



The PIOGA press

The monthly newsletter of the Pennsylvania Independent Oil & Gas Association

June 2015 • Issue 62

PIOGA Chapter 78 comments: Rules more stringent than regulations governing other industries

PIOGA believes that the Department of Environmental Protection’s draft final regulations governing oil and gas surface operations will burden both conventional and unconventional operations “to the point of stagnation.” Commenting on DEP’s Chapter 78, Subchapter 78 advanced notice of final rulemaking (ANFR), the association argued that the rules seem designed to do little more than micro-manage Pennsylvania’s oil and gas industry without meaningful environmental benefits and without regard to the costs and burdens the rules would impose on operators.

Because DEP has divided the proposed Chapter 78 regulations into separate sets of rules applying to conventional (Chapter 78) and unconventional (Chapter 78a) operations, PIOGA filed two sets of formal comments in response to the ANFR. However, the general comments for both focus on the same three themes:

1. There is no demonstrated need for the revisions in the draft final rule.

DEP has made the draft final rule significantly more restrictive without responding to the many thousands of comments the department received in response to the regulations as originally proposed in December 2013. The department has not released a comment-and-response document explaining why the changes were made in the draft final rule, nor did the agency provide any regulatory analysis. As a result, neither industry nor the public is able to discern why certain changes have been made.

“In short, the Department and EQB [Environmental Quality Board, the 20-member panel that officially proposes and adopts DEP regulations] have the responsibility and legal obligation to fully inform the regulated community of the necessity, justification, costs and impacts of the Draft Final Rule,” PIOGA stated in

its comments. “Without this, we cannot provide fully informed comments on the Draft Final Rule. The Department should conduct this rulemaking in the open, not amend proposed rules behind closed doors without clear explanation.”

Additionally, the Regulatory Review Act (RRA) requires a statement of the need for regulations and a statement of the necessary reporting procedures, including copies of forms or reports. Approximately 20 new forms are referenced in the proposed regulations, but copies of the forms or other manner of electronic submission are not included in the draft final rule. As a result, PIOGA stated, it is not possible to determine if the forms comply with the regulations and are reasonable or if they impose unjustified additional burdens on operators.

2. The draft final rule is procedurally flawed.

In 2014, the General Assembly directed the EQB to create separate regulations for conventional and unconventional oil and gas wells. DEP, in response, merely separated its 2013 draft rules into Chapter 78 and 78a and posted them on the website of the department’s Oil and Gas Technical Advisory Board (TAB) in September 2014, subsequently publishing two sets of draft final rules in its ANFR on April 4, 2015. DEP did not follow the Commonwealth Documents Law for the newly separated rules, which requires agencies to give public notice of their intent to promulgate rules, explain the changes and request written comments. PIOGA believes the Chapter 78 conventional rules must be withdrawn and go through a new public notice and associated comment period as a proposed, not final, rulemaking.

Beyond that, the RRA requires the department to conduct a regulatory flexibility analysis to estimate the direct and indirect costs both the Chapter 78 and 78a rules on the private sector, with special consideration of impacts on small businesses. Such an analysis is to include whether less stringent compliance standards and deadlines, simplified reporting requirements, and exemptions from regulation are appropriate for small businesses. The regulatory analysis form was “woefully deficient” for the 2013 draft and missing entirely from the draft final rule, PIOGA pointed out.

The RRA does not allow DEP to use the ANFR process to offer *entirely new* provisions or *substantial changes* to

(Continues on page 5)

Severance tax issue heats up	6	State forming pipeline task force	28
“Waters of the U.S.” regs finalized	11	Permitting and the northern long-eared bat	29
PIOGA Pig Roast preview	12	New DEP comment process	29
Scenes from the Summer Outing	13	House OKs lease assignment bill	30
PIOGA launching membership system	14	Teaching teachers about energy	31
MLP rules provide bright lines	17	Shale Innovation Contest winners	32
EPA’s groundwater study released	20	PIOGA Member News	33
OSHA expands Severe Violator program	22	Member Profile: Insight Environmental	34
Process Safety Management	24	New PIOGA members	35
Alternative fuel rebate extended	26	Oil & Gas Trends	36
Small scale conversion to methanol	27	Calendar of Events	39
Quigley and Dunn confirmed	27	PIOGA contacts	39

OSHA conducting inspections based on that information.

- Require the employer, for a specified time period, to notify the area office of any serious injury or illness requiring medical attention and to consent to an inspection,
- Obtain employer's consent to entry of a court enforcement order under Section 11(b) of the Occupational Safety and Health Act.

