

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

[ 25 PA. CODE CHS. 78 AND 78a ]

#### Environmental Protection Performance Standards at Oil and Gas Well Sites; Advance Notice of Final Rulemaking

The Department of Environmental Protection (Department) is soliciting comments on changes it is recommending to the Environmental Protection Performance Standards at Oil and Gas Well Sites proposed rulemaking published at 43 Pa.B. 7377 (December 14, 2013).

The primary goal of this rulemaking is to ensure that oil and gas operators employ effective measures that prevent pollution, while allowing flexibility for the optimal development of this natural resource. These rules focus on performance over process and a commitment to responsible environmental protection for oil and gas extraction activities in this Commonwealth. The amendments are designed to strengthen the environmental controls employed by this industry to ensure the protection of public health and safety and the environment.

Historically, this Commonwealth has been a large conventional oil and natural gas producer. However, advances over the last decade in drilling and completion technologies have attracted interest in producing gas from unconventional shale formations (for example, the Marcellus and Utica shales).

Compared to conventional oil and gas development, unconventional well development involves larger well sites and centralized storage facilities, mobile wastewater processing, large volumes of water for hydraulic fracturing activities and new pipeline systems. These recommended changes to the Department's proposed rulemaking should keep the Commonwealth at the forefront of this industry's advances in technology on both the conventional and unconventional sides of the industry. This industry is a major economic generator within this Commonwealth and these regulations will ensure that the oil and gas operators who choose to develop the resources in this Commonwealth are held to the highest environmental standards.

Finally, the act of February 14, 2012 (P. L. 87, No. 13) significantly revised the Commonwealth's oil and gas laws and directed the Department to promulgate regulations to implement its environmental enhancements.

#### A. Summary of the Advance Notice of Final Rulemaking Changes

The proposed rulemaking was the subject of a 90-day public comment period and 9 public hearings, with just over 24,500 comments received during that process. Since that time, the Department has been considering each comment. The draft final language represents the Department's revisions based on the review of those comments.

During the pendency of this rulemaking process, the General Assembly also passed two acts directly relating to the subject matter of the proposed rulemaking. As a result of the passage of the act of July 10, 2014 (P. L. 1053, No. 126), all regulations promulgated under 58

Pa.C.S. (relating to oil and gas) were required to differentiate between conventional oil and gas wells and unconventional gas wells. The Department determined that the current rulemaking process would continue, but that the regulations would be completely bifurcated (separated into two distinct chapters) on final-form rulemaking. The act of October 22, 2014 (P. L. 2853, No. 173) requires monthly reporting of production by unconventional well operators to the Department.

The draft final rulemaking contains significant changes in several areas. These changes include the following:

#### §§ 78.1 and 78a.1. Definitions

Several definitions are added to this section. Of particular note, a new definition for "other critical communities" has been added to address concerns related to consideration of public resources in permitting.

#### §§ 78.15 and 78a.15. Application requirements

Subsection (b)(1) requires a demonstration of protection of wetlands and streams where the edge of the pad is within 100 feet of streams and wetlands.

Under subsection (f), the Department will consider impacts to public resources as part of the permitting process. Additional areas to consider include public drinking water wellhead protection areas, playgrounds and schools considered public resources for which the Department may impose permit conditions. The draft final rulemaking extends the review time frame for jurisdiction agencies (such as the Fish and Boat Commission, the Department of Conservation and Natural Resources, the Game Commission and the Pennsylvania Historic and Museum Commission) from 15 days to 30 days.

#### §§ 78.17 and 78a.17. Permit expiration and renewal

The draft final rulemaking extends the well permit renewal term to 2 years from the current 1 year and clarifies that permits expire unless drilling is completed within 16 months of permit issuance.

#### § 78a.41. Noise mitigation

This new section of the draft final rulemaking establishes health-based standards for noise control and mitigation from unconventional operations.

#### §§ 78.51 and 78a.51. Protection of water supplies

The draft final rulemaking explicitly requires operators to restore drinking water supplies impacted by drilling to the better of either Safe Drinking Water Act standards or predrill quality.

#### §§ 78.52a and 78a.52a. Area of review

These sections extend the prehydraulic fracturing assessment (including refracking) to include active and inactive wells in addition to the proposed abandoned and orphaned wells. Operators must submit all well locational data and a monitoring plan as part of the report.

#### §§ 78.56 and 78a.56. Temporary storage

Section 78a.56 eliminates the use of pits to temporarily store waste at unconventional well sites.

