompanied by a permit fee, the surcharge required [in section 601 of the act (58 P.S. § 601.601),] under section 3271 of the act (relating to well plugging funds) and an affidavit affirming that the information on the original application is still accurate and complete, that the well location restrictions are still met and that the [surface owners, coal owners and operators, gas storage operators, where the permit renewal is for a proposed well location within an underground gas storage reservoir or the reservoir protective area, and water supply owners within 1,000 feet,] entities required to be notified under section 3211(b)(2) of the act (relating to well permits) have been notified of this request for renewal. If new water wells or buildings are constructed that are not indicated on the plat as originally submitted, the attestation must be updated as part of the renewal request. Any new water well or building owners shall be notified of the renewal request; however, the setbacks outlined in section 3215 of the act (relating to well location restrictions) do not apply provided that the original permit was issued prior to the construction of the building or water well. The request shall be received by the Department at least 15 calendar days prior to the expiration of the original permit.

§ 78.18. Disposal and enhanced recovery well permits.

(a) A person may not drill a disposal or enhanced recovery well or alter an existing well to be a disposal or enhanced recovery well unless the person obtains a well permit under § 78.11 (relating to permit requirements).

[(2)] (b) The Department may not issue a well permit to drill a disposal or enhanced recovery well or alter an existing well to be a disposal or enhanced well until the well permit applicant obtains a well permit from EPA under 40 CFR Part 146 (relating to underground injection control program).

(c) An applicant for well permit to drill a disposal or enhanced recovery well or alter an existing well to be a disposal or enhanced well shall submit [Submits], with the well permit application, [a copy of the well permit, approved] the administratively complete well permit application and required related documentation submitted for the disposal or enhanced recovery well to the EPA under 40 CFR Part 146 (relating to underground injection control program).

(1) A disposal or enhanced recovery well application is considered administratively complete when the Regional Administrator has determined that the well application is complete in accordance with 40 CFR § 124.3(c) (relating to application for a permit).

(2) If the Regional Administrator requests additional information from an applicant to clarify, modify, or supplement previously submitted material, the applicant shall provide a copy of the information to the Department at the same time.

(3) When the Regional Administrator issues the disposal or enhanced recovery permit, the applicant shall provide a copy of the well permit to the Department.

(b) By December 18, 1995, an operator of disposal or enhanced recovery wells which were operating before December 18, 1995, shall submit to the Department a list of the operator's disposal or enhanced recovery wells including:

(1) The Department's permit or registration number for each well on this list.

(2) The corresponding permit number issued to each well on this list by the EPA.

(c) A person who operates multiple well projects may submit one copy of the documents required under subsection (a) if the documents are applicable to the entire project.

(d) All containment practices and onsite processing associated with disposal and enhanced recovery wells shall comply with this chapter.

§ 78.19. Permit application fee schedule.

(a) An applicant shall pay a permit application fee according to the following schedule:

[Conventional Wells]

<i>Total Well Bore Length in Feet</i>	<i>Total Fee</i>
0 to 2,000	\$250
2,001 to 2,500	\$300
2,501 to 3,000	\$350
3,001 to 3,500	\$400
3,501 to 4,000	\$450
4,001 to 4,500	\$500
4,501 to 5,000	\$550

5,001 to 5,500	\$650
5,501 to 6,000	\$750
6,001 to 6,500	\$850
6,501 to 7,000	\$950
7,001 to 7,500	\$1,050
7,501 to 8,000	\$1,150
8,001 to 8,500	\$1,250
8,501 to 9,000	\$1,350
9,001 to 9,500	\$1,450
9,501 to 10,000	\$1,550
10,001 to 10,500	\$1,650
10,501 to 11,000	\$1,750
11,001 to 11,500	\$1,850
11,501 to 12,000	\$1,950

(b) An applicant for a **[conventional]** well exceeding 12,000 feet in total well bore length shall pay a permit application fee of \$1,950 + \$100 for every 500 feet the well bore extends over 12,000 feet. Fees shall be rounded to the nearest 500-foot interval under this subsection.

(c) If, when drilled, the total well bore length of the **[conventional]** well exceeds the length specified in the permit application due to target formation being deeper than anticipated at the time of application submittal, the operator shall pay the difference between the amount paid as part of the permit application and the amount required under subsections (a) and (b).

(d) An applicant for a **[conventional]** well with a well bore length of 1,500 feet or less for home use shall pay a permit application fee of \$200.

(e) At least every 3 years, the Department will provide the EQB with an evaluation of the fees in this chapter and recommend regulatory changes to the EQB to address any disparity between the program income generated by the fees and the Department's cost of administering the program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

OBJECTIONS

§ 78.21. Opportunity for objections and conferences; surface landowners.

(a) The surface landowner of the tract on which the proposed well is located may object to the well location based on the assertion that the well location violates section **[205 of the act (58 P.S. § 601.205)]** **3215 of the act (relating to well location restrictions)** or on the basis that the information in the application is untrue in a material respect, and request a conference under section **[501 of the act (58 P.S. § 601.501)]** **3251 of the act (relating to conferences)**.

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§ 78.25. Conferences—general.

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(c) The Department will attempt to schedule the conference as late as possible in the 10-day period if the well is subject to the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518). The Department will not schedule a conference under section **[202 of the act (58 P.S. § 601.202)] section 3212 of the act (relating to permit objections)** if it receives written notice that the gas well operator or the coal mine owner or operator has made a written request to convene a panel to resolve objections to the location of a gas well over which a panel has jurisdiction in accordance with §§ 78.29 – 78.33.

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§ 78.28. Final action if objections do not proceed to panel.

If the panel does not have jurisdiction **[of] over** the objections, under § 78.30 (relating to jurisdiction of panel), or if the panel has jurisdiction but the parties choose not to proceed to a panel, the Department may proceed to issue or deny the permit, under sections **[201 and 202 of the act (58 P.S. §§ 601.201 and 601.202)] 3211 and 3212 of the act (relating to well permits; and permit objections)**. No permit will be issued for a well at a location that in the opinion of the Department would endanger the safety of persons working in a coal mine.

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§ 78.33. Effect of panel on time for permit issuance.

The period of time during which the objections are being considered by a full panel **[is not] will not be** included in the 45-day period for the issuance or denial of a permit under section **[201(e) of the act (58 P.S. § 601.201(e))] 3211(e) of the act (relating to well permits)**.

Subchapter C. ENVIRONMENTAL PROTECTION**PERFORMANCE STANDARDS****§ 78.51. Protection of water supplies.**

(a) **[A well operator] Any person** who affects a public or private water supply by pollution or diminution while conducting oil and gas operations, shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply as determined by the Department.

(b) A landowner, water purveyor or affected person suffering pollution or diminution of a water supply as a result of **oil and gas operations [an oil or gas well]** may so notify the Department and request that an investigation be conducted. **Notices shall be made to the appropriate**

Department regional office or by calling the Department's Statewide toll free number at (800) 541-2050. The notice and request must include the following:

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(c) Within 10 **calendar** days of the receipt of the investigation request, the Department will investigate the claim and will, within 45 **calendar** days of receipt of the request, make a determination. If the Department finds that pollution or diminution was caused by the **oil and gas operations** or if it presumes the well operator responsible for polluting the water supply of the landowner or water purveyor under section [208(c) of the act (58 P.S. § 601.208(c))] **3218(c) of the act (relating to protection of water supplies) as a result of drilling or alteration of the oil or gas well**, the Department will issue orders to the well operator necessary to assure compliance with this section. **The presumption established by section 3218(c) of the act is not applicable to pollution resulting from well site construction.**

(d) A restored or replaced water supply includes any well, spring, public water system or other water supply approved by the Department, which meets the criteria for adequacy as follows:

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(2) *Quality.* The quality of a restored or replaced water supply will be deemed adequate if it meets the standards established under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1 – 721.17), or is comparable to the quality **of water that existed prior to pollution if the water quality was better than these standards. [did not meet these standards].**

(e) If the water supply is for uses other than human consumption, the operator shall demonstrate to the Department's satisfaction that the restored or replaced water supply is adequate for the purposes served by the supply.