Removal criteria for the Severe Violator Enforcement Program

Once an employer is part of the SVEP, it is extremely difficult to be removed from the program. OSHA will consider removing an employer from the SVEP after three years from the final disposition of the SVEP case. After three years, the regional administrator will perform additional follow-up inspections to determine whether the employer has: (i) abated all the SVEP violations; (ii) paid all penalties; (iii) abided by and completed all settlement provisions; and (iv) avoided receiving any additional serious citations related to the SVEP hazards. If the employer has satisfied each of these obligations, the regional administrator has discretion to remove the employer from the SVEP. If the

regional administrator determines that the employer failed to carry out any of its obligations, it will place the employer back into the SVEP for an additional three years.

In light of the extensive sanctions and the difficulty of being removed from the program, it is important for an employer to avoid being named into the SVEP. Based on the criteria, the time to act is actually before the SVEP citation; an employer should consider contesting every citation that might subject them to a subsequent SVEP case. An employer should also take advantage of the informal conference and settlement procedures to delete or reduce the severity of citations, and contest citations that cannot be favorably resolved through settlement.

If you have any additional questions regarding the Severe Violator Enforcement Program, please contact the author at 412-253-8825 or mlambach@babstcalland.com. ■

¹ High-emphasis hazards include falls under certain general industry, construction industry, shipyard, marine terminal and longshoring standards and amputation, combustible dust, crystalline silica, lead, excavation/trenching, shipbreaking and upstream oil and gas hazards.

Process Safety Management and why you should care

As employers, PIOGA members are subject to workplace health and safety inspections by the Occupational Safety and Health Administration (OSHA). If you have never been visited by OSHA, or think you are not likely to be visited, the agency's recent enforcement and rulemaking initiatives might make you sit up and take notice. This article discusses OSHA's increased scrutiny of upstream oil and gas operations and the potential future imposition of the Process Safety Management standard in particular to those operations.



**Dan Wolff
Crowell &
Moring LLP**

OSHA Is Watching

It is no secret by now that the historic sea-change in oil and gas extraction brought about by technologies permitting horizontal drilling in various shale plays around the country—Pennsylvania's Marcellus Shale at the forefront among them—has brought increased scrutiny by government regulators right alongside the job growth and economic success the industry has realized. And while environmental regulation, both state and federal, usually gets most of the headlines, upstream employers in the oil patch should also be attuned to workplace safety and health regulation. Rest assured, OSHA is watching.

For example, in February of this year, OSHA announced the addition of upstream oil and gas hazards to its list of high-emphasis hazards (HEH), as part of its Severe Violator Enforcement Program (SVEP), specifically targeting upstream oil and gas drillers and well servicers. (See www.osha.gov/dep/enforcement/memo_SVEP_oilandgas_022015.html, as well as the article on this topic elsewhere in this issue.) By treating upstream hazards as HEH, these operations

can now be targeted for programmatic inspection. And if inspected and issued two or more "willful" or "repeated" violations or "failure-to-abate" notices, the employer can be placed into the SVEP—an enhanced enforcement program that will cause the employer to garner increased scrutiny and enforcement from OSHA going forward.

Why did OSHA do this? Because it concluded based on Bureau of Labor statistics compiled over the past 20 years that the fatality rate in these upstream operations has ranged from five to eight times greater than the national average for all industries. The OSHA agenda for the oil patch doesn't stop there. In particular, upstream operators and contractors need to be aware of OSHA's Process Safety Management standard, or PSM.

Process Safety Management

Promulgated in the early 1990s at the direction of Congress, the PSM standard requires relevant industry actors to take the necessary steps to prevent accidental releases of highly hazardous substances in or from their facilities, including flammable gases and liquids. In general, the standard requires employers to compile process safety information and then use that information to make a process hazard analysis (PHA) of each of its covered processes, *i.e.*, an evaluation of the hazards associated the use, storage, handling or on-site movement of any highly hazardous chemical. A host of employee training, testing of process equipment, compliance auditing and other requirements are also imposed by the standard.

As crafted, the PSM standard is really geared toward manufacturing, where lots of chemicals and complex processes are employed. It is, by design, less well suited to upstream oil and gas activities. OSHA recognized this at the outset. Importantly for PIOGA members, OSHA specifically exempted well *drilling* and *servicing* operations from its PSM standard because at the

time it promulgated the standard it anticipated regulating those operations under an industry-specific set of standards. The pre-processing storage of flammable liquids in atmospheric tanks is also exempted from PSM, as are normally unoccupied remote facilities (e.g., field stations only periodically visited by employees). Then, in an April 2000 guidance memorandum, OSHA adopted the policy that it would not *enforce* PSM at *producing* well sites pending an economic feasibility analysis (albeit emphasizing that its decision was discretionary and not because the regulatory exemption applied to producing well sites). The result has been that most upstream operations have never been, strictly speaking, subject to the PSM standard.

