



December 7, 2016

Mr. Seth Pelepko

ecomment@pa.gov

Department of Environmental Protection, Policy Office

Rachel Carson State Office Building,

P.O. Box 2063

Harrisburg, PA 17105-2063

Re: *DEP ID: Interim Final Technical Guidance Document 800-0810-001, Guidelines for Implementing Area of Review Regulatory Requirement for Unconventional Wells [46 Pa.B. 6392]*

Dear Mr. Pelepko,

The Marcellus Shale Coalition (MSC) represents approximately 220 natural gas producers, midstream and supply chain members who are committed to the safe and responsible development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the consultants, suppliers and contractors who work with the industry.

The MSC is seeking declaratory relief in the Commonwealth Court of Pennsylvania regarding 25 Pa. Code Sections 78a.52a and 78a.73(c) and (d), relating to the Area of Review (AOR). The MSC maintains that these sections are unlawful, as alleged in our filings. Despite the pending legal challenge to the regulation, the MSC is providing comments on the Technical Guidance Document (TGD) 800-0810-00, because this 60-day public comment period is the only opportunity the MSC and our members will have to seek clarification in the Department's AOR TGD. We submit the following comments on the TGD:

1. Page i, Purpose statement: The Purpose statement should identify clearly any and all statutory and regulatory sections that this TGDS is intended to address. It also should be directed at both DEP staff and the regulated industry.

As such, the first sentence of the Purpose statement should be revised to read "*The purpose of this guidance is to inform Department staff and those engaged in hydraulic fracturing activities how to comply with the requirements of The Clean Streams Law, Section XXXX [citing any relevant Clean Streams Law sections], the 2012 Oil and Gas Act, Section XXXX [citing whatever sections of the Oil & Gas Act DEP believes are relevant], and 25 Pa. Code Chapter 78a, Sections 78a.52a and 78a.73.*" If there are "other applicable laws" the DEP believes are relevant, they also should be listed here, rather than just simply saying "*and other applicable laws*"

2. Page 1, Section I, Paragraph 1: The word “unconventional” should be added to the following sentence. “*Due to the character of the unconventional oil and gas reservoirs in Pennsylvania, hydraulic fracturing is necessary at most wells to produce commercial quantities of hydrocarbons.*”
3. Page 2, Section II: The definition for “*communication incident*” is confusing. The definition of a term should not reference back to the document in which it is defined. As such, the phrase “*that is reportable in accordance with this policy*” should be removed. The MSC recommends the following alternative:

“A transfer of measurable pressure or fluid flow from a well undergoing hydraulic fracturing to an offset well. A reportable communication incident is only an incident with sufficient deviation in pressure that could cause mechanical integrity issues at the offset well. In certain cases, the referenced transfer of pressure or fluid may be evidenced at the well undergoing hydraulic fracturing.”

4. Page 4, Section II: The “*zone of hydraulic fracturing influence*” is defined as “*a function of perforation elevation and is set at +/- 1,500 feet for all unconventional wells.*” The MSC recommends eliminating the term “*defined*” from this definition. In addition, we recommend adding the statement “*for this evaluation*” at the beginning of the second sentence, as shown below. Our concern is that terms that are categorically “*defined*” by one agency may be used in courts as official or generally accepted industry practice when, in fact, each well is unique in the completion design parameters and stress fields which ultimately control the “*influenced*” rock. It should read as follows:

“For this evaluation the zone of hydraulic fracturing influence is the function of perforation elevation and is set at +/- 1,500 feet for all unconventional wells.”

5. Page 4, Section III, Paragraph 1: The MSC recommends the following revisions:

“Sections 78a.52a. and 78a.73 require an operator of unconventional wells to identify wells within a specific area, execute monitoring at a subset of those wells having certain penetration depths, and submit a report and accompanying plat to DEP containing the information required by section 78a.52a(c) 30 days prior to drilling the well or at the time the permit application is submitted if drilling is planned to start less than 30 days after permit issuance. These areas and penetration depths are a function of the well attributes that is the subject of the area of review, i.e., the well that will be stimulated using hydraulic fracturing.”

6. Page 4, Section IV, Paragraph 1: Since the definition of “*offset well*” on page 2 does not provide any distance limitations, the first sentence of this paragraph should be revised as follows: “*Section 78a.52a(b)(1)–(2) provides that operators must identify offset wells within the Area of Review defined in Section 78a.52a(a) by (1).....”*

7. Page 4, Section IV, Paragraph 2: The second paragraph makes it sound as though a “*thorough field survey*” is always required when it is not required and may not be necessary. The MSC recommends the following revision to the second sentence.

“In some cases, a thorough field survey may be a better way to identify offset wells than a database review, though it is not required.”

