

# Oil- and Gas-Drilling Regulatory Changes

By *Lindsay A. Berkstresser, Esq.*

The Pennsylvania Department of Environmental Protection (DEP) proposed several significant amendments to the regulations at 25 Pa. Code Chapter 78 governing oil and gas extraction. The final-form rulemaking contains separate standards for conventional well development (Chapter 78) and unconventional well development (Chapter 78a). The regulations will impact nearly all aspects of oil and gas well development in Pennsylvania. Key components of oil and gas production addressed in the regulations are drilling and extraction permits; treatment of production waste; well drilling, operation and plugging; site restoration; and reporting requirements.

After an extensive review process, the Chapter 78a amendments became effective on Oct. 8, 2016 following publication in the *Pennsylvania Bulletin*. Unconventional well operators are now subject to the new rules. However, the proposed regulations for the conventional industry have not been adopted and are subject to further legislative and regulatory changes. Major legal and technical developments affecting the oil and gas industry have occurred since the regulations were last updated in 2001. The 2012 Oil and Gas Act (Act 13) established new environmental protection standards that will be implemented through the Chapter 78a regulations. Enhanced drilling techniques targeting the Marcellus Shale formation have enabled the expansion of natural-gas development which, according to DEP, has created a need for reinvigorated performance standards. DEP promulgated the proposed amendments in response to these advancements.

## Permitting and Pre-drilling Requirements

The amendments contain new rules for obtaining drilling and extraction permits applicable to both conventional and unconventional wells. All permit applications must be submitted electronically through DEP's website. Applicants must demonstrate that the proposed well-site location will protect nearby bodies of water, watercourses and wetlands. Well-permit applicants also must address potential impacts of the well site to threatened or endangered species. When considering the well-permit application, DEP will examine the impact of the proposed well on public resources, such as schools and playgrounds, and applicants must specify if the proposed well site or access road may impact such public resources. DEP

may impose conditions on well permits necessary to prevent probable harmful impacts to public resources. Prior to commencing production activities, well operators must evaluate the potential for hydraulic fracturing activities to impact abandoned, inactive and operating wells and monitor at-risk wells.

## Well-Site Operations

The regulatory changes affect both conventional and unconventional well-site operations. Secondary containment around oil- and condensate-storage tanks will be required at unconventional sites. At conventional sites, secondary containment would be required at new, replaced or refurbished brine tanks or tanks with more than a 1,320-gallon capacity for storing oil. Borrow pits used in support of conventional and unconventional oil and gas development must be operated in accordance with environmental-protection standards. The regulations also establish new rules related to environmental protection for gathering-line construction and horizontal directional drilling beneath streams. These rules are only applicable to unconventional operations.

## Fluids Storage and Disposal

The regulations treat conventional and unconventional wells differently with respect to the storage and disposal of fluids used for production. While the unconventional industry will be prohibited from utilizing pits to store drill cuttings and waste fluids at the well site, the conventional industry would be permitted to continue this practice for pits that are less than 3,000 square feet and store less than 125,000 gallons of fluid. Larger pits may be permitted with prior DEP approval. The conventional industry would be permitted to dispose of drill cuttings at the well site; unconventional operators must obtain an individual permit to do so. The proposed regulations would allow beneficial uses of brine, such as for dust suppression and de-icing purposes, in the conventional industry. Unconventional operators will not be permitted to use waste fluid for these purposes.

## Tank Maintenance

The new rules establish stiffer requirements for tank maintenance in the unconventional industry. Unconventional

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operators will be required to undertake measures to prevent vandalism to tanks, such as installing valve locks, open-end caps, retractable ladders or other protective devices. No such requirement is proposed for the conventional industry. Unconventional well operators will be required to perform routine-maintenance tank inspections once a month; conventional well operators must inspect once a quarter.

### Temporary Pipelines

Chapter 78a contains new standards for the unconventional industry concerning temporary pipelines used to transport freshwater and wastewater for oil and gas operations. Well-development pipelines must be installed above ground and may not be installed through existing stream culverts, storm-drain pipes or under bridges that cross streams without DEP approval. Development pipelines must undergo pressure testing and be equipped with protective mechanisms that prevent the discharge of more than 1,000 barrels of fluid. Operators will be required to obtain DEP approval for well-development pipelines operating for more than a year. Well-development pipelines must be removed when the well site is restored and

operators will be obligated to maintain certain records regarding pipeline location, type of fluids transported, installation date, pressure results and maintenance. These requirements do not apply to the conventional industry.

### Water Supply

The regulations adopt stricter standards for water-supply restoration than were established in Act 13. Operators must restore or replace the water supply with one that meets Safe Drinking Water Act standards or is as good as pre-drilling conditions if the water supply exceeded the Safe Drinking Water Act standards. Also in accordance with Act 13, unconventional operators must develop a DEP-approved water-management plan before water can be withdrawn for hydraulic-fracturing purposes. No such requirement exists for conventional operators.

### Reporting Requirements

The amendments contain new reporting requirements. Conventional operators would be required to report production and waste data on an annual basis; unconventional operators must report monthly. For both industries, any spill containing pollutants that exceeds five gallons and is not completely contained within secondary containment must be reported to DEP.

### Next Steps

Certain obstacles remain before any comprehensive Chapter 78 amendments can take effect. On June 23, 2016, Gov. Tom Wolf signed Act 52 of 2016 (Senate Bill 279), which abrogates the proposed revisions to Chapter 78 and instructs that any future rulemaking for the conventional industry must be undertaken independently of the unconventional industry regulations. DEP now has an opportunity to revisit the regulations for the conventional industry. A new rulemaking could retain the previously proposed mandates. However, much like the development of DEP's originally recommended Chapter 78 amendments, this process could take approximately two years.

*Lindsay A. Berkstresser is an associate with Post & Schell PC, Harrisburg, in the firm's Energy Group.*