As it happens, however, OSHA never got around to promulgating a set of standards specific to the oil and gas drilling and service industry and to date has not followed through on its feasibility analysis of applying PSM to production operations. Given OSHA's current negative view of the safety record of upstream operations, oil and gas operators, drillers, and well service companies are back in the PSM crosshairs.

In December 2013, OSHA published a request for information, or RFI, asking for comment on a series of questions about possible changes to its PSM standard, including the PSM exemption for drilling and well-servicing operations, and the completion of the economic feasibility analysis that could ultimately lead to OSHA enforcing the PSM standard at producing wells. At present, OSHA is considering the comments received in response to the RFI and has signaled that it intends to move forward with a proposed PSM rulemaking over the next few years. The process is a slow one to be sure, but PIOGA members should expect it to be steady.

Small businesses have a right to be heard

So what can PIOGA's members do in the meantime? Eventually, when OSHA promulgates a proposed revision to the PSM standard (assuming it does, as expected), individual companies, as well as PIOGA on its members' behalf, can and should read and become familiar with the proposed revisions to the extent they affect your operations and then file comments on the rule with the agency. That is how the rulemaking process works and the more participation from affected industry, the better. But there may be something you could do sooner, as a small business.

Under the 1996 Small Business Regulatory Enforcement Fairness Act, or SBREFA, Congress aimed to give small businesses assistance in understanding and complying with regulations. The concern of Congress was that the volume of federal regulations was so great, the system so complex and the aggregate cost so high, that small businesses were at risk of not being able to comply. Through SBREFA, Congress wanted to raise the voice of small business.

The law attempts to do so by requiring federal agencies—including OSHA—to, among other things, produce compliance guides for small businesses, be responsive to small business concerns about compliance and provide for graduated relief from civil penalties (through penalty reduction policies). Most importantly, in the context of OSHA (and also EPA) rulemakings, SBREFA mandates the establishment of panels of small businesses—called Small Business Advocacy Review (SBAR) panels—to provide feedback on the agency's development of certain rulemakings that are likely to have a significant impact on a substantial number of small businesses.

BITCO INSURANCE COMPANIES

What **YOU** do is what **WE** protect.

BITCO knows oil and gas.

When times get tough, BITCO has been there. BITCO has offered high-quality insurance protection and services – with the stability you need and deserve.

If you're looking for broad insurance coverage for your business at competitive rates, look no further than BITCO. We tailor packages specifically for today's energy companies.

Contact: Bob Gregory, CPCU, Branch Manager, Pittsburgh
1-800-253-1232 or 412-937-9000

1-800-475-4477 | www.BITCO.com



Full service branch offices:

Atlanta	Indianapolis	New Orleans
Charlotte	Kansas City	Oklahoma City
Dallas	Little Rock	Pittsburgh
Denver	Milwaukee	St. Louis
Des Moines	Nashville	San Antonio

All programs may not be available in all states.

Insurance contracts are underwritten and issued by one or more of the following: BITCO General Insurance Corporation and BITCO National Insurance Company, rated A+ (Excellent) by A.M. Best, A2 Stable by Moody's, and A+ Stable by Standard and Poor's.



OLD REPUBLIC INSURANCE GROUP



A Safe Biocide (Except for Bugs)



New from Universal
Bacteria Specialist:
An environmentally friendly
biocide with 1,450 ppm FACs.

ENVIROLYTE biocide offers you a safe, biodegradable alternative to toxic biocides for controlling bacteria in crude oil production and processing.

- 1,450 ppm free available chlorine and neutral 6.5 pH
- Can treat produced water before reuse
- Clears well of downhole micro-organisms
- Protects production equipment
- Eliminates microbial-induced corrosion

SAFE FOR PEOPLE. GOOD FOR PRODUCTION.

UNIVERSAL
BACTERIA 
SPECIALIST

Find out more at
www.universalbacteria.com
or call **281.342.9555**

E.P.A. Reg. No. 87636-2

© 2014 Universal Bacteria Specialist (UCS1405/0614)

In its latest regulatory agenda, OSHA has identified the PSM rulemaking as necessitating an SBAR panel. Many (or even most) PIOGA members are likely to qualify as small businesses for SBREFA purposes, which defines “small business” according to industry codes under the North American Industry Classification System (NAICS). For oil and gas well operators and drillers, this means 500 employees or fewer. For oil and gas well support services, this means annual revenue of \$38.5 million or less. (See www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.) Needless to say, that covers a lot of operators, drillers and well service providers.

