

**RESOLUTION OF THE
PENNSYLVANIA CONVENTIONAL OIL AND GAS ADVISORY COMMITTEE**

**Proposed Amendments to 25 Pa. Code Chapter 78 Environmental Protection Performance
Standards at Oil and Gas Well Sites Re; Pa. Code Chapter 78 Subchapter C**

WHEREAS, the bylaws of the Conventional Oil and Gas Advisory Committee (COGAC) charge it with the “review and comment on all...regulations” promulgated under the 2012 Oil and Gas Act prior to submission of the regulations to the Environmental Quality Board; and

WHEREAS, the COGAC desires to conduct its review consistent with legislative intent of the statutory authority for such regulations; and

WHEREAS, the COGAC has examined several laws and the legislative intent contained in those laws, including:

- A) the 2012 Oil and Gas Act, which among other expressions of intent, includes “the optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens;” and
- B) the Act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act (RRA), which among other matters contains an expression of intent “to improve State rulemaking (by making available) more flexible regulatory approaches for small businesses.”

WHEREAS, to act consistently with legislative intent, the COGAC requires information described in the RRA, such as: 1) the expected costs of proposed regulations to enable review and comment upon whether optimal development of oil and gas is served, 2) the need for proposed regulations to enable review and comment upon the protection of natural resource in balance with optimal development of oil and gas, and 3) the data underlying standards to enable review and comment upon alternatives for small businesses, among other necessary information; and;

WHEREAS, several factors have prevented COGAC from receiving or obtaining the above-described necessary information; and

WHEREAS, the COGAC finds that one of those factors is the Department of Environmental Protection’s (DEP) inability (despite request) to provide information, which inability includes the following:

- A) The DEP has not provided any data, let alone “acceptable data” as that term is used in the RRA. This inability has interfered with the COGAC’s ability to review and comment upon the many standards contained in the proposed regulations.

- B) The DEP has not provided documents or evidence that describe the need for the sweeping revisions contained in the proposed regulations. This inability has interfered with the COGAC's ability to understand why each revision is being proposed and, in turn, to assess or comment on matters identified by the Legislature, such as whether each revision serves to protect an environmental resource not protected under current regulations, whether the proposed regulations as a whole serve optimal oil and gas development, and so forth.
- C) The DEP has not provided financial analysis data for the vast majority of the regulations proposed for conventional oil and gas operations. For example, regulatory sections likely generating new costs and financial impact, such as Public Resources (78.15), Area of Review (78.52a), Site Specific PPC Planning (78.55), Site Restoration (78.65), Water Supply (78.51), Spill Remediation (78.66) and others were either not analyzed by DEP or were attributed no cost by DEP. Moreover, the costs that the DEP did attribute applied only to new well development and ignored any costs associated with bringing into compliance existing conventional oil and gas wells. Given the existence of approximately 100,000 conventional oil and gas wells, the failure to perform a financial analysis for the existing wells leaves a large void in the information the COGAC would need to perform its review and comment. Similarly, the costs the DEP did attribute applied only to initial compliance; the DEP did no financial analysis concerning the costs of maintaining conventional oil and gas wells in compliance with the proposed regulations. An industry group has commented that, based upon its examination, the proposed regulations would impose costs 100 or more times greater than that estimated by the DEP and that the actual costs would far exceed the gross revenues of the conventional oil and gas industry. A thorough understanding of the costs is key to the balancing of interests contemplated in law, and without that financial information the COGAC finds it impossible to carry out the review and comment duties charged to it in its bylaws.
- D) The DEP has not provided a regulatory flexibility analysis that considers methods of reducing the impact the proposed regulation will have upon small businesses. The experience or expertise of the COGAC members enables the COGAC members to envision numerous potential alternatives including reduction of paperwork and notices, submission of written rather than electronic forms, different standards, use of techniques allowed either under current regulations or federal law but not permitted under the proposed regulations, exemption from certain regulations, and the like. However, without the above cited information concerning data and the need for revised regulations, it has not been possible to responsibly comment on whether any alternatives meet a need or comport with data, inasmuch as data and needs have not been available to COGAC. Similarly, for the majority of the proposed regulations it is not possible to comment upon whether alternatives would reduce negative financial impact inasmuch as financial data provided by DEP is, for the most part, not available.

