

# CLIENT ALERT

## ENVIRONMENTAL



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## Public Comment Period on PA Department of Environmental Protection's Oil and Gas Rulemaking Closes May 19

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The Pennsylvania Department of Environmental Protection's (DEP's) rulemaking regarding surface activities for oil and gas wells, *Environmental Protection Performance Standards at Oil and Gas Well Sites* (Chapters 78 and 78a), has received a significant amount of attention lately, and rightfully so. Interested participants have until **May 19** to provide additional comments on the proposed final regulations.

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## **Overview of the Rulemaking**

The purpose of the rulemaking is to modify and update existing requirements related to surface activities associated with the development of conventional and unconventional oil and gas wells. Although Act 13 of 2012 serves as the authorizing statute for some of the rulemaking, much of the proposed regulation is being promulgated pursuant to statutes other than Act 13. For example, aspects of the regulation pertaining to pre-hydraulic fracturing review, centralized wastewater and freshwater impoundments, rock pits, brine spreading and spill reporting and clean-up are promulgated pursuant to the Clean Streams Law, Solid Waste Management Act, Act 2 and the Dam Safety and Encroachments Act.

As a result of the Pennsylvania General Assembly's requirement that all regulations promulgated under 58 Pa.C.S. (relating to oil and gas) differentiate between conventional oil and gas wells and unconventional gas wells, DEP separated the proposed rulemaking into two chapters. Chapter 78 addresses conventional well development, and Chapter 78a addresses unconventional well development. Highlights of the rulemaking include the following:

- requiring operators to demonstrate that streams and wetlands will be protected if the edge of the well pad is within 100 feet of the resource
- requiring centralized wastewater impoundments to be permitted through more appropriate residual waste regulations (with existing impoundments upgraded or closed within three years of the effective date)
- expanding the review of impacts that operators must conduct to include public resources, such as schools, playgrounds and approved wellhead protection areas
- requiring operators to identify active, inactive, orphan and abandoned wells and submit a plan report to DEP at least 30 days prior to drilling
- creating standards for noise control and mitigation
- requiring conventional well operators to provide notification to surface owners for certain activities, including on-site waste disposal.

## Public Comments

In August 2013, Pennsylvania's Environmental Quality Board approved DEP's proposed rulemaking for publication in the *Pennsylvania Bulletin*. From December 2013 through early 2014, more than 24,000 comments were submitted during the 90-day public comment period and nine public hearings were held.

DEP is now seeking additional public comments on the revisions to the draft final rule through an Advanced Notice of Final Rulemaking (ANFR) (available at <http://www.pabulletin.com/secure/data/vol45/45-14/597.html>), as published in the Pennsylvania Bulletin on April 4. The agency's voluntary undertaking of an ANFR allows DEP to solicit comments on the changes made from the proposed rulemaking in order to draft final rulemaking in a structured and transparent manner. This public comment period closes on **May 19**. Public hearings will be held, the locations and times of which have yet to be announced.

Interested parties with concerns about the draft rules should comment on the proposed rulemaking to make sure that those concerns are heard and addressed. Please contact us if you have questions regarding this rulemaking process or the potential impact of the proposed regulations.