

PA Environment Digest

An Update On Environmental Issues In PA

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Future Of New Drilling Regs In Doubt, Oil & Gas Advisory Board Meets Aug. 14-15

On August 14-15 the [Oil and Gas Technical Advisory Board](#) Workgroups will meet in State College and the first item on [the agenda](#) will be a discussion of the future of proposed Chapter 78 regulations DEP drafted to implement the enhanced environmental protection measures included in Act 13 Marcellus Shale drilling law passed 18 months ago.

In April, the Advisory Board voted to urge DEP to move the proposed regulations to the Environmental Quality Board and on to public comment. However, in a surprise [July 18 letter](#), the drilling industry-dominated Board suddenly said the regulations were deficient and not ready to go to the Board for public review.

DEP announced plans to take the proposed Chapter 78 regulations to the Environmental Quality Board at its August 27 meeting, however, no formal agenda for the meeting has been posted on DEP's website as of August 9.

The Technical Advisory Board said the regulations were not ready for public review 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.).

In early July, DEP announced the Advisory Board was convening subcommittees to discuss four major issues to be included in Chapter 78: public resource protection, pre-hydraulic fracturing assessment, waste management at well sites and water supply restoration standards.

In addition to Advisory Board members, DEP invited groups like the PA Environmental Council, the Western PA Conservancy and the PA Chapter of The Nature Conservancy to participate.

[Three rounds of public](#) subcommittee meetings were announced in July, August and September to conduct their work.

Given the Technical Advisory Board July 18 letter, the future of the regulatory process involving Chapter 78 is now in flux.

The August 14-15 Advisory Board meeting will be held in State College at the Nittany Room, Ramada Inn where this issue is expected to be raised by the environmental groups. The August 14 meeting is from 10 a.m. to 4:30 p.m. and on August 15 from 8:30 a.m. to 3 p.m.

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