



May 15, 2020

Jessica Shirley, Director
Policy Office
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Residual Waste General Permit WMGR123 – Proposed Modifications and Renewal [50 Pa.B. 2137] submitted electronically via - <https://www.ahs.dep.pa.gov/eComment/>

Dear Ms. Shirley:

The Marcellus Shale Coalition (MSC) was formed in 2008 and is comprised of approximately 150 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the safe development of 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, processing and transmission in the country, as well as the suppliers and contractors who partner with the industry.

The MSC appreciates the opportunity to comment on the Pennsylvania Department of Environmental Protection's (PA DEP or Department) proposed modifications and renewal of its residual waste General Permit WMGR123 (General Permit). The MSC particularly is grateful for the early engagement with permittees by the Department to solicit input on proposed modifications of the General Permit. This early engagement allowed for consideration of several operational and technical modifications that are beneficial to both the Department and permittees, while still ensuring appropriate protections for the environment and natural resources are maintained.

The MSC has reviewed the general permit and submits the following comments for consideration by the Department.

Section A. – Definitions

1. Processing – The MSC recommends adding the language below to the definition to limit it only to the storage that is specifically associated with the processing activities, as noted below:

*“Processing - A method or technology used for the purpose of reducing the volume or bulk of oil and gas liquid waste, or a method or technology used to convert the oil and gas liquid waste for beneficial use. The term includes the transfer or storage of oil and gas liquid wastes **associated with the WMGR123 permitted activities.**”*

2. Transfer – As drafted, the term “transfer” would include the actual “transportation” of the material, which is inconsistent with the definition in 25 Pa Code §287.1 that reads “... which facilitates the transportation .” The MSC recommends adding the wording “which facilitates” to the definition, as shown below:

*“Transfer - Receiving and processing, or temporarily storing, oil and gas liquid waste at a location other than the site where the oil and gas liquid waste was generated, and **which facilitates** the transportation of oil and gas liquid waste to a processing facility, a DEP permitted well pad, or permitted impoundment or other facility designed to hold liquids for the development or hydraulic fracture of an oil or gas well. The term includes a facility that uses a method or technology to convert part or all of the waste materials for beneficial use.”*

3. Oil and Gas Liquid Waste – The MSC recommends making the following revisions below that better align with definitions provided in 25 Pa Code Chapter 78a (related to unconventional oil and gas), as well as pipelines which transport oil and gas:

*“Oil and gas liquid waste – The term includes liquid wastes **generated from the drilling, development and operation of oil and gas wells and pipeline facilities Oil and Gas Operations as defined in 25 Pa. Code § 78a.1.** The term includes contaminated water from well sites, the development of ~~transmission pipelines~~ **Oil and Gas Operations** and the facility operating under this general permit, provided the generating facility has satisfied all other permitting requirements that may apply to contaminated water. The term does not include condensate from oil and gas ~~transmission~~ pipeline compressor stations that exhibits a characteristic of hazardous waste under 40 CFR Part 261, Subpart C, as incorporated by reference at 25 Pa. Code § 261a.1.”*

Section B. – Determination of Applicability Requirements

1. This section requires the Determination of Applicability to be submitted “on forms provided by DEP” but does not specify exactly which forms those are. The MSC recommends that the PA DEP specify which forms are required; for example, is it the same forms as listed in Section F for permit renewals, or different forms? If different, then those forms should be clearly specified, and if they are currently in draft form, the MSC requests that they be made available for review and comment.
2. The last sentence of Section B prohibits activities from commencing until approved, in writing, by PA DEP, but there is no timeframe specified within which the Department must respond with an approval (or denial). The MSC recommends that either a timeframe should be specified, or language added that the registration is deemed approved if no response is received within a specified timeframe.

Section C. – Operating Conditions

1. Condition C.1.b. – For consistency with the terminology in the introductory paragraph of C.1.b., the use of the term “facility” in subparagraphs b.i. and b.ii. should be changed to “unit.” Condition C.1.b. deals with de-wasted materials (i.e. no longer considered a waste), but the term “facility,” as defined in Condition 2 (which refers to the definition at § 287.1) means a facility where “waste” is managed, and since de-wasted material in Condition C.1.b. is no longer a “waste,” different terminology should be used, as shown below:

“b. The processed oil and gas liquid waste meets the concentration limits in Appendix A of this general permit and, will be stored in an impoundment or other unit designed to hold water to develop or hydraulically fracture an oil or gas well. The impoundment or other unit must be owned or operated by the permittee or the owner or operator of an oil or gas well. Transportation shall be done in accordance with the following:

i. Processed oil and gas liquid waste meeting the requirements of Condition C.1.b is not a residual waste when transported to the impoundment or other unit facility.

ii. If processed oil and gas liquid waste meeting the requirements of Condition C.1.b will be transported in a vehicle that previously contained residual waste, the vehicle must be decontaminated prior to transporting the processed oil and gas liquid waste to the impoundment or other unit facility.”

