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Comments on Proposed Changes to Chapter 78 Regulations

Thank you for the opportunity to provide comments on the Department's proposed changes to Chapter 78 regulations. The Center for Coalfield Justice was founded in 1994 by individuals organizing against the destruction caused by longwall coal mining. Over the last 20 years, we have expanded our mission to work on issues related to extractive industries generally in Washington and Greene counties. CCJ has nearly two thousand members and supporters, most of whom live in Washington and Greene counties and live with the daily impacts of fossil fuel extraction.

Today, I will address four main areas of concern:

Limits of Disturbance

- The 200-foot limit of disturbance distance for a publicly owned park, forest, game land or wildlife area, historical or archeological site and National natural landmark is too short to provide adequate protection to those important public resources. Noise and air pollution and the risk of significant impacts can be far reaching. We suggest this distance be amended to at least a mile for such public resources.
- DEP has added schools to the list of public resources that require additional consideration when permitting oil and gas wells and longer setbacks of waste storage from school buildings, parks, and playgrounds. However, the 200-foot limit of disturbance for common areas on a school's property is far too small to offer even limited protection from health risks.
- To improve protection from pollution, noise, and light, and safety from traffic, accidents, and explosions, DEP should require, at minimum, a one-mile setback of oil and gas wells, waste storage facilities, and any other infrastructure from the boundary of any school property.

Public Participation

- Hearings and comment periods should be required for all proposed drilling-related activities, including well pads, impoundments, and pipelines.
- We support the proposal to require oil and gas operators to file permit applications and required reports electronically. DEP should also ensure all electronic filings and reports made by operators are available to the public on DEP's website on the same day they are deemed complete by DEP. Public availability of timely information is necessary to improve agency transparency and operator accountability, two issues

which were revealed to be extremely problematic by the Auditor General's Performance Audit last July.

Pits, Impoundments & Waste Management

- Issues with frack pits have led to contaminated water and resulted in the largest state fines ever against a driller in Pennsylvania, both over \$4 million, to Range Resources and XTO for water contamination due to leaking pits.
- DEP should amend the regulations to prohibit operators from using any open-air pits and tanks, regardless of size or location, for storage and treatment of regulated wastes, including wastewater, drill cuttings, and substances that return to the surface after fracking. The new revisions prohibit the use of production pits at shale gas well sites, an important change that should be supported. However, huge impoundments to service multiple wells are still allowed. DEP should standardize the use of aboveground closed loop systems for the storage and treatment of waste.
- We remain concerned that sections 78.56(d) and 78.62(a)(15) allow for residual waste pits to be filled in, burying waste onsite. Under section 78.62, residual waste, including contaminated drill cuttings, must be stored in a lined pit with a bottom at least 20 inches above the seasonal high groundwater table. Those protective requirements are ultimately rendered ineffective after the operator fills in the pit and waste has an opportunity to migrate into the groundwater. The regulations state that the pit should be filled 18 inches over the top of the liner and graded to promote runoff with no depressions that would accumulate or pond water on the surface. This ignores the reality that the soil used to backfill the pit will absorb harmful constituents from the waste and the soil layer on top can shift and erode over time.
- DEP should require all waste impoundments to be properly closed immediately upon the effective date of the regulations. The revisions give operators 3 years to either properly close their existing impoundments or bring them into compliance with the construction requirements in residual waste permits. This is an improvement but still puts nearby residents and the environment at risk.
- DEP should require that tanks used for the storage of waste be completely enclosed. The revisions give operators the option of using tanks "without lids" to store waste on well sites—making it more likely that harmful spills and emissions will occur.

DEP Investigations

- Section 78.51(b) provides procedures for notifying DEP of water pollution or diminution of a water supply to request an investigation, but only covers impacts "as a result of well site construction, well drilling, altering or operating activities...." It is unclear whether "operating activities" includes all of the activities listed under "Oil and Gas Operations" in the definitions section of the regulations which provides a comprehensive list of activities. DEP should clarify this uncertainty by including the full range of activities listed in the definition of "Oil and Gas Operations" as actions that can trigger an investigation.