

FREQUENTLY ASKED QUESTIONS

Environmental Protection Performance Standards at Oil and Gas Well Sites

Water Management Plans

(§ 78a.69)

The purpose of this Frequently Asked Questions (FAQ) document is to highlight changes in and address questions about the new regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa.Code Chapter 78a and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.

This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.

§78a.69 Water Management Plans

- 1) For surface water and groundwater sources, how far does the applicant have to investigate any additional downstream water uses (such as agricultural or industrial)? What is an appropriate investigation?

Due to the variability of site-specific circumstances, the distance downstream for this investigation cannot be generally established for all water withdrawals since the area of evaluation may vary depending on the quantity, location, and duration of the proposed withdrawal in relation to stream flow, and will be subject to an exercise of professional judgment. If the applicant is uncertain, it is recommended that they contact the PA Department of Environmental Protection (DEP) District Oil and Gas staff prior to submission of the Water Management Plan (WMP) application.

- 2) If an applicant has a River Basin approval to withdraw water (such as the Susquehanna River Basin Commission (SRBC) or, Delaware River Basin Commission (DRBC)) are they required to submit a WMP for review and approval to the Department?

Yes, in accordance with the 2012 Oil and Gas Act, no person may withdraw or use water from water sources for drilling or hydraulic fracture simulation of an unconventional well except in accordance with a WMP approved by DEP. To reduce duplication, if the water source is subject to DRBC or SRBC approval, and has been approved, the applicant need only complete the sections of the WMP application that are not subject to review by the respective River Basin Commission. When issued, a copy of the DRBC or SRBC approval must be supplied to the applicable DEP district office.

- 3) Can an applicant receive a WMP approval under section 78a.69(d) if it simply meets the criteria of a River Basin Commission without having an actual approval from the River Basin Commission?

In accordance with the 2012 Oil and Gas Act, no person may withdraw or use water from water sources for drilling or hydraulic fracture simulation of an unconventional well except in accordance with a WMP approved by DEP. If the water source is subject to DRBC or SRBC authority, the applicant needs to get necessary approval from the appropriate River Basin Commission before water can be withdrawn.

- 4) What should an applicant do if a renewal application has been submitted 6 months in advance, but they have not heard if it has been approved by the expiration date?

DEP requires an application for renewal to be submitted 6 months prior to the 5-year expiration date to ensure DEP has sufficient time to review the renewal application. It is the DEP's goal to act on all renewal applications prior to expiration. The applicant should contact the reviewing Oil and Gas District office in advance of the expiration date of the existing WMP if the expiration of the existing WMP is approaching and the applicant is unsure of the status of the review.

- 5) Will the WMP renewal process be simplified or will it be the same process as a new WMP application?

DEP requires renewal application submittal 6 months prior to the 5-year expiration date. The applicant must use the same WMP application form and DEP's reviewing process will be the same as though it is a new WMP application. To the extent that conditions have not changed since initial approval, however, the necessary demonstrations may be easier.

- 6) In section 78a.69(e)(3), what is the report submittal frequency?

The WMP holder will need to record daily withdrawal volumes, instream flow measurements, and/or water purchases on a daily basis. At a future date to be determined by DEP, this daily water withdrawal data will need to be reported monthly to DEP. In the interim, WMP holders will submit the water withdrawal data to DEP on at least a quarterly basis utilizing the DEP GreenPort system, providing monthly total amount of withdrawals and number of days on which withdrawals were made from each source and/or water source purchases.

- 7) May the SRBC signage requirement for withdrawal locations fulfill the signage requirement in section 78a.69(e)(1)?

Yes.

- 8) Does WMP signage apply to all approved sources or only active sources?

Signage requirements apply to all active sources. Prior to any withdrawal, the WMP holder needs to post a sign at the entrance to the water source withdrawal location according to section 78a.69(e)(1).

- 9) Can River Basin Commission notifications be dually utilized for the Department's requirements for WMP notifications?

Yes, DEP accepts the county and municipality notifications used for River Basin Commissions to satisfy DEP's regulatory notification requirements.

- 10) Is notification to the Department 48 hours prior to initiating a withdrawal a regulatory requirement?

No. However, in order to assist in responding to public inquiries, DEP requests those with approved WMPs to provide DEP district office with notice prior to the first use of an approved source. This would be a one-time notification. The water source and use monitoring plan should include the procedure and a statement of intent by the applicant to provide oral or e-mail notice to DEP district office prior to first use of each newly approved source, with the objective of providing such notice at least 48-hours prior to the first withdrawal. This is intended as an information coordination process.

- 11) Do notification requirements include public water sources?

Yes

- 12) Will a Centralized Waste Treatment facility be required to be listed as a source, on the WMP?