Both sections of the draft final rulemaking eliminate the requirement to remove underground storage tanks. New buried tanks must meet design and inspection criteria.

Section 78.56 removes the requirement for conventional operators to install locks on their tanks.

*§§ 78.57 and 78a.57. Control, storage and disposal of production fluids*

These sections eliminate the use of pits to store production fluids at wells sites and require existing pits to be properly closed.

Both sections of the draft final rulemaking eliminate the requirement to remove underground storage tanks. New buried tanks must meet design and inspection criteria.

Section 78.57 removes the requirement for conventional operators to install locks on their tanks. Both sections add a requirement for a basic monthly maintenance inspection.

*§§ 78.57a and 78a.57a. Centralized tank storage*

These new sections in the draft final rulemaking add a centralized tank storage option for unconventional operators, primarily based on residual waste tank storage requirements.

*§§ 78.59c and 78a.59c. Centralized impoundments*

These sections require operators using centralized wastewater storage impoundments to obtain a residual waste impoundment permit.

For existing centralized wastewater storage impoundments, these sections require a closure plan to be submitted to the Department within 6 months of the effective date of the final-form rulemaking. Any existing centralized wastewater storage impoundments must be properly closed within 3 years of the effective date of the final-form rulemaking or the operator must obtain a residual waste impoundment permit under the residual waste regulations.

*§§ 78.61—78.63 and 78a.61—78a.63. Disposal of drill cuttings and residual waste onsite (pits and land application)*

The draft final rulemaking adds a requirement for operators to give landowners notice of disposal within 10 days (conventional only).

Sections 78a.61—78a.63 require Department approval to dispose of waste and cuttings from below the casing seat and waste at unconventional well sites.

*§§ 78.66 and 78a.66. Reporting and remediating spills and releases*

The draft final rulemaking requires landowner notification and sampling of water supplies with the potential to be impacted by a spill or release. In addition, the draft final rulemaking removes the alternative cleanup process; all remediation will be required to be conducted pursuant to the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

*§ 78.68. Oil and gas gathering lines*

The draft final rulemaking removes the requirements for regulation of gathering lines of conventional operators.

*§ 78a.121. Production reporting*

This section amends requirements to address new legislation requiring monthly resource production reporting. In addition, this section also requires unconventional operators to report the amount and type of waste produced and the method of disposal or reuse on a monthly basis.

*B. Contact Persons*

For further information or to request a copy of the draft final rulemaking, contact Kurt Klappkowski, 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 Elizabeth Nolan, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. The draft final rulemaking is available electronically through the Department's web site at [www.dep.state.pa.us](http://www.dep.state.pa.us) (Select "Oil and Gas Rulemaking" button).

*C. Public Comments*

While there is no legal requirement to provide an opportunity to comment upon the Department's recommendations for final rulemaking, the Department believes comments on the draft final rulemaking would serve the public interest in this instance. The Department requests that commentators focus their comments on language that is changed from the proposed rulemaking and that comments be submitted separately for each chapter to aid in comment review and response. The Department particularly seeks comments on the issues of the definition of "other critical communities" (§§ 78.1 and 78a.1), noise mitigation (§ 78a.41) and centralized tank storage (§§ 78.57a and 78a.57a).

Written or electronic comments will be accepted. Electronic comments may be submitted through the Department's Online Regulatory Comment System at [www.ahs.dep.pa.gov/RegComments](http://www.ahs.dep.pa.gov/RegComments) or by e-mail to [RegComments@pa.gov](mailto:RegComments@pa.gov).

Written comments should be sent to the Department of Environmental Protection, Policy Office, 400 Market Street, P. O. Box 2063, Harrisburg, PA 17105-2063. Comments must be received by May 4, 2015. A subject heading of the rulemaking and a return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voice mail.

JOHN QUIGLEY,  
*Acting Secretary*

[Pa.B. Doc. No. 15-597. Filed for public inspection April 3, 2015, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 63, 97 AND 103 ]

#### Fishing; Boating

The Fish and Boat Commission (Commission) amends Chapters 63, 97 and 103 (relating to general fishing regulations; operator provided equipment; and rules of the road). The Commission is publishing this final-omitted rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code) and other authorities described as follows.

*A. Effective Date*

This final-omitted rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

*B. Contact Person*

For further information on the final-omitted rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000,

Harrisburg, PA 17106-7000, (717) 705-7810. This final-omitted rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

C. *Statutory Authority*

These amendments are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). These amendments also are published in accordance with section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property or if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

D. *Purpose and Background*

Under § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or the *Pennsylvania Bulletin*.