(f) Tank trucks or bottled water are acceptable only as temporary water replacement for a period approved by the Department and do not relieve the operator of the obligation to provide a restored or replaced water supply.

(g) If the well operator and the water user are unable to reach agreement on the means for restoring or replacing the water supply, the Department or either party may request a conference under section [501 of the act (58 P.S. § 601.501)] **3251 of the act (relating to conferences).**

(h) A well operator who receives notice from a landowner, water purveyor or affected person that a water supply has been affected by pollution or diminution, shall report receipt of notice from an affected person to the Department within 24 hours of receiving the notice. **Notice shall be provided electronically to the Department through its web site.**

§ 78.52. Predrilling or prealteration survey.

(a) A well operator who wishes to preserve its defense under section [208(d)(1) of the act (58 P.S. § 601.208 (d)(1))] **3218(d)(1)(i) of the act (relating to protection of water supplies)** that

the pollution of a water supply existed prior to the drilling or alteration of the well shall conduct a predrilling or prealteration survey in accordance with this section. **For the purposes of this section, “survey” shall mean all of the pre-drilling or prealteration water supply samples associated with a single well.**

(b) A person who wishes to document the quality of a water supply to support a future claim that the drilling or alteration of the well affected the water supply by pollution may conduct a predrilling or prealteration survey in accordance with this section.

(c) The survey shall be conducted by an independent **[certified] Pennsylvania-accredited** laboratory. A person independent of the well owner or well operator, other than an employee of the **[certified] accredited** laboratory, may collect the sample and document the condition of the water supply, if the **[certified] accredited** laboratory affirms that the sampling and documentation is performed in accordance with the laboratory’s approved sample collection, preservation and handling procedure and chain of custody.

(d) An operator electing to preserve its defenses under section **[208(d)(1)] 3218(d)(1)(i)** of the act (**relating to protection of water supplies**) shall provide a **report containing a** copy of **all** the **sample** results **taken as part** of the survey **electronically** to the Department **[and] on forms provided through its web site 10 business days prior to commencement of drilling of the well that is the subject of the survey. The operator shall provide a copy of any sample results to** the landowner or water purveyor within 10[-]business days of receipt of the **sample** results. **[Test] Survey** results not received by the Department within 10 business days may not be used to preserve the operator’s defenses under section **[208(d)(1)] 3218(d)(1)(i)** of the act.

(e) The report describing the results of the survey must contain the following information:

(1) The location of the water supply and the name of the surface landowner or water purveyor.

(2) The date of the survey, and the name of the **[certified] independent Pennsylvania-accredited** laboratory and the person who conducted the survey.

(3) A description of where and how the **[sample was] samples were** collected.

(4) A description of the type and age, if known, of the water supply, and treatment, if any.

(5) The name of the well operator, name and number of well to be drilled and permit number if known.

(6) The results of the laboratory analysis.

(f) A well operator who wishes to preserve the defense under section **[208(d)(2)] 3218(d)(1)(ii)** of the act that the landowner or water purveyor refused the operator access to conduct a survey shall confirm the desire to conduct this survey and that access was refused by issuing notice to the person by certified mail, or otherwise document that access was refused. The notice must include the following:

- (1) The operator's intention to drill or alter a well.
- (2) The desire to conduct a predrilling or prealteration survey.
- (3) The name of the person who requested and was refused access to conduct the survey and the date of the request and refusal.
- (4) The name and address of the well operator and the address of the Department, to which the water purveyor or landowner may respond.

§ 78.53. Erosion and sediment control and stormwater management.

[During and after earthmoving or soil disturbing activities, including the activities related to siting, drilling, completing, producing, servicing and plugging the well, constructing, utilizing and restoring the access road and restoring the site, the operator shall design, implement and maintain best management practices in accordance with] **Any person proposing or conducting earth disturbance activities associated with oil and gas operations shall comply with** Chapter 102 (relating to erosion and sediment control) [and an erosion and sediment control plan prepared under that chapter]. Best management practices for **erosion and sediment control and stormwater management** for oil and gas **operations** are listed in the [*Oil And Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001 (April 1997), as amended and updated*] **Erosion and Sediment Pollution Control Program Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008, as amended and updated, the Pennsylvania Stormwater Best Management Practices Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002, as amended and updated, the Oil and Gas Operators Manual, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001, as amended and updated, and Riparian Forest Buffer Guidance, (Buffer Guidance), Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001, as amended and updated.**

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§ 78.59. [Reserved].

§ 78.59a. Impoundment embankments.

(a) Embankments constructed for well development impoundments for oil and gas operations must meet the following requirements:

(1) The foundation for each embankment must be stripped and grubbed to a minimum depth of 2 feet below existing contour prior to any placement and compaction of fill.

(2) Any springs encountered in the embankment foundation area shall be drained to the downstream toe of the embankment with a drain section 2 foot by 2 foot in dimension consisting of PennDOT Type A sand, compacted by hand tamper. Geotextiles may not be used around sand. The last 3 feet of this drain at the downstream slope must be constructed of AASHTO #8 material.

(3) The minimum top width of the embankment must be 12 feet.

(4) The inside and outside slope must have a slope no steeper than 3 horizontal to 1 vertical.

(5) Soils to be used for embankment construction must be classified in accordance with ASTM D-2487 (Unified Soils Classification). Soil samples must be classified at a minimum rate of 1 sample per 10,000 cubic yards of placed fill with at least one test per source with an additional test conducted each time the material changes. At least one sample must be classified in accordance with ASTM D-2487. Soils utilized during embankment construction shall be described and identified in accordance with ASTM D-2488-09A (Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)). Soil identification and description in accordance with this procedure shall be performed at a minimum rate of 1 sample per 1,000 cubic yards of placed fill. Results of testing of materials shall be provided to the Department upon request.

(6) The embankment must be constructed out of soils designated as GC, GM, SC, SM, CL or ML, only. Soils with split designations when one of the designations is not GC, GM, SC, SM, CL or ML may not be used. Soils must contain a minimum of 20% of No. 200 sieve materials or larger. Results of testing of materials shall be provided to the Department upon request.

(7) Particles greater than 6 inches in any dimension may not be used for embankment construction.

(8) Soil used in embankment construction must be compacted. Soil compaction shall be conducted in accordance with the following:

(i) Compaction shall be conducted with a sheepsfoot or pad roller.

(ii) The maximum loose lift thickness must be 9 inches.

(iii) Soil shall be compacted until visible nonmovement of the embankment material.

(iv) Soil shall be compacted to a minimum of 95% of the standard proctor in accordance with ASTM D698 (Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort). Satisfactory compaction shall be verified by field density testing in accordance with ASTM D1556 (Standard Test Method for Density and Unit Weight of Soil in Place by the Sand Cone Method) or ASTM D6938 (Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods

(Shallow Depth)) with a minimum of one test per 2,000 square yards of lift surface and at least one test per lift.

