



The PIOGA *press*

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Governor Wolf signs Act 52 of 2016, erasing Chapter 78 revisions

On June 23, Governor Tom Wolf signed Act 52 of 2016, the Pennsylvania Grade Crude Development Act, formally Senate Bill 279. Act 52 abrogates the Environmental Quality Board's (EQB) revisions to the Chapter 78 regulations concerning conventional oil and natural gas wells and creates the Pennsylvania Grade Crude Development Advisory Council.

In February, the EQB approved the Chapter 78 (conventional wells) and Chapter 78a (unconventional wells) Subchapter C revisions by a vote of 15-4. The Chapter 78 revisions would have altered or created new obligations for permit applications and renewals, water supply replacement, predrilling surveys and reviews, erosion and sediment control, emergency response plans, wastewater management, disposal of drill cuttings, site restorations, spills and releases, and production reporting. The revisions also included 31 different requirements for electronic applications, notifications and submittals.

Act 52 applies only to the conventional regulations. The Chapter 78a unconventional regulations are currently undergoing review at the Pennsylvania Office of Attorney General and are expected to be published in late summer.

In addition to abrogating the pending revisions to Chapter 78, Act 52 specifies that any future rulemaking concerning conventional wells must be undertaken separately and independently of unconventional wells and other subjects. Future rulemakings concerning conventional wells must include a regulatory analysis form submitted to the Independent Regulatory Review Commission (IRRC) that is restricted to the subject of conventional wells.

Act 52 addresses the primary criticism of PIOGA and other trade associations and the Department of Environmental Protection's Conventional Oil and Gas Advisory Committee (COGAC) regarding EQB's Chapter 78 revisions. Specifically, Act 126 of 2014 required EQB to promulgate proposed regulations relating to conventional wells separately from proposed regulations relating to unconventional wells, which should have removed pending revisions applicable to conventional operations proposed in 2013. Any regulatory revisions for conventional operations following Act 126 were required to be restarted with a new proposed rule and regulatory analysis explaining and justifying the need for the revisions.

In an October 29, 2015 resolution, COGAC stated that DEP did not adequately separate and distinguish between the two sets

of proposed regulations. As noted by COGAC, merely separating the rule into two chapters (78 and 78a) was inadequate to cure several Regulatory Review Act (RRA) deficiencies, including the department's failure to provide data, documents or evidence that describe the need for changes to the regulations; data on the cost of the proposed regulations to the conventional industry; and a regulatory flexibility analysis that considers methods of reducing the impact of the revisions on small businesses. During the IRRC review process, two of the five commissioners agreed that the department did not provide enough information on the cost of the regulations, meet its burden to show that the revisions as applied to conventional operations are necessary or conduct the required flexibility analysis for small businesses.

Act 52 responds to these and other concerns by requiring that the department submit information required by the RRA—including information related to the need for the regulations, the cost of the regulations and the effect of the regulations on small businesses—in a format solely dedicated to conventional wells, if and when the department determines that any revisions to the existing rules are necessary.

Act 52 also creates the Pennsylvania Grade Crude Development Advisory Council. The Council will consist of 17 members, including two members apiece appointed by Governor Wolf from PIOGA, the Pennsylvania Independent Petroleum Producers and the Pennsylvania Grade Crude Oil Coalition.

The council will assist the department in: (1) examining and making recommendations regarding existing technical regulations promulgated under the Oil and Gas Act; (2) exploring the development of a regulatory scheme that provides for environmental oversight and enforcement specifically applicable to the conventional oil and gas industry; (3) providing written comments on new DEP policy that will impact the conventional oil and gas industry; and (4) reviewing and commenting on the formulation and drafting of all technical regulations proposed under the Oil and Gas Act.

Beyond regulatory review and recommendations, the new council is charged with promoting the long-term viability of the conventional industry, providing institutional support for the conventional industry by ensuring effective cooperation and

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communication among governmental agencies and the academic and research community, and recommending appropriate measures relating to the promotion and development of the conventional industry. The council will also develop a plan to increase Pennsylvania Grade crude oil production in an environmentally responsible way and form a joint working group with the department to explore and develop an environmentally responsible and economically viable production water management option.

DEP is in the process of developing Chapter 78 Subchapter D revisions, which will address well drilling, casing, cementing, completion, operation, production, plugging and other subsurface activities. Act 52 mandates that any proposed Subchapter D revisions applicable to conventional wells be undertaken separately and independently from those regulations the department proposes for the unconventional industry. DEP has stated it anticipates proposing revisions to Subchapter D in the fourth quarter of 2016.

Both the unconventional and conventional industries should be prepared for further legislative and regulatory developments throughout 2016. ■

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