8. Page 5, Section IV, Paragraph 3: The DEP should change the word “*required*” in the first sentence to “***possible.***” The sentence is misleading as only 3 of the 14 references listed are indicated as a mandatory reference source. Additionally, a footnote should be added to all pages that have a part of Table 2 explaining which sources are required, to read as follows: “***Indicates mandatory reference source (shaded red).***” Another option is that the DEP could indicate in the paragraph at the beginning of the table that red below indicates mandatory references.
9. Page 5, Section IV.A., Bullet 1: The reference to “*Table 1*” in the first bullet should be corrected to read “**Table 2**”
10. Page 10, Section V, Paragraph 1: In the first sentence, the regulatory citation “78a.52a(1)-(2)” should be corrected to “**78a.52a(b)(1)-(2)**”
11. Page 10, Section V, Paragraph 1: In the third sentence the words “*of notification*” should be deleted and in the fourth sentence the word “*defined*” should be deleted, such that those two sentences read as follows: “*Section 78a.52a(c) requires the operator to provide proof that the operator submitted questionnaires to those applicable landowners. **This regulatory process is also critical for coordinating surface access to locate any wells in the field that the operator is responsible for monitoring.**”*”
12. Page 10, Section V, Paragraph 2: As the DEP collects information from the Area of Review investigations, will the DEP be making this information available to other operators as a resource?
13. Page 10 Section V Paragraph 2: The DEP states in the second sentence, “*With approval from DEP, information gathered using the development plan option described below may be referenced for an additional two (2) years for a total of five (5) years from the date of collection.*” The MSC requests that the DEP state what criteria is required for the additional two years under the development plan option.
14. Page 10, Section V, Paragraph 2: In the third sentence, the DEP requires that “*original*” survey results be provided to new operators which acquire a lease from another operator. The MSC recommends that scanned, electronic versions of the signed questionnaire with corresponding certified mail receipt should be acceptable.

15. Page 10, Section V.A., Paragraph 1: In the second sentence, the words “occupying parcels” should be changed to “whose property is” for consistency with the regulatory wording in 78a.52a(b)(3), such that the revised sentence reads as follows: “*This form must be sent via certified mail, as defined in 25 Pa. Code § 78a.1, to all landowners whose property is within the established AOR.*”
16. Page 10, Section V.A., Paragraph 1: The third sentence states, “*It is recommended that a reference map be included with the form to best assist the landowner in determining whether or not wells they are aware of fall within the AOR.*” This language recommends that a reference map be included. However, the landowner survey form indicates that a reference map is attached. Also, there is conflicting language between the TGD and the Landowner Survey Form 8000-PM-OOGM0148U. Neither support the “*Development Plan Option*” where well paths have not been finalized. The MSC recommends that the DEP resolve this conflict.
17. Page 10, Section V.A., Paragraph 2: In the first sentence the word “specify” should be changed to “request” and the word “should” should be removed, such that the revised sentence reads as follows: “*The instructions accompanying the form request that a landowner or the landowner’s designee complete and return the form to the operator within ten (10) business days of receipt.*”
18. Page 11, Section V.A. (1): The MSC requests that the DEP define the expectations of a “*reasonable timeframe.*” There needs to be a clear deadline set for landowners who respond after the recommended 10 or 30 days.
19. Page 11, Section V.B., Paragraph 3: The MSC recommends that the last sentence on page 11 continuing onto page 12 should end with the word “landowners” on page 11. The rest of the sentence is confusing and not needed given the last sentence of this paragraph on page 12.
20. Page 11, Section V.B., Paragraph 3: The MSC recommends that the response time from landowners for operators using the land development plan option should be 10 days in order to be consistent with the Landowner Survey Form. The same Landowner Survey Form is utilized for both the single well evaluation and development plan option and is sent in the same manner. The landowners should have the same amount of time to return the survey regardless of whether they are asked about a single or multiple parcels. In addition, the landowner’s well knowledge and landowner survey submittal process is the same whether they have 1 acre or 10000 acres.
21. Page 13, Section V.E.: The MSC would like to clarify that “*Other Considerations*” are neither required nor expected. As such, the MSC requests that the word “Possible” be added to the title, “*Other Possible Considerations.*”
22. Page 14, Section VI.A., Paragraph 2: The MSC disagrees with the DEP’s requirement in maintaining an operator’s liability on a plugged well for 12 months past the plugging date. DEP notes that “*the assignment of responsibility for recently plugged offset wells is*

exclusive to the AOR regulation.” However, this arbitrary 12-month post-plugging assignment of responsibility is improper. Once an operator plugs a well and the bond is released, the operator no longer has any responsibility for that well. It does not matter if final site reclamation has been achieved on the well site, particularly since it may be a multi-well pad. The MSC recommends that the paragraph should be revised to state:

*“For recently plugged wells identified within the AOR that intercept the zone of hydraulic fracturing influence, i. e. those plugged within the preceding 12 months, the operator **intending to complete hydraulic fracturing activities may request that DEP complete an inspection of the well prior to stimulation. Such wells include only those where the bond has not yet been released. Requested inspections will be completed at the agency’s discretion.**”*