(9) Exposed embankment slopes shall be permanently stabilized using one or a combination of the following methods:

(i) Exposed embankments shall be limed, fertilized, seeded and mulched and permanent vegetative ground covering in compliance with § 102.22 (relating to site stabilization) shall be established upon completion of construction of the impoundment.

(ii) Compacted rock fill or riprap placed on the downstream face of the embankment as a cover having a minimum depth of 2 feet. The rock fill must be durable, evenly distributed and underlain by a Class 2, Type A geotextile.

(b) The owner or operator may request approval from the Department to deviate from the requirements in this section. The request must demonstrate that the alternate practice provides equivalent or superior protection to the requirements of this section.

§ 78.59b. Well development impoundments.

(a) In addition to meeting the requirements of § 78.59a (relating to impoundment embankments), any new well development impoundments must be in compliance with this section.

(b) A well operator that constructed a well development impoundment prior to _____ (Editor's Note: The blank refers to the effective date of adoption of this rulemaking.) shall register the location of the well development impoundment by _____, (Editor's Note: The blank refers to 60 days after the effective date of adoption of this proposed rulemaking.) by providing the Department, through the Department's website, with electronic notification of the GPS coordinates, township and county where the well development impoundment is located as well as certification as to whether the impoundment meets the requirements in subsections (d), (e), and (h). Any impoundments that do not comply with the requirements in subsections (d), (e), and (h) shall be upgraded to meet these requirements or restored in accordance with subsection (g) by _____ (Editor's Note: The blank refers to twelve months after the effective date of adoption of this proposed rulemaking.).

(c) A well operator shall register the location of a new well development impoundment prior to construction. Registration of the well development impoundment may be transferred to another operator. Registration transfers shall utilize forms provided by the Department and be submitted electronically to the Department through its website.

(d) Well development impoundments shall be constructed with a synthetic impervious liner.

(e) Unless an individual is continuously present at a well development impoundment, a fence must completely surround the well development impoundment to prevent unauthorized acts of third parties and damage caused by wildlife.

(f) The bottom of the impoundment shall be at least 20 inches above the seasonal high groundwater table. The applicant may maintain the required separation distance of 20 inches by passive artificial means such as an under-drain system throughout the lifetime of the impoundment. In no case shall the regional groundwater table be affected by the passive artificial system. The operator shall document the depth of the seasonal high groundwater table, the manner in which the depth of the seasonal high groundwater table was ascertained, the distance between the bottom of the impoundment and the seasonal high groundwater table, and the depth of the regional groundwater table if the separation between the impoundment bottom and seasonal high groundwater table is maintained by artificial means. A soil scientist or other similarly trained person using accepted and documented scientific methods shall make the determination. The determination must contain a statement certifying that the impoundment bottom is at least 20 inches above the seasonal high groundwater table according to observed field conditions. The name, qualifications and statement of the person making the determination and the basis of the determination shall be provided to the Department upon request.

(g) Well development impoundments shall be restored in accordance with subsection (h) by the operator that the impoundment is registered to within 9 months of completion of hydraulic fracturing of the last well serviced by the impoundment. An extension of the restoration requirement may be approved under § 78.65(c) (relating to site restoration).

(h) An impoundment is restored under this subsection by the operator removing excess water and the synthetic liner, returning the site to approximate original conditions, including preconstruction contours, and supporting the land uses that existed prior to oil and gas operations to the extent practicable. If requested by the landowner in writing, on forms provided by the department, the requirement to return the site to approximate original contours may be waived by the department if the liner is removed from the impoundment.

(i) Prior to storing mine influenced water in a well development impoundment, the operator shall develop a mine influenced water storage plan and submit it to the Department for approval.

(1) The mine influenced water storage plan shall be submitted on forms provided by the Department and include the following:

(i) A demonstration that the escape of the mine influenced water stored in the well development impoundment will not result in air, water or land pollution, or endanger persons or property.

(ii) A procedure and schedule to test the mine influenced water. This testing shall be conducted at the source prior to storage in the impoundment.

(iii) A records retention schedule for the mine influenced water test results.

(2) An operator with an approved mine influenced water storage plan shall maintain records of all mine influenced water testing prior to storage. These records shall be made available to the Department upon request.

(j) The Department may require the operator to test water sources proposed to be stored in a well development impoundment prior to storage.

(k) Well development impoundments shall be maintained so that at least 2 feet of freeboard remain at all times.

(l) Contents of a well development impoundment may be discharged to maintain freeboard and prior to restoration. An operator must submit a well development impoundment discharge plan to the Department for approval prior to discharging contents of the well development impoundment to the land surface. Discharges to surface waters of the Commonwealth are prohibited, unless the discharge is authorized under an NPDES permit issued by the Department for such discharge.

* * * * *

§ 78.65. Site restoration.

[In addition to complying with section 206 of the act (58 P. S. § 601.206), an owner or operator shall meet the following requirements:

(1) A drill hole or bore hole used to facilitate the drilling of a well shall be filled with cement, soil, drill cuttings or other earthen material before moving the drilling equipment from the well site.

(2) If a well site is constructed and the well is not drilled, the well site shall be restored within 30 days after the expiration of the well permit unless the Department approves an extension for reasons of adverse weather or lack of essential fuel, equipment or labor.

(3) Within 60 days after the restoration of the well site, the operator shall submit a well site restoration report to the Department. The report shall be made on forms provided by the Department and shall identify the following:

(i) The date of land application of the tophole water, the results of Ph and specific conductance tests and an estimated volume of discharge.

(ii) A description of the method used for disposal or reuse of the free liquid fraction of the waste, and the name of the hauler and disposal facility, if any.

(iii) The location of the pit in relation to the well, the depth of the pit, the type and thickness of the material used for the pit subbase, the type and thickness of the pit liner, the type and nature of the waste, a description of the pit closure procedures used and the pit dimensions.

(iv) The location of the area used for land application of the waste, and the results of a chemical analysis of the waste soil mixture if requested by the Department.

(v) The types and volumes of waste produced and the name and address of the waste disposal facility and waste hauler used to dispose of the waste.]

(a) Restoration. The owner or operator shall restore land surface areas disturbed to construct the well site as follows:

(1) Post drilling—Within 9 months after completion of drilling a well, the owner or operator shall undertake post-drilling restoration of the well site in accordance with a restoration plan developed in accordance with subsection (b) and remove all drilling supplies, equipment, primary containment and secondary containment not necessary for production or needed to safely operate the well.

(i) When multiple wells are drilled or permitted to be drilled on a single well site, post-drilling restoration is required within 9 months after completion of drilling all permitted wells on the well site or 9 months after the expiration of all existing well permits on the well site, whichever is later.

(ii) A drill hole or bore hole used to facilitate the drilling of a well shall be filled with cement, soil, uncontaminated drill cuttings or other earthen material before moving the drilling equipment from the well site.

(iii) Drilling supplies and equipment not needed for production may only be stored on the well site if express written consent of the surface landowner is obtained.

(iv) The areas needed to safely operate the well include to the following:

(A) Areas used for service vehicle and rig access.

(B) Areas used for storage tanks and secondary containment.

(C) Areas used for wellheads and appurtenant oil and gas processing facilities.

(D) Areas used for any necessary safety buffer limited to the area surrounding equipment that is physically cordoned off to protect the facilities.

(E) Areas used to store any supplies or equipment consented to by the surface landowner.

(F) Areas used for operation and maintenance of long-term PCSM best management practices.

(2) Post plugging—Within 9 months after plugging the final well on the well site, the owner or operator shall remove all production or storage facilities, supplies and equipment and restore the well site to approximate original conditions and restore stormwater runoff rate, volume and quality to preconstruction condition in accordance with § 102.8 (relating to PCSM requirements).