2. Condition C.3. – Since this section addresses “continuing” to store material in accordance with Condition C.1.b., meaning that the material has been demonstrated to meet the Appendix A concentration limits, and at this point has also met the demonstration required by Condition C.2., MSC recommends that it should be referred to as “de-wasted material” in Condition C.3. rather than as “waste,” as shown below:

“To continue storing de-wasted material ~~processed oil and gas well liquid waste~~ in accordance with Condition C.1.b, the permittee shall demonstrate that the de-wasted material ~~oil and gas liquid waste~~ continues to meet the limits in Appendix A by:”

3. Condition C.4. – The allowance to request a reduction in the frequency of sampling and analysis under this section should not be limited to permittees that process waste from only one generator. The MSC suggests that regardless of the number of generators sending waste to the facility, the ability to request a reduction in sampling and analysis frequency should be available as long as the specified consistency in achieving the Appendix A limits has been demonstrated. Also, given the cost and burden of requiring daily sampling and analysis for Strontium, Barium, and TDS, the time-frame specified in C.4., subparagraphs a.i., a.ii., and b.i. should be reduced from one year to three months.

The changes recommended for Condition C.4. are shown below:

"4. Permittees processing oil and gas liquid waste ~~from only one generator~~ may request a reduction in the required frequency of sampling and analysis, and a reduction in the number of parameters, for processed oil and gas liquid waste stored in accordance with condition C.1.b. by submitting an application to the appropriate Department regional office (see attached list) for a permit modification to the permittee's coverage under this general permit.

a. A reduced sampling and analysis frequency may be requested if the following criteria are met:

*i. Analysis of representative samples of the processed oil and gas wastewater has been conducted in accordance with this general permit for a **three month** ~~one year~~ period; and*

*ii. The permittee has demonstrated that the constituent limits in Appendix A have been satisfied for a **three month** ~~one year~~ period.*

b. A reduced parameter list may be requested if the following criteria are met:

*i. The permittee has demonstrated that the parameter(s) in Appendix A that is sought for removal from ongoing sampling and analysis requirements has not been detected in analytical results for at least **three months** ~~one year~~.*

ii. If the reduction in parameters is approved, the permittee must sample and analyze for the removed parameter(s) on a quarterly basis to demonstrate that the reduction can continue.

iii. If the results of the quarterly sampling and analysis performed to satisfy this condition show a detection of a parameter that was removed from ongoing sampling and analysis requirements, then the permittee must immediately notify DEP and reinstate the detected parameter(s) into sampling and analysis required by Condition C.3. until the permittee demonstrates to DEP's satisfaction that the detection was an anomaly, or the parameter is no longer being detected."

4. Condition C.11. - Maintaining documents at a facility, especially during inactive periods, can be challenging. Consequently, the MSC requests the following text modifications, which would allow remote access to documentation.

*A copy of the Department approved Radiation Protection Action Plan (RPAP), for the facility must be **maintained during operations and made available upon request** ~~maintained by the permittee at the facility at all times~~. The RPAP must address the management of oil and gas liquid waste and solids generated that contain technologically*



enhanced naturally occurring radioactive material (TENORM), and be implemented during all phases of operations at the facility.

5. Condition C.14. – The citation to the Oil and Gas Act in this paragraph is out of date and should be updated and revised accordingly, as shown below:

“14. Nothing in this general permit shall be construed to supersede, amend, or authorize a violation of any of the provisions of any valid and applicable law, ordinance, or regulations, providing that said local law, ordinance, or regulation is not preempted by the Solid Waste Management Act (SWMA), 35 P.S. §§ 6018.101 - 6018.1003; Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§ 4000.101 – 4000.1904; Air Pollution Control Act, 35 P.S. §§ 4001 - 4005; Waste Transportation Safety Act, 27 Pa. C.S. §§ 6201 - 6209; Oil and Gas Act, §§ 58 ~~Pa.C.S.A. §§ 2301—3504 P.S. 601.101—601.605~~; Radiation Protection Act, 35 P.S. §§ 7110.101 - 7110.703 and the Clean Streams Law, 35 PS. §§ 691.1 - 691.1001.”

