

PA Environment Digest

An Update On Environmental Issues In PA

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Advisory Board Says DEP Chapter 78 Drilling Rule Changes Not Ready For Public Review

On July 18 the [Oil and Gas Technical Advisory Board](#) wrote to the Department of Environmental Protection recommending DEP not publish the proposed [Chapter 78 Marcellus Shale regulation](#) changes required [by Act 13](#) for public comment because they are not fully developed.

DEP said the regulation changes will be going to the Environmental Quality Board on August 20 for its approval as proposed rulemaking for public review.

[The letter said](#) the proposed rule is not ready for publication for five reasons--

- It does not meet the requirements of [Executive Order 1996-1](#) or the Department's [Policy for Development, Approval and Distribution of Regulations](#) because the agency did not review the regulations to determine if the cost of the regulation outweigh the benefits, if non-regulatory alternatives were explored and preferred over regulation, if the regulations address a "compelling public interest" and "definable public health, safety or environmental risks," and if the regulation will hamper Pennsylvania's ability to compete effectively with other states.
- Significant portions of the rule were removed from discussion at TAB's April 2013 meeting because they require further development in [technical workgroups](#), a process that has just begun. The subjects removed include: public resource protection, pre-hydraulic fracturing assessment (orphaned and abandoned wells), waste management at well sites and water supply restoration standards.
- Certain provisions of the proposed rule exceed statutory authority, including provisions related to public resources, site restoration, pipelines and horizontal direction drilling and tanks and containers.
- The Department has not critically analyzed or accommodated the anticipated impacts of the proposed rule on small businesses, which is required by the [Regulatory Review Act](#) and the [Act 76 of 2012](#).
- The rule fails to proposed criteria, which the Environmental Quality Board is specifically directed to do by Act 13, for the Department to use to impose permit conditions to mitigate probably harmful

impacts to public resources while ensuring optimal development of oil and gas resources and respecting the property rights of oil and gas owners.

“To allow for full and robust public comment period, all of these concerns should be addressed before the proposed rule is published for comment.

“(The) Environmental Quality Board should remand the proposed rule to the Department and delay publishing any rule until the regulatory package is more fully developed and suitable for public comment.

“Indeed, the rule’s failure to propose any criteria with respect to public resource permit conditions renders the package incomplete and requires its return to the Department.”

The members of the Advisory Board signing the letter included: Gary Slagel (CONSOL Energy); Robert Watson, PhD (Penn State University); Samuel Fragale (Chief Oil & Gas); Burt Waite (Moody & Associates); and Arthur Yingling (Ark Resources, Inc.).

A copy of the letter [is available online](#).