

**Emergency Final-Omitted Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa.Code Chapter 78
(Oil and Gas Wells)**

Order

The Environmental Quality Board (Board) by this order amends 25 Pa.Code Chapter 78 (relating to Oil and Gas Wells) by revising Section 78.1 (relating to definitions), and revising Section 78.55 (relating to control and disposal plan), as set forth in Annex A.

Notice of proposed rulemaking is omitted as provided under section 204(3) of the Commonwealth Documents Law, the act of July 31, 1968, P.L. 769, No. 240 (45 P.S. § 1204(3)). Section 204(3) provides that an agency may omit notice of proposed rulemaking if the agency finds for good cause that the notice is contrary to the public interest. The notice of proposed rulemaking procedure for this regulation is contrary to the public interest for the reasons set forth below.

In addition, this is an emergency-certified regulation as provided under section 745.6(d) of the Regulatory Review Act, the act of June 30, 1989, P.L. 73, No. 89 (71 P.S. § 745.6(d)). Section 745.6(d) provides for issuance of emergency regulations based on, inter alia, a certification by the Governor that a final-omitted regulation is required to protect the public health, safety and welfare. In this case, the Governor issued a Certification of Need for Emergency Regulation on ___ that this final-omitted regulation is required to protect the public health, safety and welfare. In addition, that Certification is consistent with the statute authorizing the regulation, as set forth below.

This order was adopted by the Board at its meeting of November 20, 2012.

A. Effective Date

The amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Kurt Klapkowski, Director, Bureau of Oil and Gas Planning and Program Management, Rachel Carson State Office Building, 15th floor, 400 Market Street, P.O. Box 8765, Harrisburg, PA 17105-8765, 717-772-2199; or Douglas Brennan, Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P.O. Box 8461, Harrisburg, PA 17105-8461, 717-787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

This final-form rulemaking is available on the Department of Environmental Protection's (Department) Web site: www.depweb.state.pa.us.

C. Statutory Authority

This final-form rulemaking is being made under the authority of the Act of February 2, 2012, No. 9, P.L. 67 (Act 9) (35 Pa.C.S. § 7321), which requires the Department and the Pennsylvania Emergency Management Agency (PEMA) to adopt emergency regulations directing the operators of all unconventional wells within this Commonwealth to take certain actions for emergency response. The rulemaking is also adopted under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. Background of the Regulation

Governor Tom Corbett has called the Marcellus Shale natural gas play an “economic cornerstone” of the Commonwealth’s recovery from the recession, which has impacted the nation over the past four years. The development of vast natural gas resources trapped beneath more than half of Pennsylvania has created tens of thousands of new jobs, generated billions of dollars in tax and lease revenues for the Commonwealth and its citizens, infused billions of additional dollars in bonus lease and royalty payments to landowners, and significantly expanded access to clean, affordable energy sources for residential, commercial and industrial customers.

Along with the economic and energy independence and security potential of the Marcellus Shale natural gas reserve comes a heightened awareness of and concern for the activity’s impact on local communities within the shale development regions. While the Commonwealth has an extensive history of oil and natural gas development, particularly in its western region, natural gas development is relatively new to regions such as the Northern Tier and northeastern Pennsylvania. Additionally, the size, scale and accelerated pace of development of the Marcellus Shale natural gas reserve is a new phenomenon for Pennsylvania.

In 2011, Governor Corbett issued Executive Order 2011-01 to establish the Marcellus Shale Advisory Commission. The Governor charged it to identify, prioritize and craft recommendations regarding the safe, efficient and environmentally responsible extraction and use of unconventional natural gas reserves in Pennsylvania.

As outlined in Executive Order 2011-01, the Commission undertook a broad review of a multitude of issues related to Marcellus Shale natural gas development. As part of this, the Commission formed a Local Impact & Emergency Response Work Group. This workgroup closely examined emergency response issues, which included meeting with various experts and local government officials.

In the final Commission report to the Governor, the Commission noted that

... municipalities have a legal responsibility for planning for and responding to all types of emergencies. Drilling activity leads to the

potential for many types of incidents for which response may be necessary including: fires, well blowouts, chemical and fuel spills, and traffic accidents attributed to an overall increase in vehicular traffic. Emergencies at drilling locations have occurred and until emergency specialists retained by drilling companies arrive on site, volunteer fire companies and other local first responders must secure a site and take appropriate action... Responding to natural gas incidents requires additional emergency management planning at the local, county, and regional levels and appropriate equipment and training, particularly with respect to natural gas well operations.

The Commission made two recommendations that relate to this regulation:

9.3.1: Oil and gas well pads and related facilities should be assigned a 9-1-1 address for emergency response purposes, and oil and gas operators should be required to provide GPS coordinates for access roads and well pad sites, and post this information, along with appropriate emergency response contact information, in a conspicuous manner at the well pad site.

9.3.2: In coordination with PEMA and [the Department], emergency plans for responding to incidents on well development sites should be standardized across the Commonwealth to ensure an acceptable level of expectation for safety and response coordination. The emergency plan should be distributed to the county emergency management coordinator.

On February 2, 2012, Governor Corbett signed into law Act 9, which adopted these recommendations from the Commission. The law provides that the Department and PEMA “shall adopt emergency regulations directing the operators of all unconventional wells within this Commonwealth” to register street and GPS addresses, to post signs, and to develop and implement emergency response plans. The Department and PEMA have worked closely in developing this regulation.

The Department presented these final-omit regulations to its Oil and Gas Technical Advisory Board (TAB) at meetings on August 15 and September 17, 2012, and changes were made to these final-omit regulations to reflect concerns raised by TAB.