(3) Wells not drilled—If a well site is constructed and the well is not drilled, the well site shall be restored within 9 months after the expiration of the well permit unless the Department approves an extension for reasons of adverse weather or lack of essential fuel, equipment or labor.

(b) Restoration. An operator of a well site must restore the well site as follows:

(1) Restore areas not needed to safely operate the well to approximate original conditions.

(2) Minimize impervious areas. impervious areas include but are not limited to areas where soil has been compacted, areas where soil has been treated with amendments to firm or harden the soil and areas underlain with an impermeable liner.

(3) Remove all drilling supplies and equipment not needed for production, including primary and secondary containment.

(4) Restore the disturbed areas to achieve meadow in good condition or better or otherwise incorporate ABACT or nondischarge alternative PCSM best management practices (BMP).

(5) PCSM BMPs required under Chapter 102 (relating to erosion and sediment control) remaining in place must comply with § 102.8(l) and (m), or the operator must provide a licensed professional certification of complete site restoration to approximate original contours and return to preconstruction stormwater runoff rate, volume and quality in accordance with § 102.8(g).

(6) Permanently stabilize the restored areas as follows:

(i) In accordance with § 102.22 (relating to site stabilization), or

(ii) Through implementation of PCSM BMPs as required in § 102.8, including § 102.8(a) – (m);

(7) An operator of a well site who is required to obtain a permit under § 102.5(c) may develop a written restoration plan containing drawings and a narrative that address the requirements of (b)(1)-(6), which constitutes a restoration plan for the purposes of § 102.8(n) for the areas of the site being restored in accordance with this subsection.

(c) Extension of drilling or production period. The restoration period in this subsection may be extended through approval by the Department for an additional period of time, not to exceed 2 years.

(1) A request to extend the restoration period must be submitted electronically on forms provided by the Department through the Department's web site not more than 6 months after the completion of drilling.

(2) The request shall specify the reasons for the request to extend the restoration period not to exceed 24 months. The request shall include a justification for the length of extension and demonstrate that:

(i) The extension will result in less earth disturbance, increased water reuse or more efficient development of the resources; or

(ii) Restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor.

(3) A demonstration that the extension will result in less earth disturbance, increased water reuse or more efficient development of the resources shall include the following:

(i) A demonstration that the site is stabilized and the BMPs utilized on the well site will address post construction stormwater management.

(ii) A demonstration that the portions of the well site not occupied by production facilities or equipment will be returned to approximate original conditions.

(d) Areas not restored. Disturbed areas associated with well sites that are not included in a restoration plan, and other remaining impervious surfaces, must comply with all requirements in Chapter 102. The PCSM plan provisions in § 102.8(n) apply only to the portions of the restoration plan that provide for restoration of disturbed areas to meadow in good condition or better or otherwise incorporate ABACT or nondischarge PCSM BMPs.

(e) Post drilling restoration reports. Within 60 calendar days after post-drilling restoration under paragraph (a)(1), the operator shall submit a restoration report to the Department. The well operator shall forward a copy of all restoration reports to the surface landowner. The report shall be made electronically on forms provided by the Department through the Department's website and shall identify the following:

(1) The date of land application of the topsoil water.

(2) The results of pH and specific conductance tests and an estimated volume of discharge.

(3) The method used for disposal or reuse of the free liquid fraction of the waste, and the name of the hauler and disposal facility, if any.

(4) The location, including GPS coordinates, of the pit in relation to the well, the depth of the pit, the type and thickness of the material used for the pit subbase, the type and thickness of the pit liner, the type and nature of the waste, the type of any approved solidifier, a description of the pit closure procedures used and the pit dimensions.

(5) The location of the area used for land application of the waste, and the results of a chemical analysis of the waste soil mixture if requested by the Department.

(6) The types and volumes of waste produced and the name and address of the waste disposal facility and waste hauler used to dispose of the waste.

(7) The name, qualifications and basis for determination that the bottom of a pit used for encapsulation is at least 20 inches above the seasonal high groundwater table.

(f) *Post plugging restoration reports.* Within 60 calendar days after post-plugging restoration under paragraph (a)(2), the operator shall submit a restoration report to the Department. The well operator shall forward a copy of all restoration reports to the surface landowner. The report shall be made electronically on forms provided by the Department through the Department's website and shall include the following:

(1) A description of the types and volumes of waste produced and the name and address of the waste disposal facility and waste hauler used to dispose of the waste.

(2) Confirmation that earth disturbance activities, site restoration including an installation of any PCSM BMPs and permanent stabilization in accordance with § 102.22 have been completed.

(g) Written consent of the landowner on forms provided by the Department satisfies the restoration requirements of this section provided the operator develops and implements a site restoration plan that complies with paragraphs (a) and (b)(2)-(7) and all PCSM requirements in Chapter 102.

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§ 78.67. Borrow pits.

(a) An operator who owns or controls a borrow pit that does not require a permit under the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301-3326) under the exemption in section 3273.1(b) of the act (relating to relationship to solid waste and surface mining), because the borrow pit is used exclusively for extraction of minerals for the purpose of oil and gas well development, including access road construction, shall operate, maintain and reclaim the borrow pit in accordance with the performance standards in Chapter 77, Subchapter I (relating to environmental protection performance

standards) and in accordance with Chapter 102 (relating to environmental protection performance standards; and erosion and sediment control), and other applicable laws. The mining permit exemption only applies so long as the borrow pit is servicing an oil and gas well site where a well is permitted under section 3211 of the act (relating to well permits) or registered under section 3213 of the act (relating to well registration and identification) and the requirements of section 3225 of the act (relating to bonding) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985. Borrow pits shall be subject to the Clean Streams Law, and regulations promulgated thereunder, including Chapter 102 (relating to erosion and sediment control). For purposes of determining permitting requirements under § 102.5(c) (relating to permit requirements), areas subject to the mining permit exemption must be considered part of the project along with the well site being serviced.

(b) Operators shall register the location of their existing borrow pits by _____, (Editor's Note: The blank refers to 60 calendar days the effective date of adoption of this proposed rulemaking.) by providing the Department, electronically, through the Department's website, with the GPS coordinates, township and county where the borrow pit is located. The operator shall register the location of a new borrow pit in the same manner prior to construction.

(c) Borrow pits used for the development of oil and gas well sites and access roads that no longer meet the conditions under section 3273.1 of the act must meet one of the following:

(1) Be restored within 9 months after completion of drilling the final well on a well site serviced by the borrow pit or 9 months after the expiration of all well permits on well sites serviced by the borrow pit, whichever occurs later in time.

(2) Obtain a noncoal surface mining permit for its continued use, unless relevant exemptions apply under the Noncoal Surface Mining Conservation and Reclamation Act and regulations promulgated thereunder. An extension of the restoration requirement may be approved under § 78.65(d) (relating to site restoration).

(d) A well operator who owns or operates a borrow pit constructed prior to (Editor's Note: The blank refers to the effective date of adoption of this rulemaking.) shall have the borrow pit inspected by qualified personnel for compliance with the requirements of this section prior to _____. (Editor's Note: The blank refers to 180 days after the effective date of adoption of this proposed rulemaking.) any borrow pits that do not comply with the provisions of subsection (a) shall be upgraded to meet the requirements of this section or closed in accordance with subsection (c) by _____ (Editor's Note: The blank refers to one year after the effective date of adoption of this proposed rulemaking.)

Subchapter D. WELL DRILLING, OPERATION AND PLUGGING

GENERAL

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§ 78.75. Alternative methods.

