pennsylvania environmental council

ENVIRONMENTAL DEFENSE FUND
Finding the ways that work

September 19, 2019

Mr. Nick Troutman
Office of Chairman Yaw
Senate Environmental Resources and Energy Committee

Re: Initial Comments on Senate Bill 790 (P.N. 1051)

Dear Mr. Troutman:

The Environmental Defense Fund (EDF) and Pennsylvania Environmental Council (PEC) respectfully submit the following initial comments on Senate Bill 790. We recognize this legislation is still part of ongoing discussions between your office and the Administration; our hope is that these comments can help guide refinement of the bill.

Listed below are our primary concerns with the legislation along with suggested amendments. We appreciate your consideration of these comments and would welcome the chance to discuss them with you further.

Sincerely,

Andrew Williams
Environmental Defense Fund

John Walliser
Pennsylvania Environmental Council

Distinction Between "Conventional and Unconventional"

As a general starting point, we believe it is important to again emphasize that Pennsylvania is unique in how it identifies "conventional" and "unconventional" operations. While we recognize that there can be appreciable differences between operations in terms of scale and potential threat of environmental impact, existing state law bases its distinction solely on whether subsurface drilling activity occurs above or below a particular geologic formation. This does not account for the actual size of the operator or operation, or the practices employed at the well site. At present, "conventional" wells can in fact be drilled horizontally and hydraulically fractured.

If Pennsylvania is going to establish a different set of rules for conventional operations, we would urge the General Assembly to redefine "conventional operations" to exclude any well operation that employs

high volume fracturing. Other states have utilized this approach for their protection standards (see, for example, Illinois[1]).

Bonding [Section 316]
Pennsylvania already faces a wide ranging and expensive legacy of abandoned wells – any legislation addressing new or ongoing operations should ensure that there is no expansion of that legacy on the Commonwealth. We recommend the following changes to the legislation:

- We are generally wary of blanket bonding, which can amount to only pennies on the dollar available to the Commonwealth for plugging each well covered under such a bond. It is unsound to strictly limit the total amount that blanket bonding can be adjusted by the Environmental Quality Board (EQB) given the financial viability of this industry. Even for shallow wells, the amounts currently provided in the legislation are far too low.
- Similarly, the bonding amounts for individual wells is far too low given known plugging and remediation costs.
- DEP, and other parties including industry, have readily-available data demonstrating the extent of costs associated with well plugging and remediation and how those costs can vary from site to site. The EQB should be provided greater latitude, based on that data and subject to the rulemaking process (with public input), to adjust bonding amounts for the conventional industry.
- Furthermore, the bonding language of SB790 does not appear to account for the costs of site restoration. This should be provided in amendments to the legislation.

Plugging [Sections 311, 312, and 701]
Plugging requirements are scattered throughout the legislation and are at times unclear. We suggest the follow changes to the bill:

- We encourage you to work with DEP to better clarify the guidance provided, or strengthen the discretion afforded to the Department to establish plugging requirements, particularly for issues such as water and cement quality, and verification of cement placement and testing.
- SB790 should integrate the various financial vehicles into one subsection of the legislation and clarify how they function together. Furthermore, there should be analysis done to determine if the funds provided through the Commonwealth Financing Authority (CFA) are sufficient. This assessment should be updated annually.
- The legislation should provide clearer guidance or authority with respect to how individuals/companies are deemed qualified and experienced to perform these activities.
- As is done in neighboring states, DEP should be notified in advance of all plugging activities.
- The legislation should not allow any type of intra-wellbore flow to exist, artesian freshwater or otherwise, in a plugged well – this is because policymakers cannot be reasonably certain of long-term effects of intra-wellbore flow, especially if the fluid characteristics are subject to unknown or unanticipated changes.

[1] See 225 ILCS 732, Article 1, Section 1-5

Mechanical Integrity and Surface Casing [Sections 304, 307, 308, and 313]
We believe the legislation should be amended as follows:

- SB790 only addresses mechanical integrity for active wells. The legislation should be amended to include such provisions for all well types.
- With respect to mechanical integrity, we believe the current language in 25 Pa Code Sections 78.73(c), 78.88, and 78.102 provide standards that are not expensive or onerous in light of current industry practice. The legislation should, at a minimum, match or authorize those requirements.
- With respect to surface casing, we also believe that current provisions (25 Pa Code Sections 78.81 – 78.87) are appropriate and not unduly burdensome for industry. The legislation should, at a minimum, match or authorize those requirements.

Transfer Requirements [Sections 301(j), 314, and 316]
We agree with the concept that the Department of Environmental Protection (DEP) should approve all permit transfers. However, we believe the legislation should be strengthen as follows:

- As noted above, we believe the bonding and plugging provisions of this legislation as currently drafted are inadequate. There should be an express provision in the legislation that the DEP has the right to deny transfer of a permit if, after proper documentation is submitted, that there are insufficient resources (through bonding or other financial means on the part of the transferor or transferee) to prudently operate, plug, and restore the well site. The cost of these liabilities should not fall to the citizens of Pennsylvania.
- Further, the transfer requirements for home and consumptive use should apply to all wells, regardless of use.

Orphan Wells [Sections 301(k), 303(b), 311(e), and 701(c)]
We believe the legislation should be amended as follows:

- The legislation should consolidate all orphan well provisions into one section.
- The legislation should provide express authorization to EQB to develop regulations for permitting the operation and remediation of orphan wells.
- The legislation should also require that DEP is provided prompt notice when a potential abandoned or orphaned well is discovered by an operator or other responsible party.

Well Location Restrictions [Section 305]

<u>Setbacks</u> [Sections 305(a), (b), and (g)]

- Given the increase in flooding and severe rain in the Commonwealth, there should be a blanket prohibition on the placement or storage, even if temporary, of chemicals, fuels, solid waste, or other hazardous materials within a floodplain.
- For similar reasons, the setbacks in the legislation with respect to streams, floodplains, and other aquatic resources should be increased; or DEP should be granted the authority to increase

required setbacks upon the DEP's adequate justification of need. This justification should include, but not be limited to, the fact that current mapping for floodplains is or may be outdated or inadequate.
- In addition, horizontal subsurface separation from water wells should be more clearly defined by the legislation or resulting regulation.

Public Resources [Section 305(c)-(f)]
Given recent court determinations with respect to the Environmental Rights Amendment of the state constitution, and to adequately protect public resources, we believe the legislation should be amended as follows:

- Section 305(d) should be amended to strike the language asserting the default dominance of the subsurface estate and/or oil and gas rights with respect to public resources.
- The burden of proof with respect to challenging permit conditions imposed by DEP to protect public resources should rest with the permit applicant, not the Department.

Replacement Water Quality [Section 308]
While we recognize this issue has been of noted consternation to industry, ensuring that replacement drinking water supplies, at a minimum, meet safe drinking water standards was a fundamental part of negotiations leading to passage of Act 13 of 2012. SB790 should not backtrack from that principle. Instead, the legislation should require compliance with the standards of the Safe Drinking Water Act, and further require EQB to promulgate regulations to ensure that citizens are not left dependent on impermanent solutions to water disruption or pollution.

Spill Reporting [Section 704(f)]
We suggest the following amendments to the legislation:

- Brine characteristics alone are not an adequate indicator of spill toxicity. The legislation should be clarified, or provide authority to EQB, to establish more comprehensive requirements for spill reporting.
    - At a minimum, any and all spills that contact surface waters should be reported to DEP, regardless of amount.
    - Operators should report all spills of oil and/or produced water in excess of ½ barrel each outside of secondary containment over a 24 hour period immediately