The latest word from OSHA is that it is intending to convene an SBAR panel this month (June). That, however, is not set in stone and could very well slip. But it is certainly more likely than not that an SBAR panel will eventually be convened on the PSM standard, so PIOGA members should be alert to it and show their interest now.

To participate in the SBAR panel process, a company (or even PIOGA itself, as a trade association of mainly small businesses) should contact the U.S. Small Business Association’s Office of Advocacy (SBA) and ask to become a small entity representative, or SER. (See www.sba.gov.) The SBA gathers the names of interested entities and then recommends SERs to OSHA to be consulted on the rule and its effects. OSHA will then convene the SBAR panel, consisting of officials from the agency, the SBA’s chief counsel for advocacy, and the Office of Management and Budget’s Office of Information and Regulatory Affairs. The panel hears comments from SERs and reviews the draft proposed rule and related analyses prepared by OSHA. The import of this process is the ability of small businesses to have an audience with agency policymakers and to influence the policymaking process on issues of concern to them. A written report of this interagency panel is submitted to OSHA within 60 days and is ultimately published with the final rule in the *Federal Register*.

If you think you might be interested in participating in the SBAR panel process, please contact the PIOGA Safety Committee or this article’s author for more information. ■

Alternative fuel rebate program extended

The Department of Environmental Protection has announced the continuation of Pennsylvania’s Alternative Fuel Vehicle Rebate Program, which provides incentives to assist with the incremental cost of purchasing an alternative fuel vehicle. To qualify, the vehicle must be registered in Pennsylvania, operated primarily in-state and be purchased no more than six months before the rebate application is submitted. The rebates are funded by the Alternative Fuels Incentive Grant Program, which is supported by a gross receipts tax on utilities.

Included in the program are rebates of \$1,000 for natural gas and propane vehicles including any 2014-15 CNG-powered car or pickup truck. CNG original equipment, manufacturer retrofits, or certified conversions to CNG or propane are eligible for the \$1,000 rebate. For more information or to apply for a rebate, go to www.depweb.state.pa.us and click on the icon for the Natural Gas Vehicle Program.

Calendar of Events

PIOGA Events

PIOGA Pig Roast, Equipment Show & Seminar

July 28-29, Seven Springs Mountain Resort, Champion
Info: www.pioga.org/events/category/pioga-events

18th Annual Divot Diggers Golf Outing

August 26, Tam O'Shanter of Pennsylvania, Hermitage
Info: www.pioga.org/events/category/pioga-events

Eastern Oil & Gas Conference and Trade Show

October 27-28, Monroeville Convention Center, Monroeville
Info: www.pioga.org/events/category/pioga-events

Industry Events

U.S. Energy Information Administration 2015 Conference

June 15-16, Renaissance Washington, DC Downtown Hotel
Info: www.fbcinc.com/e/eia

IPAA Midyear Meeting

June 24-26, Eldorado Hotel & Spa, Santa Fe, NM
Info: hwww.ipaa.org/meetings-events

KOGA Annual Meeting

July 14-16, Hyatt Regency Lexington, KY
Info: koga.memberclicks.net/2015-annual-meeting

IOGANY Summer Meeting

July 8-9, Peek'n Peak Resort & Conference Center, Findley Lake, NY
Info: www.iogany.org/events.php

OOGA Summer Meeting

July 27-28, Zanesville (OH) Country Club
Info: www.ooga.org/events

IOGAWV Summer Meeting

August 2-4, The Greenbrier, White Sulphur Springs, WV
Info: events.iogawv.com

WVONGA Fall Meeting & Centennial Celebration

September 29-October 2, Oglebay Resort, Wheeling, WV
Info: www.wvonga.com/Attend/Fall2015

IOGANY 35th Annual Meeting

October 21-22, Buffalo Marriott Niagara, Amherst, NY
Info: www.iogany.org/events.php

IPAA Annual Meeting

November 9-10, The Ritz-Carlton, New Orleans, LA
Info: hwww.ipaa.org/meetings-events