(a) A well operator may request approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well under section [211 of the act (58 P.S. § 601.211)] 3221 of the act (relating to well permits).

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§ 78.76. Drilling within a gas storage reservoir area.

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(b) The storage operator may file an objection with the Department to the drilling, casing and cementing plan or the proposed well location within 15 calendar days of receipt of the notification and request a conference in accordance with section [501 of the act (58 P.S. § 601.501)] 3251 of the act (relating to conferences).

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CASING AND CEMENTING

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§ 78.87. Gas storage reservoir protective casing and cementing procedures.

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(b) A request by an operator for approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well drilled through a gas storage reservoir under section [211 of the act (58 P.S. § 601.211)] 3221 of the act (relating to well permits) shall be made in accordance with § 78.75 (relating to alternative methods).

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§ 78.88. Mechanical integrity of operating wells.

(a) Except for wells regulated under Subchapter H (relating to underground gas storage) and wells that have been granted inactive status, the operator shall inspect each operating well at least quarterly to ensure it is in compliance with the well construction and operating requirements of this chapter and the act. The results of the inspections shall be recorded and retained by the operator for at least 5 years and be available for review by the Department and the coal owner or operator.

(b) At a minimum, inspections must determine:

(1) The well-head pressure or water level measurement.

(2) The open flow on the annulus of the production casing or the annulus pressure if the annulus is shut in.

(3) The measured or best estimated quantity of gas, oil or brine [If there is evidence of gas] escaping from the well, **if any** [and the amount escaping, using measurement or best estimate of quantity].

(4) Any [If there is] evidence of progressive corrosion, rusting or other signs of equipment deterioration.

(c) For structurally sound wells in compliance with § 78.73(c) (relating to surface and coal protective casing and cementing procedure), the operator shall follow the reporting schedule outlined in subsection (e).

(d) For wells exhibiting progressive corrosion, rusting or other signs of equipment deterioration that compromise the integrity of the well, **the operator shall notify the Department within 24 hours of discovery and correct the defect or submit a plan to correct the defect for approval by the Department within 30 days.** [or the] **For a** well is not in compliance with § 78.73(c), the operator shall [immediately] notify the Department **within 24 hours of discovery** and take corrective actions to repair or replace defective equipment or casing or mitigate the excess pressure on the surface casing seat or coal protective casing seat according to the following hierarchy:

(1) The operator shall reduce the shut-in or producing back pressure on the casing seat to achieve compliance with § 78.73(c).

(2) The operator shall retrofit the well by installing production casing to reduce the pressure on the casing seat to achieve compliance with § 78.73(c). The annular space surrounding the production casing must be **[open] vented** to the atmosphere. The production casing shall be either cemented to the surface or installed on a permanent packer. The operator shall notify the Department at least 7 days prior to initiating the corrective measure.

(3) Additional mechanical integrity tests, including, but not limited to, pressure tests, may be required by the Department to demonstrate the integrity of the well.

(e) The operator shall submit an annual report to the Department identifying the compliance status of each well with the mechanical integrity requirements of this section. **[The report shall be submitted on forms prescribed by, and available from, the Department or in a similar manner approved by the Department.] At a minimum, the report shall be:**

(1) Inclusive of at least one quarterly inspection summary (pertaining to well integrity inspections in subsection (b)).

(2) Submitted electronically to the Department through its web site, with the exception that a report including only home or consumptive use wells may be submitted to the Department on forms provided by the Department.

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PLUGGING

§ 78.91. General provisions.

(a) Upon abandoning a well, the owner or operator shall plug the well under §§ 78.92—78.98 or an approved alternate method under section **[211 of the act (58 P.S. § 601.211)] 3221 of the act (relating to well permits)** to stop the vertical flow of fluids or gas within the well bore unless one of the following applies:

* * * * *

(3) The Department has approved the identification of the well as an orphan well under section **[203 of the act (58 P.S. § 601.203)] 3213 of the act (relating to well registration and identification)**, and the Department has not determined a prior owner or operator received economic benefit after April 18, 1979, from this well other than economic benefit derived only as a landowner or from a royalty interest.

* * * * *

INACTIVE STATUS

§ 78.101. General provisions.

Upon application, the Department will grant inactive status for 5 years for a permitted or registered well if the application meets the requirements of section **[204 of the act (58 P.S. § 601.204)] 3214 of the act (relating to inactive status)** and §§ 78.102—78.105. The Department may require information to demonstrate that the conditions imposed by § 78.102 (relating to criteria for approval of inactive status) are satisfied.

§ 78.102. Criteria for approval of inactive status.

To obtain inactive status, the applicant shall affirmatively demonstrate to the Department's satisfaction that:

(1) The condition of the well is sufficient to:

(i) Prevent damage to the producing zone or contamination of fresh water or other natural resources or surface leakage of substances.

(ii) Stop the vertical flow of fluid or gas within the well bore.

(iii) Protect fresh groundwater.

(iv) Pose no threat to the health and safety of persons, property or the environment.

(2) The well complies with one of the following:

(i) The well meets casing and cementing requirements of §§ 78.81—78.86 (relating to casing and cementing).

(ii) For wells not drilled in conformance with casing and cementing requirements of §§ 78.81—78.86, and for the purpose of the annual monitoring of wells granted inactive status as required by § 78.103 (relating to annual monitoring of inactive wells), the applicant **shall inspect the well, and at a minimum determine; [demonstrates that]**

(A) The well-head pressure or water level measurement [For oil and gas wells equipped with surface casing, the operator shall demonstrate that the liquid level in the well bore is maintained at a level at no higher than the water protection depth. For purposes of this clause where oil or gas bearing formations are encountered less than 100 feet below the surface casing seat, the water protection depth shall be that point midway between the top of the oil or gas bearing formation and the surface casing seat.]

(B) The open flow on the annulus of the production casing or the annulus pressure if the annulus is shut in [If the liquid level in an oil or gas well equipped with surface casing stands above the water protection depth and below the groundwater table depth, the operator shall test the liquid to determine its quality. If the liquid has a total dissolved solids content or conductivity generally equivalent to fresh groundwater in the immediate area, the casing is assumed to be either leaking or not set deep enough to shut off groundwater, and mechanical integrity is not demonstrated and inactive status will not be granted unless the operator demonstrates that the well is in compliance with the shut-in portion of the mechanical integrity test requirements of the Under Ground Injection Control program under the Safe Drinking Water Act (21 U.S.C.A. § 349; 42 U.S.C. §§ 201, 300f—300j-11). If the liquid has a total dissolved solids content or conductivity equivalent to the production formation or production liquid, mechanical integrity is considered to be demonstrated.]

(C) The measured or best estimated quantity of gas, oil or brine escaping from the well, if any [For oil wells not equipped with surface casing or for oil wells equipped with surface casing that cannot be approved for inactive status under paragraph (2)(ii)(A) or (B), the operator shall modify the well to meet one of the following:

(I) The operator shall set a string of casing on a packer sufficiently deep to isolate the fresh groundwater system. The casing shall be set to the water protection depth for wells in the area, and the requirements of paragraph (2)(ii)(A) or (B) shall be met.

(II) The operator has set a temporary plug or mechanical seal at the water protection depth and isolated the fresh groundwater system. The operator may demonstrate the integrity of the plug by demonstrating that water standing above the plug is, and continues to be, fresh water not contaminated by production fluids, or by other means acceptable to the Department.