Section D. – Recordkeeping

1. Condition D.1.a. – The introductory sentence of Condition D.1 requires permittees to maintain certain listed “records of the processing or storage and beneficial use of oil and gas liquid waste.” However, the first subparagraph D.1.a. of Condition D.1. would require records of the volumes of the fresh surface water and other water sources withdrawn for use by the facility, which is unrelated to the records of oil and gas liquid waste managed at the facility. As such, The MSC recommends that Condition D.1.a. should either be removed entirely from the permit or moved to a section separate from Condition D.1. dealing with records related to waste.
2. Condition D.2. - Maintaining documents at a facility can be challenging. The MSC recommends the following text modifications, which would allow remote access to documentation.

All records required in this general permit shall be maintained ~~on-site~~ for a minimum of five years and shall be made available to the Department upon request. Should a facility be no longer located at the site where the processing occurred, the records shall be maintained by the permittee for a minimum of five years and shall be made available to the Department DEP upon request.

Section E. – Reporting Requirements

1. Condition E.1. – There should be no need to “immediately” report any of the types of changes that are listed in this condition, particularly since the notification must be made by certified mail and it’s not possible to notify PA DEP immediately by mail. The MSC recommends that the notification timeframe in this condition be changed from “immediately” to “within ten business days” as shown below:



*“1. Any person that operates under the provisions of this permit shall **immediately** notify DEP **within ten business days** via certified mail of any changes in: the company name, address, owners, operators, and/or responsible officials of the company, compliance status, and the status of any permit issued by DEP or the federal government under the environmental protection acts.”*

2. Condition E.2. – The MSC recommends that WMGR123 permits related to operator owned facilities that only treat/store their own oil and gas liquid waste should be exempt from the annual reporting requirement as they are required to report waste data to the Department monthly and in their annual 26R reports.

3. The MSC recommends adding a new condition under E.2. that states:

“Persons operating under the provisions of this general permit shall not exceed the maximum volumes of processed and unprocessed oil and gas liquid wastes or other wastes provided in their approved bonding calculations. In the event these volumes are exceeded the DEP shall be immediately notified.”

4. Condition E.2.e – The MSC recommends that this condition should be removed. Providing the information required in conditions E.2.b, E.2.d and E.2.c should be all that is required.
5. Condition E.2.f – The MSC recommends removing this from a reporting requirement as updating the bond is not a reporting requirement. Updating bond calculations would be associated with a permit modification.
6. Condition E.3. – Oil and Gas operators that hold WMGR123 permits for their own facilities will come in conflict with what is required in this condition based on what is required in 25 Pa. Code § 78a.66 that was finalized in 2016. See below specific provisions in 78a.66 that conflict with Condition E.3, specifically notifying the Department through the appropriate emergency hotline, the timing, and the discharge event specifics:

78a.66(b)(ii) A spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by secondary containment.

78a.66(2) In addition to meeting the notification requirements of § 91.33, the operator or other responsible party shall contact the appropriate regional Department office by telephone or call the Department’s Statewide toll free number as soon as practicable, but no later than 2 hours after discovering the spill or release.

The MSC recommends that the Department reference the Chapter 78a requirements for oil and gas operators that hold WMGR123 permits. Without clarification there may be confusion as to what oil and gas operators are required to follow given the conflict between WMGR123 permit condition and what is in regulation under Chapter 78a.



Appendix A

1. Appendix A Limits – The Department is not proposing any revisions to any of the parameter limits in Appendix A. MSC expresses concern that the list of constituents is excessive and the statutory authority for many of the limits is unclear. The constituents listed should be those that have set limits for aquatic life uses in a natural stream system, at the highest level for protection. Many of the constituents listed appear to be based on drinking water standards which is inappropriate, unnecessary, and untenable by industry without expensive and excessive treatment for oil and gas liquids that are meant to be beneficially re-used in the industrial process, not discharged into streams or distributed as drinking water.

The introduction to the list mentions that other limits are based on current levels in stream systems, but no background data is presented as proof of this claim, and even if it is available within the Department, the constituents may not have any limits established within Pennsylvania regulations for either drinking water or aquatic life uses. The small chance of a spill getting into a surface water from a WMGR123 facility should not be the basis for an overly stringent de-wasting requirement for storage and subsequent use. Many commercial products are stored at facilities across a broad spectrum of industries that contain constituents far above drinking water and aquatic life limits that if spilled, could cause damage, yet they are recognized as legitimate products, not waste, and processed oil and gas liquids prepared for beneficial use should be treated no different. Appendix A in its current form is stricter than the NPDES program that would allow discharge to a stream for other industries in Pennsylvania.

The MSC appreciates the opportunity to comment and we remain committed to working with the Department on this topic and any others that may arise. Please let us know if you have any questions regarding these comments.

Sincerely,



Jim Welty
Vice President, Government Affairs