WHEREAS, the COGAC finds that another factor preventing its review of necessary information is the DEP's inability (despite request) to provide the forms called for under the proposed regulations. Examples of the several new forms include the form required to identify public resources under section 78.15, the form of questionnaire to landowners required under section 78.52, the form for well monitoring required under section 78.52 and 78.73, and others. Although Section 5(a)(5) of the RRA requires DEP to submit copies of forms required for implementation on the same date as submission of the proposed rule, the DEP has advised the COGAC that the forms do not exist. It is therefore impossible for the COGAC to review and comment on the required forms.

WHEREAS, in addition to the failure of information, the COGAC finds that its ability to review and comment has been impeded by the breadth of changes and lack of time. The COGAC finds the following matters to have had significant impact:

- A) The EQB and DEP have chosen to repeatedly modify an already very complex and broad set of proposed regulations. The ANFR published in April 2015 added many new provisions as did the August 2015 redline version. The October 2015 version made yet additional changes which COGAC has not yet had time to even perfunctorily examine.
- B) COGAC was not formed until March 2015 and the initial meetings of COGAC were consumed not with thorough review and comment on the Chapter 78 regulations, but rather with the bylaws of COGAC and other housekeeping matters.
- C) Under the COGAC bylaws, the DEP is charged with "framing the issues" brought before the COGAC, and in that framing the DEP has elected to utilize the lecture format, providing a presentation about the results of the most recent modifications to the regulations written by the DEP. Given the breadth of both the proposed regulations and the many changes made by the DEP in 2015, these presentations take many hours and consume all of the meeting time (not otherwise spent on housekeeping matters). Consequently the COGAC has not had time to inquire of the DEP about ambiguities in the proposed regulations, to discuss the impact of the regulations, to inquire about or discuss alternatives, or to otherwise bring to bear the experience and expertise of the COGAC members.
- D) There are many ambiguities the COGAC would like to discuss with DEP before commenting upon the proposed regulations, including ambiguities generated by inconsistencies between what DEP has orally reported to members of the regulated community at meetings or elsewhere and the actual text of the proposed regulations, as well as ambiguities generated by the lack of information such as the lack of the required forms. Examples of these ambiguities include:
 - 1) Area of Review (78.52a. and 78.73). What monitoring will be required? The proposed regulation requires that during new well

completion all plugged, abandoned, orphaned and active wells within either 500' or 1000' of the new well be monitored. Within 500' of a new conventional oil well there would normally be four to eight wells requiring monitoring under this new regulation. If full time monitoring is required then obviously many employees or contractors would have to be hired. Yet the DEP's RAF attributes \$0 of cost to the implementation of this regulation. And the form for the required well monitoring plan has not been provided by the DEP.

- 2) Site Restoration (78.65). Is section 102.8(g) applicable to all new conventional wells (requiring certified professional, soil tests, permanent stormwater measures, and surface owner consent in deed)? The expansion of the site restoration requirements is, in great part, a result of changes proposed in the April 2015 ANFR and there are no explanatory or analysis documents published by the DEP that clarify the new requirements. One industry group solicited two engineering firms to provide cost estimates for conventional well operators to comply with the revised Site Restoration requirements (including the 102.8(g) requirements cited therein), and the estimates ranged from \$22,000 to \$84,000 per individual conventional well site, depending upon the site topography. Given that the average cost of a conventional oil well in this study area is currently slightly in excess of \$100,000 this one new requirement would increase the cost of a new conventional oil well by 25% to 75%. Yet DEP employees have repeated orally stated to members of the regulated community, whom are represented by COGAC that industry cost estimates for compliance with the proposed regulations are overstated.
- 3) Site Specific PPC Plans (78.55). Where are individual PPC plans required? The proposed regulations incorporate the provisions of 25 Pa. Code 91.34 which require the supply of PPC plans at both well sites and tank storage locations. This would greatly amplify the current PPC plan practice of a PPC plan on site at individual leases or tank battery, but not at each well site. However, DEP employees have orally stated to members of the regulated community that the new regulation is not intended to change existing practice and that individual plans will not be required at each well site. Those oral statements are in conflict with the provisions of 25 Pa. Code 91.34.