(III) The operator shall fill the well with a freshwater bentonite gel or other material approved by the Department which will restrict vertical migration of gas or fluids in the well bore. The operator shall monitor the gel level and report significant changes to the Department on an annual basis and take remedial action approved by the Department].

(D) Any progressive corrosion, rusting or other signs of equipment deterioration[For gas wells equipped with production casing separate from the surface casing, the annulus between the surface or coal protective casing and the production casing is vented to the atmosphere. The owner or operator of a well granted inactive status under this clause shall monitor the annular vents for gas flow volumes. If the gas flow volume exceeds 5,000 cubic feet per day, the owner or operator shall notify the Department and take remedial action approved by the Department].

[(E) For gas wells not equipped with separate production casing, but with cemented or uncemented surface casing present, the produced gas shut-in pressure is less than the pressure necessary to cause gas migration into the adjacent formation at the surface casing seat. Compliance with this condition may be demonstrated by mechanical tests of the casing and by evidence that the gas wellhead shut-in pressure does not exceed 0.433 psi per foot of surface or coal protective casing depth.]

(3) For structurally sound wells in compliance with § 78.73(c) (relating to surface and coal protective casing and cementing procedure), the operator shall follow the reporting schedule outlined in paragraph (7).

(4) For wells exhibiting progressive corrosion, rusting or other signs of equipment deterioration that compromise the integrity of the well, the operator shall notify the Department within 24 hours of discovery and correct the defect or submit a plan to correct the defect for approval by the Department within 30 days. For wells not in compliance with § 78.73(c), the operator shall notify the Department within 24 hours of discovery and take corrective actions to repair or replace defective equipment or casing or mitigate the excess pressure on the surface casing seat or coal protective casing seat according to the following hierarchy:

(i) The operator shall reduce the shut-in or producing back pressure on the casing seat to achieve compliance with § 78.73(c).

(ii) The operator shall retrofit the well by installing production casing to reduce the pressure on the casing seat to achieve compliance with § 78.73(c). The annular space surrounding the production casing must be vented to the atmosphere. The production casing shall be either cemented to the surface or installed on a permanent packer. The

operator shall notify the Department at least 7 days prior to initiating the corrective measure.

(iii) Additional mechanical integrity tests, including, but not limited to, pressure tests, may be required by the Department to demonstrate the integrity of the well.

(3)(5) If gas exists at an inactive oil well, the operator may vent the gas to the atmosphere or equip the well to confine the gas to the producing formation. If this gas flow is greater than 5,000 cubic feet per day, the owner or operator shall notify the Department and take remedial action approved by the Department.

(6) If the annular gas flow volume for gas wells equipped with production casing separate from surface casing exceeds 5,000 cubic feet per day, the owner or operator shall notify the Department and take remedial action approved by the Department.

(7) The operator shall submit an annual report electronically to the Department through its web site inclusive of observations made during implementation of the mechanical integrity requirements of this section.

(4)(8) The applicant shall certify that the well is of future utility and shall present a viable plan for utilizing the well within a reasonable time. In addition to providing information to demonstrate compliance with paragraphs (1) and (2), the application for inactive status shall include the following:

- (i) A plan showing when the well will be used.
- (ii) A certification identifying that one of the following applies:
 - (A) Significant reserves remain in place and the operator plans to produce the well.
 - (B) The well will be used as a disposal well.
 - (C) The well will be used as a storage well.
 - (D) The well will be used as an observation well.
 - (E) The well will be used as a secondary or tertiary recovery injection well or that the well will be used for other purposes specified by the applicant.
- (iii) Other information necessary for the Department to make a determination on inactive status.

§ 78.103. Annual monitoring of inactive wells.

The owner or operator of a well granted inactive status shall monitor the integrity of the well on an annual basis and shall report the results to the Department. The owner or operator shall give the Department 3 **[working] business** days prior notice of the annual monitoring and mechanical

integrity testing. For all wells **granted inactive status**[that were drilled in accordance with the casing and cementing standards of §§ 78.81—78.86 (relating to casing and cementing)], the operator shall monitor the integrity of the well by using the method described in § 78.102(2)(ii)(A) **and**, (B),] (D) [or (E)] (relating to criteria for approval of inactive status) **and report these monitoring results in accordance with § 78.102(6)**, as appropriate. [For a well that was not drilled in accordance with the casing and cementing standards, the wells shall be monitored in accordance with § 78.102(1).] To qualify for continued inactive status, the owner or operator shall demonstrate, by the data in the monitoring reports, that the condition of the well continues to satisfy the requirements of § 78.102. The owner or operator shall submit the report by March 31 of the following year.

* * * * *

§ 78.105. Revocation of inactive status.

The Department may revoke inactive status and may order the immediate plugging of a well if one of the following applies:

* * * * *

(3) The condition of the well no longer satisfies the requirements of section [204 of the act (58 P.S. § 601.204)] **3214 of the act (relating to inactive status)** and §§ 78.102—78.104 (relating to criteria for approval of inactive status; annual monitoring of inactive wells; and term of inactive status).

* * * * *

RADIOACTIVE LOGGING SOURCES

§ 78.111. Abandonment.

* * * * *

(d) Upon plugging a well in which a radioactive source is left in the hole, the operator shall place a permanent plaque by welding or bolting or cementing it to the top of the bore hole in a manner approved by the Department that re-entry cannot be accomplished without disturbing the plaque. The plaque shall serve as a visual warning to a person re-entering the hole that a radioactive source has been abandoned in-place in the well. The plaque shall depict the trefoil radiation symbol with the words “Caution, Radioactive Material” under [§ 219.41] **10 CFR 20.1901(a)** (relating to [radiation symbol] **caution signs**) and shall be constructed of a long-lasting material such as monel, stainless steel, bronze or brass. The marker shall bear the following information:

* * * * *

(8) The date the source was abandoned.

* * * * *

Subchapter E. WELL REPORTING

§ 78.121. Production reporting.

(a) ~~[The well]~~**Each** operator **of a conventional well** shall submit an annual production and status report for each permitted or registered well on an individual basis, on or before February 15 of each year. **Production shall be reported for the preceding calendar year.** When the production data is not available to the operator on a well basis, the operator shall report production on the most well-specific basis available.

(b) The annual production report must include information on the amount and type of waste produced and the method of waste disposal or reuse, **including the specific facility or well site where the waste was managed.** Waste information submitted to the Department in accordance with this subsection is deemed to satisfy the residual waste biennial reporting requirements of § 287.52 (relating to biennial report).

~~[(b)]~~ **(c)** The production report shall be submitted electronically to the Department through its web site, **with the exception that a production report including only home or consumptive use wells may be submitted to the Department on forms provided by the Department.**

§ 78.122. Well record and completion report.

(a) For each well that is drilled or altered, the operator shall keep a detailed drillers log at the well site available for inspection until drilling is completed. Within 30 calendar days of cessation of drilling or altering a well, the well operator shall submit a well record to the Department on a form provided by the Department that includes the following information:

* * * * *

(10) Certification by the operator that the well has been constructed in accordance with this chapter and any permit conditions imposed by the Department.

(11) **Whether methane was encountered other than in a target formation.**

(12) **The country of origin and manufacture of tubular steel products used in the construction of the well.**

(13) **The borrow pit used for well site development, if any.**

(14) Other information required by the Department.

(b) Within 30 calendar days after completion of the well, **when the well is capable of production,** the well operator shall ~~[submit]~~ **arrange for the submission of** a completion report to the Department on a form provided by the Department that includes the following information:

* * * * *

(6) Stimulation record which includes the following:

(i) A descriptive list of the chemical additives in the stimulation fluid, including any acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor and surfactant.