More events: www.pioga.org

PIOGA Board of Directors

Gary Slagel (Chairman), Steptoe & Johnson PLLC (representing CONSOL Energy)
Sam Fragale (Vice Chairman), SEF Consulting, LLC
Frank J. Ross (2nd Vice Chairman), T&F Exploration, LP
James Kriebel (Treasurer), Kriebel Companies
Craig Mayer (Secretary), Pennsylvania General Energy Co., LLC
Terrence S. Jacobs (Past President), Penneco Oil Company, Inc.
L. Richard Adams, Chief Oil and Gas
Thomas M. Bartos, ABARTA Energy
Stanley J. Berdell, BLX, Inc.
Rob Boulware, Seneca Resources Corporation
Carl Carlson, Range Resources - Appalachia, LLC
Mike Cochran, Energy Corporation of America
Don A. Connor, Open Flow Energy
Ted Cranmer, TBC Consulting
Jack Crook, Atlas Resource Partners, LP
Robert Esch, American Refining Group, Inc.
Michael Hillebrand, Huntley & Huntley, Inc.
Jim Hoover, Phoenix Energy Productions, Inc.
Ron McGlade, Tenaska Resources, LLC
Jim McKinney, EnerVest Operating, LLC
Steve Millis, Vineyard Oil & Gas Company
Gregory Muse, PennEnergy Resources, LLC
Joy Ruff, Dawood Engineering, Inc.
Stephen Rupert, Texas Keystone, Inc.
Jake Stilley, Patriot Exploration Corporation
Burt A. Waite, Moody and Associates, Inc.
Roger B. Willis, Universal Well Services, Inc.
Thomas Yarnick, XTO Energy

Committee Chairs

Environmental Committee
Paul Hart, Fluid Recovery Services, LLC
Ken Fleeman, ABARTA Energy
Legislative Committee
Ben Wallace, Penneco Oil Company
Holly Christie, Steptoe and Johnson, PLLC
Pipeline & Gas Market Development Committee
Bob Eckle, Appalachian Producer Services, LLC
Ron McGlade, Tenaska Resources, LLC
Health & Safety Committee
Pat Carfagna, CONSOL Energy
Meetings Committee
Lou D'Amico, PIOGA
Tax Committee
Donald B. Nestor, Arnett Foster Toothman, PLLC
Communications Committee
Terry Jacobs, Penneco Oil Company, Inc.

Staff

Lou D'Amico (lou@pioga.org), President & Executive Director
Kevin Moody (kevin@pioga.org), Vice President & General Counsel
Debbie Oylar (debbie@pioga.org), Director of Member Services
Matt Benson (matt@pioga.org), Director of Internal Communications (also newsletter advertising & editorial contact)
Joyce Turkaly (joyce@pioga.org), Director of Natural Gas Market Development
Dan Weaver (dan@pioga.org), Public Outreach Director
Danielle Boston (danielle@pioga.org), Director of Administration
Chris Lisle (chris@pioga.org), Manager of Finance
Tracy Zink (tracy@pioga.org), Administrative Assistant

Pennsylvania Independent Oil & Gas Association

115 VIP Drive, Suite 210 • Wexford, PA 15090-7906
724-933-7306 • fax 724-933-7310 • www.pioga.org

Northern Tier Office (Matt Benson)
167 Wolf Farm Road, Kane, PA 16735
Phone/fax 814-778-2291

© 2015, Pennsylvania Independent Oil & Gas Association



Office: (724) 742-1122
Fax: (724) 742-4703

NEW PROSPECT COMPANY

120 MARGUERITE DRIVE, SUITE 201 • CRANBERRY TOWNSHIP, PA 16066

MARK A. WILLIAMS

Consultant Business Development Manager

Engineering, Completion and Drilling Consultants

mwilliams@newprospect.com

Cell: (814) 449-8822

www.newprospect.com



115 VIP Drive, Suite 210
Wexford, PA 15090-7906

Address Service Requested

PRESORTED
STANDARD
U.S. POSTAGE PAID
PITTSBURGH, PA
15290
PERMIT NO. 1211

This article was originally published in the PIOGA June 2015 Newsletter.

WORK
HARD
PLAY
HARD





Resort & Conference Center
 Phone: 800-972-1991
 Email: sales@oglebay-resort.com
 Web: www.oglebay-resort.com

Conveniently located just 3 miles from I-70, exit 2A in Wheeling, West Virginia.

Just 1 hour from Pittsburgh!

A Natural Setting for Success with the Perfect Blend of Work and Play

- Conference Center with 22,000 sq. ft. of flexible meeting space that can accommodate up to 400.
- 270-room Wilson Lodge featuring 59 premium rooms and The West Spa.
- Creative cuisine served in banquet rooms or catered in various locations throughout the resort.
- Legendary customer service & personal attention.
- 1,700 acres of year-round recreation in an inspiring natural setting.

