

From: Brokenshire, Stephen <sbrokenshi@pa.gov>
To: Rich O'Brien
CC: Dave Nolt; Marc Cerceo; Mark Singel (msingel@wintergrouppa.com); Perry, Scott (DEP); Nolan, Elizabeth A.
Subject: Tab Meetings – Chapter 78

Mr. O'Brien,

The proposed changes to Chapter 78, Subchapter C are still in a draft proposed form and, as such, are subject to change during the rulemaking process in response to public comments prior to finalization. For this reason, the Department is unable to speculate or comment on how it will implement specific regulatory provisions at this time. Please note that after the proposed changes are published as draft in the Pennsylvania Bulletin, there will be a formal public comment period during which the public will have opportunity to review and comment on the proposed regulations.

As stated in the Department's August 13, 2012 letter to D.A. Nolt Inc., the D.A. Nolt system appears to meet the requirements of Section 3218.2(a) of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3218.2 (a), regarding the design and construction requirements for containment at unconventional gas wells sites. As contemplated in draft proposed § 78.64a(i), any regulated substances that are released or spilled onto containment must be removed from the affected areas as soon as possible and properly contained and/or disposed of in accordance with the Solid Waste Management Act. Materials that are contaminated with regulated substances should also be removed or decontaminated.

Also, please note that, in draft proposed 78.66, Act 2 is not contemplated unless there is a spill or release of a regulated substance causing or threatening pollution to water of the Commonwealth or there is a spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by a containment system (ie. a subsurface containment system). At that time, the responsible party must report the spill and remediate it using either small spill, Act 2 or other alternative remediation method.

Thank you,

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From: Rich O'Brien
Sent: Friday, March 01, 2013 9:07 AM
To: 'Brokenshire, Stephen'
Cc: 'Dave Nolt'; Marc Cerceo; 'Mark Singel'; 'Perry, Scott'
Subject: TAB Meetings - Chapter 78

Stephen:

We appreciate the opportunity to participate in the TAB meetings last week.

As you are aware, we made a few comments during the public comment period, and we were hoping to simply clarify and confirm our understanding of some of the terms of 78.64a "Containment systems and practices at unconventional well site" and how they are applicable to various methods of containment that are currently utilized or proposed to be utilized.

1. 78.64a, (a), (b), (c), (d), (e) - these subsections define the requirements for the use of Containment System.
 - * Our understanding is that these subsections define the general containment requirements for use at unconventional well site.
 - * Our understanding is that the D.A. Nolt, Inc. of PA sub-surface containment system conforms to these subsections.
 - * Our understanding is that certain surface containment liners also conform to these subsections.
1. 78.64a, (f), (g) - these subsections define the requirements and the use of Secondary Containment systems.
 - * Our understanding is that these subsections define when Secondary Containment systems are required and how they can be implemented.
 - * Our understanding is that the D.A. Nolt, Inc. of PA sub-surface containment system conforms to these subsections.
 - * Our understanding is that last sentence of 78.64a (f), which states, "A well site liner that is not used in conjunction with other containment systems does not constitute secondary containment for the purpose of this subsection" means that surface containment liners alone do NOT conform to these subsections, unless they are supplemented with certain features of other containment systems to make it a complete containment system.
1. Our understanding is that the D.A. Nolt, Inc. of PA sub-surface containment system meets both the general containment requirements and the secondary containment requirements as defined in 78.64a.
1. Our understanding is that if a spill or release occurs when utilizing the D.A. Nolt, Inc. of PA containment system that either Act 2 or the Alternative Remediation method can be utilized.
 - * Our understanding is that as long as the initial notification requirements are submitted to the Department within 15 days and a Final Report is submitted to the Department within 90 days of the spill or release that the submission and publication of a Notice of Intent to Remediate (NIR) and public notification regarding the Final Report are not necessary.

Please get back to us to confirm the accuracy of our understanding of the above terms of 78.64a that we discussed at the TAB meeting.

In addition, we wanted to again thank you for considering amending the requirements for surface containment systems to include the language, "Be designed and installed in a manner that prevents damage to the system by the sub-base or the movement of equipment or other activities on the surface", so it is consistent with this same requirement that is defined for sub-surface containment systems.

We look forward to hearing back from you.

Regards,

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