On January 1, 2015, amended regulations pertaining to the possession, sale, introduction, importation and transportation of native and nonnative crayfish species went into effect. One of the amended regulations, § 63.46 (relating to sale, purchase or barter of injurious species), was intended to prohibit the sale, purchase and barter of both native and nonnative species. The final-omitted rulemaking reflects that intent. However, the heading of this section was not amended to delete the reference to nonnative species. The purpose of this final-omitted rulemaking is to correct the section heading.

In 2010, the Inland Navigation Rules Act of 1980 (act) was rescinded and the rules were moved to 33 CFR Part 83 (relating to rules). Another purpose of this final-omitted rulemaking is to correct references to the act in the Commission's regulations.

E. *Summary of Changes*

The Commission amends § 63.46 to delete "nonnative" from the section heading. In addition, the Commission amends §§ 97.3 and 103.1 (relating to sound producing devices; and general) to delete references to the act and correctly cite 33 CFR Part 83. The Commission amends §§ 63.46, 97.3 and 103.1 to read as set forth in Annex A.

F. *Paperwork*

This final-omitted rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This final-omitted rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-omitted rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Under section 204(3) of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the

CDL if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

*Findings*

The Commission finds that:

(1) Errors were discovered in the text of §§ 63.46, 97.3 and 103.1 as published in the *Pennsylvania Code*.

(2) Under § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 63, 97 and 103, are amended by amending §§ 63.46, 97.3 and 103.1 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-262. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 63. GENERAL FISHING REGULATIONS**

**§ 63.46. Sale, purchase or barter of injurious species.**

It is unlawful for a person to sell, purchase, offer for sale or barter the following live species in this Commonwealth:

- (1) Snakehead (all species).
- (2) Black carp (*Mylopharyngodon piceus*).
- (3) Bighead carp (*Hypophthalmichthys nobilis*).
- (4) Silver carp (*Hypophthalmichthys molitrix*).
- (5) Zebra mussel (*Dreissena polymorpha*).
- (6) Quagga mussel (*Dreissena bugensis*).
- (7) Round goby (*Neogobius melanostomus*).

- (8) Tubenose goby (*Proterorhinus marmoratus*).
- (9) European rudd (*Scardinius erythrophthalmus*).
- (10) Crayfish (all species) except when:
  - (i) They are sold, purchased, offered for sale or bartered for testing and scientific purposes or restaurant consumption.
  - (ii) Adequate measures have been taken to prevent their escape.
  - (iii) They are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.
- (11) Ruffe (*Gymnocephalus cernuus*).

#### **Subpart C. BOATING**

#### **CHAPTER 97. OPERATOR PROVIDED EQUIPMENT**

##### **§ 97.3. Sound producing devices.**

- (a) *Motorboats 12 meters or more in length.* A motorboat 12 meters (39.4 feet) or more in length shall carry sound producing devices as prescribed by 33 CFR Part 83 (relating to rules).
- (b) *Motorboats less than 12 meters.* A motorboat less than 12 meters (39.4 feet) in length shall carry some mechanical means of making a sound signal. This device may be hand, mouth or power operated. An athletic coach's whistle is an acceptable sound producing device for small motorboats.

(c) *Unpowered boats.* Unpowered boat operators are required to carry a device capable of sounding a prolonged blast for 4-6 seconds that can be heard by another boat operator in time to avoid a collision. An athletic coach's whistle is an acceptable sound producing device for unpowered boats. It is unlawful to use a sound producing device on the water under any circumstance except in the following situations:

- (1) Assistance is needed because of immediate or potential danger to the persons onboard.
- (2) It is necessary to attract the attention of another boat.
- (d) *Device accessibility.* Sound signaling devices shall be readily accessible to the operator of the boat.

#### **CHAPTER 103. RULES OF THE ROAD**

##### **§ 103.1. General.**

- (a) Every boater is responsible for avoiding a boating accident. This subpart is to give predictability to meeting, crossing and overtaking situations, but does not replace accurate analysis of the situation and taking necessary action to avoid collision, even if it means diverging from this subpart.
- (b) Every boat operating on the inland waters of this Commonwealth, which includes Lake Erie, shall comply with 33 CFR 83.02 (relating to responsibility (Rule 2)).

[Pa.B. Doc. No. 15-598. Filed for public inspection April 3, 2015, 9:00 a.m.]