

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



PADEP's Chapter 78a Rulemaking Goes into Effect for Unconventional Operations in Pennsylvania

On Saturday October 8, 2016, the Pennsylvania Department of Environmental Protection's new Chapter 78a regulations associated with unconventional wells went into effect when they were published in the *Pennsylvania Bulletin*. For unconventional well operators, there are substantial changes from prior law affecting operations over the entire life of the well, from permitting to site construction, waste handling, impoundments, pipelines, site restoration and spill remediation.

Critical New Provisions in Chapter 78a

One major revision to the rules arises in sections 78a.15(f) and (g), which set out the pre-application requirements for a well permit at a location that "may impact a public resource." This provision requires operators who propose to drill a well in such locations to notify the public resource agency, which now by definition includes schools, municipalities, and owners of playgrounds or water supplies, and provide additional information to DEP. The regulation applies if the limit of disturbance of the well site is located in any of eight specified areas, including "in a location that will impact other critical communities" and "within 200 feet of . . . a playground." The public resource agency must be notified at least 30 days prior to the submission of the well permit application to DEP to allow the agency to provide written comments to DEP and the applicant. The applicant may provide a response to the comments. DEP will then consider various factors, including the comments submitted by both the public resource agency and the applicant, before setting conditions for the well permit based on impacts to public resources.

Pipeline operators are for the first time within the scope of oil and gas regulations promulgated under Act 13. Under section 78a.68a, pipeline operators conducting horizontal directional drilling (HDD) beneath a body of water or a watercourse are subject to notification requirements. The rule requires such operators to notify PADEP at least 24 hours prior to beginning HDD beneath a body of water or watercourse and, in the case of a water supply complaint, to report the complaint to PADEP within 24 hours of receipt.

New obligations for operators have been created in the Area of Review provision in section 78a.52a, which requires operators to submit a report identifying the surface and bottom hole locations of active, inactive, orphan, abandoned and plugged and abandoned wells within 1,000 feet of both the vertical and horizontal wellbores. Operators must create a monitoring plan and provide notice, now required in section 78a.73, to owners and operators of nearby wells that may penetrate the same formation being stimulated in the new well. Operators must cease operations if communication occurs and may not resume operations without PADEP authorization.

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PADEP has altered the water replacement/restoration standard in section 78a.51(d)(2) to require replacement water supplies to meet or exceed Safe Drinking Water Act (SDWA) standards, where the prior regulation required replacement water supplies to meet SDWA standards or be comparable to the water quality prior to impact if those supplies did not meet that standard. In effect, the SDWA standard is now the floor, rather than the ceiling, for the water quality standard of replacement water supplies.

Revised section 78a.58 allows operators to process fluids (including mine influenced water) and drill cuttings on the well site with PADEP approval, using the existing OG-71 approval process, but the forms have been revised. In addition, operators may mix fluids with freshwater, aerate fluids, and filter solids from fluids without PADEP approval, provided that the activities are conducted within secondary containment. The onsite processing of any residual waste other than these fluids and drill cuttings now requires a permit under the Solid Waste Management Act. For any onsite processing activities, the operator must develop an action plan for monitoring and responding to radioactive materials.

The new rules overhaul the requirements for reporting and remediating spills. Section 78a.66 requires immediate reporting of spills that cause or threaten to pollute waters of the Commonwealth and requires reports within two hours for any release of five gallons or more over a 24-hour period that is not completely contained on secondary containment. Remediation procedures for spills of at least 42 gallons (or spills that threaten to pollute waters of the Commonwealth) require attainment of Act 2 standards, with new reporting and time limits developed specifically for the unconventional oil and gas industry.

Finally, the use of pits for temporary storage on unconventional well sites is entirely prohibited under section 78a.56, and three new provisions establish rules for off-site impoundments. Section 78a.59a sets requirements for impoundment embankments. Section 78a.59b requires the registration of new and existing well development impoundments (freshwater impoundments), and sets standards for the location and construction of these impoundments. The bottom of well development impoundments must be at least 20 inches above the seasonal high groundwater table, as certified by a soil scientist or similarly trained person. Section 78a.59c requires the closure of all centralized impoundments within three years, unless a permit is obtained under the Solid Waste Management Act. Closure plans must be submitted within six months of publication of the rule.

Forms and Technical Guidance Documents

To implement Chapter 78a, PADEP has prepared or updated more than 20 forms for unconventional operations. Many provisions of the new rules allow the agency to request information in addition to what is specified in the regulations, making the forms themselves a critical part of rule implementation. The new forms include a monthly tank maintenance checklist, well site restoration reporting forms, requests for approval of alternative waste management practices and well site restoration extensions, and a variety of forms related to the Area of Review requirements in section 78a.52a. All new forms are available on PADEP's [eLibrary](#).

PADEP also [announced](#) the availability of two interim final technical guidance documents (TGDs) on October 8. Both documents are available on eLibrary under "Technical Guidance Draft Documents." One TGD describes implementation of the Area of Review provision, and the second sets out PADEP's new policy on replacing and restoring private water supplies. PADEP is accepting public comments on the interim final TGDs until December 7, 2016.

Training Resources

In August and September 2016, PADEP presented training webinars on topics associated with the final Chapter 78a rulemaking for operators, contractors, and any other interested parties. Training topics included pipelines and horizontal directional drilling, waste management, emergency response, secondary containment, spills and releases, well permits and reporting, water management plans, area of review, erosion control and site restoration. Audio recordings of the webinars, along with PADEP's slideshows, are available on the PADEP's website.

Almost all unconventional operator submissions, including notifications, requests, well permits and reports, are now required to be electronic. PADEP announced updates to its Greenport system to accept these submissions, and held webinars about the new eWell, PADEP Notifications and eSubmission applications. The recorded webinars are expected to be available on PADEP's website soon.

This summary is not an exhaustive list of changes in Chapter 78a, and there are many open questions about how PADEP will implement and enforce these changes. And on the horizon in the coming months, there is an additional rulemaking related to Subchapter D standards for well construction, operations and plugging. Stay tuned.

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