(ii) The percent by **[volume]** **mass** of each chemical additive in the stimulation fluid.

(iii) **[A list of the chemicals in the Material Safety Data Sheets, by name and chemical abstract service number, corresponding to the appropriate chemical additive.] The trade name, vendor and a brief descriptor of the intended use or function of each chemical additive in the stimulation fluid.**

(iv) **[The percent by volume of each chemical listed in the Material Safety Data Sheets.] A list of the chemicals intentionally added to the stimulation fluid, by name and chemical abstract service number.**

(v) **The maximum concentration, in percent by mass, of each chemical intentionally added to the stimulation fluid.**

[(v)] (vi) The total volume of the base fluid.

[(vi)] (vii) A list of water sources used under an approved water management plan and the volume of water used from each source.

[(vii)] (viii) The total volume of recycled water used.

[(viii)] (ix) The pump rate and pressure used in the well.

(7) Actual open flow production and shut in surface pressure.

(8) Open flow production and shut in surface pressure, measured 24 hours after completion.

(9) **The well development impoundment, if any, used in the development of the well.**

(10) **Certification by the operator that the monitoring plan required under § 78.52a (relating to area of review) was conducted as outlined in the area of review report.**

(c) When the well operator submits a stimulation record, it may designate specific portions of the stimulation record as containing a trade secret or confidential proprietary information. The Department will prevent disclosure of the designated confidential information to the extent permitted under the Right-to-Know Law (65 P.S. §§ 67.101—**[67.3103] 67.3104**) **or other applicable State law.**

(d) [In addition to submitting a stimulation record to the Department under subsection (b), and subject to the protections afforded for trade secrets and confidential proprietary information under the Right-to-Know Law, the operator shall arrange to provide a list of the chemical constituents of the chemical additives used to hydraulically fracture a well, by chemical name and abstract service number, unless the additive does not have an abstract service number, to the Department upon written request by the Department.] The well record required by subsection (a) and the completion report required by subsection (b) shall be submitted electronically to the Department through the Department's web site.

§ 78.123. Logs and additional data.

(a) [If requested by the Department within 90 calendar days after the completion of drilling or recompletion of a well, the well operator shall submit to the Department a copy of the electrical, radioactive or other standard industry logs run on the well.] The well operator shall, within 90 days of completion or recompletion of drilling, submit a copy of any electrical, radioactive or other standard industry logs which have been run.

(b) In addition, if requested by the Department within 1 year of the completion [of drilling] or recompletion [a well] of drilling, the well operator shall file with the Department a copy of the drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis and lithologic log or sample description or other similar data as compiled. No information will be required unless the operator has had the information described in this subsection compiled in the ordinary course of business. No interpretation of the data is to be filed.

~~[(b)]~~ (c) Upon notification by the Department prior to drilling, the well operator shall collect additional data specified by the Department, such as representative drill cuttings and samples from cores taken, and other geological information that the operator can reasonably compile. Interpretation of the data is not required to be filed.

(c) The information requested by the Department under subsections (a) and (b) shall be provided to the Department by the operator, within 3 years after completion of the well unless the Department has granted an extension or unless the Department has requested information as described in subsection (d). If the Department has granted an extension, the information shall be submitted in accordance with the extension, but in no case may the extension exceed 5 years from the date of completion of the well.

(d) In accordance with the request of the Department, the operator shall submit the information described in this section for use in investigation or enforcement proceedings, or in aggregate form for statistical purposes.]

(d) Data requested by the Department under subsections (b) and (c) shall be retained by the well operator and filed with the Department no more than 3 years after completion of the well. Upon request for good cause, the Department may extend the deadline up to 5 years from the date of completion or recompletion of drilling the well. The Department

may request submission of the information before these timeframes if the information is necessary to conduct an investigation or for enforcement proceedings.

(e) The Department is entitled to utilize information collected under this section in enforcement proceedings, in making designations or determinations under section 1927-A of The Administrative Code of 1929 (71 P.S. § 510-27) and in aggregate form for statistical purposes.

Subchapter G. BONDING REQUIREMENTS

§ 78.301. Scope.

In addition to the requirements of section [215 of the act (58 P.S. § 601.215)] **3225 of the act (relating to bonding), and section 1606-E of The Fiscal Code (72 P.S. § 1606-E)**, this subchapter specifies certain requirements for surety bonds, collateral bonds, replacement of existing bonds, maintaining adequate bond and bond forfeiture.

§ 78.302. Requirement to file a bond.

For a well that has not been plugged, the owner or operator shall file a bond or otherwise comply with the bonding requirements of section [215 of the act (58 P.S. § 601.215)] **3225 of the act (relating to bonding), section 1606-E of The Fiscal Code (72 P.S. § 1606-E)** and this chapter. A bond or bond substitute is not required for a well drilled before April 18, 1985.

§ 78.303. Form, terms and conditions of the bond.

(a) The following types of security are approvable:

(1) A surety bond as provided in § 78.304 (relating to terms and conditions for surety bonds).

(2) A collateral bond as provided in §§ 78.305—78.308. **[For individuals who meet the requirements of section 215(d.1) of the act, a phased deposit of collateral bond as provided in § 78.309(b) (relating to phased deposit of collateral).]**

* * * * *

(d) The person named in the bond or other security shall be the same as the person named in the permit.

[(e) The bond amounts required under section 215 of the act are as follows:

(1) Two thousand five hundred dollars for a single well.

(2) Twenty-five thousand dollars for a blanket bond.]

* * * * *

§ 78.306. Collateral bonds—letters of credit.

(a) Letters of credit submitted as collateral for collateral bonds shall be subject to the following conditions:

(1) The letter of credit shall be a standby or guarantee letter of credit issued by a Federally insured or equivalently protected financial institution, regulated and examined by the Commonwealth or a Federal agency and authorized to do business in this Commonwealth.

(2) The letter of credit shall be irrevocable and shall be so designated. However, the Department may accept a letter of credit for which a limited time period is stated if the following conditions are met and are stated in the letter:

(i) The letter of credit is automatically renewable for additional time periods unless the financial institution gives at least 90 days prior written notice to both the Department and the operator of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of its time period, if the operator fails to replace the letter of credit with other acceptable means of compliance with section [215 of the act (58 P.S. § 601.215)] 3225 of the act (relating to bonding) within 30 calendar days of the financial institution's notice to terminate the credit.

* * * * *

(b) If the Department collects any amount under the letter of credit due to failure of the operator to replace the letter of credit after demand by the Department, the Department will hold the proceeds as cash collateral as provided by this subchapter. The operator may obtain the cash collateral after he has submitted and the Department has approved a bond or other means of compliance with section [215] 3225 of the act.

§ 78.308. Collateral bonds—negotiable bonds.

Negotiable bonds submitted and pledged as collateral for collateral bonds under section [215(a)(3) of the act (58 P.S. § 601.215(a)(3))] 3225(a)(3) of the act (relating to bonding) are subject to the following conditions:

* * * * *

§ 78.309. [Phased deposit of collateral] (Reserved).

[(a) Operators.

(1) Eligibility. An operator who had a phased deposit of collateral in effect as of November 26, 1997, may maintain that bond for wells requiring bonding, for new well permits and for wells acquired by transfer.

(i) An operator may not have more than 200 wells.

(ii) Under the following schedule, an operator shall make a deposit with the Department of approved collateral prior to the issuance of a permit for a well or the transfer of a permit for a well, and shall make subsequent annual deposits and additional well payments. For the purpose of calculating the required deposit, all of the operator's wells are included in the number of wells.