23. Page 14, Section VI.B: The MSC requests that the last bullet point be removed. This point is not mentioned anywhere else in the TGD or the regulation, and it is unclear what the requirement is.
24. Page 19, Section VII.B., Paragraph 2: When a well is deemed to require visual monitoring and instrumentation is installed, how often does the instrumentation need to be checked or that information need to be recorded? The MSC requests that the DEP provide suggested frequency of inspections. It may be appropriate to base the monitoring on the stages of well fracturing and production.
25. Page 19, Section VII.B. (1): What is an RTU? The MSC request that the DEP spell out the acronym and define RTU in the definitions.
26. Page 21 Section VIII Paragraph 1: As written the first paragraph may be interpreted that a site-specific report is always required. Section B states that “in certain cases” a site-specific narrative report may be developed to accompany the electronic summary table report. The MSC recommends revising the paragraph:

*“Section 78a.52a(c) requires the operator to submit a report summarizing the AOR review including (1) a plat, (2) proof of submitting questionnaires to landowners, (3) a monitoring plan, and (4) the true vertical depth of offset wells in the AOR, if known. The AOR report consists of standard components that will be useful for creating a database detailing operator activities associated with the regulation. **This section of the guidance provides a tabular summary of the standard AOR deliverables. Note that an electronic plat must also be filed in conjunction with each AOR report. The AOR report must be submitted electronically to PADEP at least 30 days in advance of well spud, or in cases where a well will be spud within 30 days of permit issuance, along with the well permit application package in accordance with section 78a.52a(d). The AOR report may also consist of a site-specific analysis and plan that are not easily transferrable to a tracking system, but are none-the-less important for recognizing and addressing variability throughout the different oil and gas producing areas of the state.**”*

27. Page 22 Section VIII.B. Paragraph 2: The first sentence should be revised as follows: **“Whenever the operator deems an accompanying report is necessary, it shall be submitted to DEP electronically in pdf format.”** The MSC recommends this clarification so that it is up to the operator to determine if an accompanying report is necessary, as stated in the beginning of this section.
28. Page 25 Section X Paragraph 1: There is a typographical error in item (2) in this paragraph, where the wording “... *indicative or abnormal* ...” should be “... **indicative of an abnormal**”
29. Page 26, Section X, Paragraph 1: The “*cease stimulation activities*” language for a reportable communication incident in this section is negated by Section B, except in certain instances. Not all reportable communication incidents require a cessation of activities. The MSC recommends that the second to last sentence of this paragraph be revised to state, **“When a reportable communication incident occurs, the operator must notify DEP within the appropriate time frame and prevent pollution to waters of the Commonwealth or discharges to the surface. In some instances, ceasing stimulation activities may be required.”**
30. Page 27, Section X.A. (4)-(5): Subsection A describes five (5) types of communication incidents that require the operator to immediately cease hydraulic fracturing operations and then report to the Department within two (2) hours and follow up with an incident report within three (3) days. Items (4) and (5) describe subsets of the incidents covered in items (1), (2) and (3). The MSC recommends that items (4) and (5) be deleted.
31. Page 28, Section X.B., Final Paragraph: The last paragraph in this section should be made into paragraph (3) and re-written as follows to clarify the intent:

“In cases where an adjacent operator makes the operator conducting hydraulic fracturing aware of a communication incident below the threshold for well damage, the operator conducting hydraulic fracture activities will notify the Department within 24 hours and provide a 30-day follow-up incident report. Note, there is no expectation or regulation that requires an adjacent operator to notify an operator conducting hydraulic fracturing when communication incidents below the thresholds noted in this policy occur at an offset well that is the responsibility of the adjacent operator.

The operator conducting hydraulic fracture activities is not required to cease hydraulic fracturing if: (1) the adjacent operator documents in writing that none of the applicable thresholds for reporting in subsections A and B of this section have been exceeded, (2) DEP is notified via the electronic reporting notification service on the DEP website, within 24 hours of when the operator first became aware of the incident, and (3) an incident report, consisting of the adjacent operators communication described in (1) above, is filed with DEP within 30 days of when the operator first becomes aware of the communication incident. Notification and follow-up reporting is required one time only if subsequent communication incidents occur at the offset well

during later stages of hydraulic fracturing provided the incidents remain below the thresholds described in sections A and B.”

32. Page 29, Section X.D.: The MSC recommends that 4th bullet on this list be deleted. There are no requirements in the regulations or within the TGD for an operator to communicate with DEP’s field inspection staff to discuss the timelines for hydraulic fracturing activities.
33. Pages 34-40: The maps are not complete. The MSC recommends that they include all of Pennsylvania.

The MSC appreciates the opportunity to comment, and we remain committed to working with the DEP on this and other items as they arise.

Sincerely,



Jim Welty
Vice President Government Affairs