E. Summary of Final Rulemaking

This regulation adds two definitions to Section 78.1, and adds five paragraphs to Section 78.55, in a new subsection 78.55(e). The Department is currently developing other changes to Chapter 78 to address a variety of topics, including ones needed to implement the 2012 Oil and Gas Act (58 Pa. C.S.A. §§ 3201-3274). As part of that effort, the Department expects that this new subsection will be integrated into a more comprehensive Section 78.55 in the future.

The new definitions in Section 78.1 are for “unconventional formation” and “unconventional well.” Those two definitions are taken verbatim from section 3203 of the 2012 Oil and Gas Act (58 Pa.C.S. § 3203).

New Section 78.55(b)(2) contains definitions of terms used in Act 9, and others that are needed to clarify the requirements of the regulation. These definitions only apply to the new provisions in Section 78.55(b) contained in this regulation. The definitions include several terms to ensure clarity of the requirements for signs (access road, entrance, private road, public road, reflective).

New Section 78.55(b)(3) requires registration of street addresses, and GPS coordinate addresses, needed to assist emergency responders in locating well sites. Section 78.55(b)(3) provides details on how those requirements apply in different scenarios.

New Section 78.55(b)(4) contains signage requirements for the same purpose. The standards are largely borrowed from PennDOT regulations. An example sign is provided in Figure 1.

New Section 78.55(b)(5) contains requirements for emergency response planning. Emergency response planning is a central part of ensuring that the impacts of emergencies are minimized. The plans must utilize the concepts of the National Incident Management System (NIMS) to the maximum extent practicable, and the key elements are described in Section 78.55(b)(5). The plan must contain a description of the procedure used to provide current information to emergency responders in the event of an emergency, including current Material Safety Data Sheets for materials located at the well site.

Emergency response plans may consist of a base plan common to all of an operator’s well sites, along with site-specific plans for each well site with information relevant to that site. The initial emergency response plan must be submitted to PEMA, the Department, the county emergency management agency and the “Public Safety Answering Point” prior to drilling operations. Annual updates must be submitted after that, although if there are no changes needed to the plan, the operator must only submit a statement to that effect.

Act 9 explicitly applies to both new and existing unconventional wells located within the Commonwealth. In recognition of that fact, Section 78.55(b)(6) contains a transition to allow for existing operations, and others, to meet the new requirements within a reasonable time period after publication of the regulation. The transition allows for delayed effective dates for well sites containing a well that is being drilled or has been drilled, well sites for which a well permit has been issued but no wells have commenced drilling, and well sites for which an administratively complete well permit application is pending.

G. Benefits and Costs

Benefits

The public will benefit from this regulation because it enhances emergency response at unconventional well sites. That has a direct benefit to public health, safety and welfare. This is particularly beneficial to first responders and employees at the well sites, who are the people

most vulnerable to injury when there is an emergency.

Local governments will benefit because this regulation will enhance their ability to manage emergency response. They will have emergency response plans that meet a statewide standard in hand when an emergency occurs, and there will be signs that meet the same standard to direct their response personnel to the well site as quickly as possible.

The regulated community will also benefit because there will be clear and uniform statewide requirements for emergency response planning, and the use of signs and addresses to direct emergency responders to the well site.

Costs

This rulemaking will not impose any additional costs on the Department.

Industry will incur costs in preparing the emergency response plans, and in posting signs. However, responsible operators already do both, so the expense should not be significant. The Department estimates that for existing unconventional well sites the cost to industry to provide the required signage may run between \$250,000 and \$1.1 million, depending on the material used to manufacture the sign (\$150 per sign for fiberboard and \$600 per sign for aluminum).

Compliance Assistance Plan

A compliance assistance plan will be implemented, including regional training sessions by the Department and PEMA on the new requirements. The training will be targeted to Department and PEMA staff, local governments, first responders and unconventional well operators.

Paperwork requirements

This regulation will require operators to prepare written emergency response plans. They will also need to submit annual updates, although for the vast majority of well sites this will simply involve notification that the plans are still current.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 745.5a(f) of the Regulatory Review Act, 71 P. S. § 745.5a(c), on _____, the Department submitted a copy of this final rulemaking with notice of proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). On the same date, the Department also submitted this rulemaking to the Office of Attorney General for

review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506). In addition to the final rulemaking, IRRC and the Committees were provided with a copy of a detailed regulatory analysis form prepared by the Department.

J. Findings of the Board

The Board finds that:

(1) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§1201 and 1202) is, under the circumstances, contrary to the public interest.

(2) Use of the notice of proposed rulemaking procedures is contrary to the public interest because the subject of the regulation, emergency response, has a direct and immediate impact on human health and safety at unconventional well sites.

(3) Use of the emergency-certified rulemaking procedure provided in section 645.6(d) of the Regulatory Review Act, the act of June 30, 1989, P.L. 73, No. 89, 71 P.S. § 745.6(d) is appropriate because it is required to protect the public health, safety and welfare.

(4) Use of the emergency-certified rulemaking procedure required to protect the public health, safety and welfare based on the Governor's Certification of Need for Emergency Regulation dated ___ and attached hereto. This is also indicated by the underlying statute, in which the General Assembly directed the Department and PEMA to issue an emergency regulation containing the explicit provisions in the regulation.

(3) The regulation is necessary and appropriate for administration of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order of the Board

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pa. Code* Chapter 78 are amended by revising sections 78.1 and 78.55, as shown in Annex A.

(b) The Chairperson shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit

them with the Legislative Reference Bureau, as required by law.

- (e) This order shall take effect immediately.

BY:

Michael L. Krancer
Chairperson
Environmental Quality Board