<i>Number of Wells</i>	<i>Annual Deposit</i>	<i>Per Additional Well</i>
1-10 with no intention to operate more than 10	\$50/well	N.A.
11-25 or 1-10 and applies for additional well permits	\$1,150	\$ 150
26-50	\$1,300	\$ 400
51-100	\$1,500	\$ 400
101-200	\$1,600	\$1,000

(iii) An operator shall make the phased deposits of collateral as required by the bond.

(2) *Termination of eligibility.* An operator is no longer eligible to make phased deposits of collateral when one or more of the following occur:

(i) The operator shall fully bond the wells immediately, if an operator has more than 200 wells.

(ii) If the operator misses a phased deposit of collateral payment, the operator shall do one of the following:

(A) Immediately submit the appropriate bond amount in full.

(B) Cease all operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act (58 P. S. § 601.210).

(b) *Individuals.*

(1) *Eligibility.*

(i) An individual who seeks to satisfy the collateral bond requirements of the act by submitting phased deposit of collateral under section 215(d.1) of the act (58 P. S. § 601.215(d.1)), may not drill more than ten new wells per calendar year. A well in which the individual has a financial interest is to be considered one of the wells permitted under this section. A partnership, association or corporation is not eligible for phased deposit of collateral under this subsection.

(ii) The individual shall deposit with the Department \$500 per well in approved collateral prior to issuance of a new permit.

(iii) The individual shall deposit 10% of the remaining amount of bond in approved collateral in each of the next 10 years. Annual payments shall become due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. Payments shall be accompanied by appropriate bond documents required by the Department.

(iv) The individual shall make the phased collateral payments as required by the bond.

(2) *Termination of eligibility.* If the individual misses a phased deposit of collateral payment, the individual will no longer be eligible to make phased deposits of collateral and shall do one of the following:

(i) Immediately submit the appropriate bond amount in full.

(ii) Cease operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act.

(c) *Interest earned.* Interest earned by collateral on deposit by operators and individuals under this section shall be accumulated and become part of the bond amount until the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest earned by the collateral shall be returned to the operator or the individual upon release of the bond. Interest may not be paid for postforfeiture interest accruing during appeals and after resolution of the appeals, when the forfeiture is adjudicated, decided or settled in favor of the Commonwealth.]

§ 78.310. Replacement of existing bond.

(a) An owner or operator may replace an existing surety or collateral bond with another surety or collateral bond that satisfies the requirements of this chapter, if the liability which has accrued against the bond, the owner or operator who filed the first bond and the well operation is transferred to the replacement bond. An owner or operator may not substitute a phased deposit of collateral bond under section [215(d) and (d.1) of the act (58 P.S. § 601.215(d) and (d.1))], 3225(d) and (d.1) of the act (relating to bonding) for a valid surety bond or collateral that has been filed and approved by the Department.

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Subchapter H. UNDERGROUND GAS STORAGE

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§ 78.402. Inspections by the gas storage operator.

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(c) Storage operators shall inspect the gas storage reservoir and storage protective area at least annually to discover if material changes have occurred that require an amendment or supplement of the map and data as required in section [301(a) and (b) of the act (58 P.S. § 601.301(a) and (b))] 3231(a) and (b) of the act (relating to reporting requirements for gas storage operations). As part of that inspection, gas storage operators shall inspect known abandoned wells and plugged wells within the gas storage reservoir area and the gas storage protective area, subject to the right of entry, at the end of the injection season when the storage pressure is at its highest. The inspection record shall include observed evidence of gas leaking and other conditions that may be hazardous to the public or property.

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§ 78.403. Gas storage well integrity testing.

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(g) The Department may require the operator to perform additional tests it deems necessary after a conference is held under section [501 of the act (58 P.S. § 601.501)] 3251 of the act (relating to conferences).

§ 78.404. Maximum storage pressure.

A gas storage reservoir operator, who has not requested approval of a maximum storage pressure for a gas storage reservoir, shall request, by February 15, 1995, Department approval of a maximum gas storage reservoir pressure in accordance with the following:

(1) The maximum shut-in wellhead pressure (psig) may not exceed the highest shut-in wellhead pressure (psig) found to exist during the production history of the reservoir, unless a higher pressure is established through testing of caprock and pool containment. The methods used for determining the higher pressure shall be determined in conference with the Department in accordance with section [501] 3251 of the act.

* * * * *

[Subchapter X. STATEMENTS OF POLICY

INSPECTION POLICY REGARDING OIL AND GAS WELL ACTIVITIES

§ 78.901. [Reserved].

§ 78.902. Policy.

(a) This statement of policy sets forth the policy of the Department in regard to inspections of oil and gas well locations, sites, property, facilities, operations or activities governed by the act, the Coal and Gas Resource Coordination Act (58 P.S. §§ 501—518) or the Oil and Gas Conservation Law (58 P.S. §§ 401—419). This policy does not create a duty or obligation upon the Department to conduct a minimum or maximum number of inspections per year or during a certain period of time.

(b) Inspections are conducted to administer, implement, enforce and determine compliance with the statutes set forth in subsection (a) and with Article XIX-A of The Administrative Code of 1929 (71 P.S. §§ 510-1—510-108), The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and other statutes administered by the Department that apply to activities associated with gas and oil operations.

§ 78.903. Frequency of inspections.

The Department, its employes and agents intend to conduct inspections at the following frequencies:

- (1) At least once prior to the issuance of a permit, if a waiver or exception is requested by the permit applicant.
- (2) At least once in verifying or resolving objections or determining the Department's response to objections, when objections are raised to a permit application.
- (3) At least once during each of the phases of siting, drilling, casing, cementing, completing, altering and stimulating a well.
- (4) At least once during, or within 3 months after, the time period in which the owner or operator is required to restore the site, after drilling the well.
- (5) At least once prior to the authorization to use an alternate method for plugging, casing or equipping the well.
- (6) At least once during the periods that an alternative method for plugging, casing or equipping the well is being used or installed.
- (7) At least once when a well is being reconditioned or repaired or when casing is being replaced.
- (8) At least once prior to a well being granted inactive status.
- (9) At least once during the plugging of the well.
- (10) At least once during, or within 3 months after, the period in which the owner or operator is required to restore the site, after the well is plugged or abandoned.

(11) At least once before the bond or other financial security is released.

(12) At least once a year, if there is onsite brine disposal or residual waste disposal subject to the statutes referenced in § 78.902 (relating to policy).

(13) At least twice a year if the well is located in a gas storage reservoir or in a gas storage reservoir protective area.

(14) At least once a year to determine whether compliance with the statutes administered by the Department has been achieved.

(15) If there is a violation, at least once to determine whether the violation has been corrected, or whether there is a continuing violation.

(16) At least once, in response to a complaint.

§ 78.904. Manner of inspection.

The inspections described in this subchapter may be conducted separately, or in combination, whichever manner is deemed by the Department to permit maximum efficiency, accuracy and thoroughness in implementing the statutes administered by the Department.

§ 78.905. Additional inspections.

The Department, its employees and agents may conduct additional inspections, including follow-up inspections, inspections to observe a practice or condition related to the public health or safety and inspections to determine compliance with the statutes set forth in § 78.902 (relating to policy), with the laws administered by the Department, with the Department's regulations, with the terms or conditions of a permit or with the requirements of an order.

§ 78.906. Limitation.

The provisions of this statement of policy are subject to the availability of personnel and financial resources. This statement of policy does not create a duty or obligation upon the Department to conduct a minimum or maximum number of inspections per year or during a certain period.]