

Support Necessary Environmental Protections for Oil & Gas Development

The Pennsylvania Senate and House may soon be asked to consider a resolution to disapprove proposed rulemaking by the Department of Environmental Protection to implement Act 13 of 2012 – rulemaking that has been in development for more than four years with unprecedented public involvement.

Here are some key facts regarding this rulemaking and its value to the people of Pennsylvania.

There are compelling reasons why the regulations are necessary. In 2012, the legislature passed Act 13, which explicitly directed the Department of Environmental Protection (DEP) to develop new oil and gas regulations—which hadn't been comprehensively revised in over 30 years.

- *Both DEP and General Assembly have a constitutional duty to protect the people and environment of the Commonwealth.* Continued delays in implementing the rulemaking could leave significant environmental problems unchecked, and increase the health and financial risks faced by the public.
- *This rulemaking aligns the state's oil and gas regulations with new technologies and modern-day practices,* such as current forms of hydraulic fracturing; generation of large volumes of toxic and potentially radioactive waste; and operations in more populated areas.
- *The regulations are based on several decades of DEP violation and enforcement experience.* Pennsylvania continues to bear the cost of cleaning up and managing oil and gas pollution caused in the past, reinforcing the need for more effective environmental protection requirements today. We don't want to create new environmental legacy costs.
- *Decisions issued by the Environmental Quality Board (EQB) and the Independent Regulatory Review Commission (IRRC)—entities created by the General Assembly to review and vote on proposed regulations—affirm that this rulemaking is in the public interest.*

The current rulemaking process has been the most extensive, transparent, and inclusive in DEP's history. It is fully compliant with the Regulatory Review Act. For nearly five years, legislators, local officials, industry, residents, and environmental organizations have had numerous opportunities to weigh in, including:

- 12 public hearings across the state and two extensive public comment periods.
- Nearly 30,000 comments that DEP reviewed and responded to in writing.
- Three sessions of the General Assembly.
- Meetings, review of draft rulemakings, and input by the Conventional Oil and Gas Advisory Committee (COGAC), the Oil & Gas Technical Advisory Board (TAB), EQB, and IRRC.
- Substantial revision of the rulemaking after repeated consultation with both industry and the public.
- Before being implemented, the regulations will be reviewed by the Pennsylvania Attorney General to ensure they are within DEP's granted authority.

Act 13 of 2012 included new environmental protection requirements for both conventional and unconventional operators. Nonetheless, following passage of Act 126 by the legislature in 2014, DEP made two big changes:

1. Completely separating the rulemaking into two separate chapters for conventional (Chapter 78) and unconventional (Chapter 78a) operations. Both chapters were subject to public hearings and comments in 2015.
2. Significant revisions to Chapter 78 that effectively reduced and eliminated several environmental protection requirements just for conventional operations (see below).

Despite the Pennsylvania Supreme Court case that struck down parts of Act 13, DEP has legal authority and responsibility to implement oil and gas regulations. DEP is required to implement and enforce a range of environmental laws related to oil and gas operations, not just Act 13. Even Pennsylvania's Constitution, as noted by the Supreme Court in the *Robinson Township* case, requires both the DEP and the General Assembly to ensure that the state's environmental resources and public health are strongly protected.

DEP conducted a thorough economic analysis in developing the rulemaking, including the impact of the regulations on small businesses. When it first proposed the rulemaking in December 2013, DEP issued Fiscal Notes explaining potential economic impacts of the regulations. DEP also provided a comprehensive identification of economic costs associated with the final rulemaking in the Regulatory Analysis Form submitted to the Environmental Quality Board in January 2016, including those for conventional operators.

The legal definition of a "conventional operator" (contained in Act 13) is determined by the depth of drilling, and is unrelated to the number of employees or budget of the company. Yet in its economic analysis, the DEP assumed that all conventional operators qualified as small businesses.

Conventional operators benefit from several differences between Chapter 78 and 78a. Both conventional and unconventional operations rely on hydraulic fracturing, use toxic chemicals and large volumes of water, disturb land, and generate waste. But under Chapter 78, conventional drillers will still be allowed to use pits and open tanks to store waste; dispose of drill cuttings through pit burial or land application without a permit; conduct operations without a water management plan; use brine waste for dust suppression and de-icing; and report their gas, condensate, and waste production volumes to DEP just once a year. Any assertion that DEP did not accommodate the conventional industry are unfounded.