WHEREAS, in addition to the failure of information and adequate time, COGAC has concern that the DEP has not complied with Act 126 of 2014, which requires the DEP to "promulgate proposed regulations under 58 Pa. C.S. (relating to oil and gas) or other laws of this Commonwealth relating to conventional oil and gas wells separately from proposed regulations relating to unconventional gas wells." As individuals familiar with the technology and methodologies utilized to find and

recover oil and gas, the COGAC members are well familiar with the significant differences between the conventional and unconventional oil and gas industries. The COGAC believes that the General Assembly adopted Act 126 to address the impropriety of regulating conventional and unconventional oil and gas operations as a single industry and that DEP's response of simply dividing the rule into separate subchapters in the middle of the current rulemaking process does not follow the statutory procedures for the promulgation of a separate rule for conventional oil and gas operations; and

WHEREAS, all of the COGAC members are experienced in the realm of conventional oil and gas operations are familiar with the current regulations pertaining thereto, and believe, based upon that experience, that: 1) the existing regulations are adequate and appropriate to both accomplish the protection of the environmental resources of the Commonwealth and allow for optimal development of oil and gas from conventional well operations, 2) the remarkably sweeping changes contained in the proposed regulations have not been explained or justified by data or need, and 3) the proposed changes are unnecessary and inappropriate.

NOW THEREFORE, IT IS RESOLVED, that the voting members of COGAC are in full agreement that relative to the proposed regulations:

- 1) The above recitals are incorporated as part of the conclusions of the COGAC;
- 2) That Act 126 of 2014 required that the process of formulating new regulations for Pennsylvania's conventional oil and gas industry should be restarted in its entirety;
- 3) That if the process for conventional oil and gas regulations is not restarted and this process is continued, that for COGAC to give meaningful review and comment the following procedures must be adopted as a minimum:
 - a. That the process be suspended until such time as the following is provided by the DEP and/or the EQB:
 - i. A corrected financial analysis that includes analysis of: 1) the regulatory sections not analyzed by the DEP, 2) the implantation costs for existing wells not analyzed by the DEP, 3) the costs of maintaining the proposed regulations not analyzed by the DEP;
 - ii. the required forms;
 - iii. a regulatory flexibility analysis for each regulatory section;
 - iv. a statement of need detailing the inadequacies of the existing regulations for conventional oil and gas well operations; and
 - v. data supporting any proposed new standards.
 - b. That following the provision of such materials the COGAC be afforded the period of nine months to review and comment upon the proposed regulations with meetings scheduled once per month; and
 - c. That at each such meeting the minimum time of two hours be allowed by DEP for the COGAC voting members to carry on dialogue with themselves and informed DEP staff for the purpose of discussing ambiguities, need, alternatives and the like.

- 4) The COGAC members have not had adequate time to review and comment upon the proposed regulations;
- 5) The remarkably sweeping changes contained in the proposed regulations have not been justified by data or need, and that therefore, the proposed changes are unnecessary and inappropriate.
- 6) The DEP should not move the regulatory package to the EQB for the reasons stated above;
- 7) This Resolution shall be made part of the public record; and
- 8) A copy of this Resolution should be forwarded to the Pennsylvania Independent Regulatory Review Commission, the Pennsylvania House and Senate Environmental Resources and Energy Committees.

By: 

Mark L. Cline







DATE: 10/29/15