No, a DEP approved WMP is required when a person wants to withdrawal or use water from *water sources* within this Commonwealth to drill or complete an unconventional gas well. According to the definition of water source in section 78a.1:

- (ii) The term does not include flowback or production waters or other fluids:
 - (A) Which are used for drilling or completing a well in an unconventional formation.
 - (B) Which do not discharge into waters of the Commonwealth.

However, if the Centralized Waste Treatment facility has a discharge to waters of the Commonwealth, then a DEP approved WMP would be required prior to its use or withdrawal.

- 13) What is an "operations plan" for wastewater sources?

An operations plan for wastewater source would be same as one for surface water source as required in section 78a.69(c)(6)(i) ("an intake design, a flow schematic showing how water is to be withdrawn, a site layout and a footprint for each surface water withdrawal.").

- 14) Is the Department expecting applicants to use the form for already approved sources? Even if it has River Basin Commission approval already?

The 2012 Oil and Gas Act established that any person that wants to withdraw or use water for drilling or hydraulic fracture stimulation of unconventional natural gas wells must get a DEP approved WMP. Currently approved WMPs do not need to reapply until they expire. New and renewal requests for a WMP are required to use the forms provided by DEP. If the water source is subject to DRBC or SRBC authority, the applicant needs to get necessary approval from the appropriate River Basin Commission as well.

- 15) Regarding purchase from a water purveyor, are WMP applicants required to demonstrate that the water purveyor's allocation and operating permits, as well as system integrity, are in order?

Yes, the applicant must provide a description of the how the proposed purchase will not adversely affect the quantity or quality of water available to other users of the same water source; this shall include a description of how the purchase will not adversely affect the water purveyor's system.

- 16) Should a WMP intake structure be installed outside of a floodway?

No, DEP is not restricting the installation of a water intake structure to locations outside of a stream's floodway. However, the application and subsequent approval of a WMP does not relieve the applicant from any of the requirements of 25 Pa. Code Chapter 105. Therefore, it is the responsibility of the applicant to ensure any requirements to secure permits or other approvals related to water obstructions or encroachments in or near streams or waterways of the Commonwealth prior to installation of any water intake structures that may be required.

- 17) What are the requirements under the WMP for operators who recycle produced and flow-back water in future wells? What if produced water is shared with other operators as a source?

A DEP approved WMP is required when a person withdraws or uses water from water sources within this Commonwealth to drill or complete an unconventional gas well. According to the definition of "water source" in section 78a.1, flowback or production waters that are used for drilling or completing a well in an unconventional formation or that do not discharge to the waters of the Commonwealth are not considered as water source. Accordingly, flowback water used in future wells or produced water shared with other operators would not need an approved WMP from DEP.

- 18) Is an already approved plan "grandfathered" from the new provisions until its renewal? Is there a guaranteed WMP review/response timeframe similar to permit decision guarantee?

Already approved WMP plans are valid until their expiration date. DEP requires the applicant to submit the renewal application 6 months prior to the 5-year expiration date. The applicant must use the new WMP application form and DEP will review the application based on the new regulatory requirements. WMP reviews are not subject to a permit decision guarantee, but if completed applications are submitted 6 months prior to expiration, DEP's goal is to complete its review in that timeframe, if not sooner.

- 19) What are the requirements and contents of the water reuse plan?

The applicant needs to develop a reuse plan for fluids that will be used to hydraulically fracture wells. Applicant can include the criteria or strategy for reuse and recycle of the flow back or production fluid for hydraulic fracture simulation. Description of treatment technologies and analytical techniques that will assist in the development of reuse and recycling strategy can also be included.

Proof of a wastewater source reduction strategy in compliance with section 95.10(b) will satisfy the reuse plan requirements. DEP notes that section 95.10(b)(2) required operators with “operations with wastewater resulting from fracturing, production, field exploration, drilling or completion of natural gas wells” to develop source reduction strategies no later than August 22, 2011. The source reduction strategy must identify the methods and procedures the applicant will use to maximize the recycling and reuse of flow back or production fluid either to fracture other natural gas wells, or for other beneficial uses approved under Chapter 287 (relating to residual waste management—general provisions.) The strategy must be updated annually and include, (i) a complete characterization of the operator’s wastewater stream, (ii) a description and evaluation of potential wastewater source reduction options through recycling, reuse or other beneficial uses, (iii) rationale for selecting the source reduction methods and (iv) quantification of the flowback and production fluid generated by each well.

- 20) Will the 2003 SRBC Passby Flow Policy still be acceptable to DEP, as opposed to applying the new SRBC policy for withdrawals greater than 10 percent Q_{7-10} in the Ohio River basin?

All sources in SRBC need to comply with SRBC water withdrawal requirements. Sources outside of SRBC need to follow the guidelines from DEP. Pass by flow requirements will be imposed if the proposed maximum rate of water withdrawal is greater than 10 percent of Q_{7-10} .