

D. RECOMMENDED CHANGES TO THE REGULATIONS PROPOSED IN THE DRAFT GEIS

The Department would like to thank all parties who actively participated in the draft GEIS review process by submitting comments and/or attending the public hearings. Public involvement, as required by law, provided insight and in some cases enlightened the Department staff on critical issues. The inclusion of the Department's responses to over 850 written and oral comments received from the public on the draft GEIS is critical to the successful completion of the final document.

The public's written and oral comments varied in content and opinion according to the impact of the issue on the individual commentator. The proposed operational recommendations were at the center of attention and triggered most of the controversy within the draft GEIS. In general, environmental groups and government agencies agreed on issues concerning increased regulation while industry commentators offered opposing viewpoints and possible alternatives.

1. Controversial Operational Recommendations

Six operational recommendations presented in the draft GEIS generated the most controversy and received numerous comments. Because of the diversity and sometimes opposing nature of the comments, the following table was prepared to facilitate the review of these controversial operational recommendations. The table lists the pertinent issues and cross-references the appropriate comments and responses contained in the Comment-Response Table.

<u>Operational Recommendation</u>	<u>Refer To:</u>
1) Information required on well plats submitted with drilling application.	page CR-17 (I-138), p. CR-19 (I-165), p. CR-53 (I-554), p. CR-75 (ENG-6 & 7), p. CR-94 (URH-2), p. CR-98 (URH-7), p. CR-130 (CCD-14)

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| 2) Well setback requirements. | page CR-17 (I-136), p. CR-18 (I-156), p. CR-19 (I-165), p. CR-20 (I-166), p. CR-53 (I-552 & 553), p. CR-74 (ENG-5), p. CR-76 (ENG-9 & 10), p. CR-77 (ENG-13), p. CR-93 (URH-1), p. CR-96 (URH-5), p. CR-130 (CCD-13 & 16), p. CR-131 (CCD-20), p. CR-140 (DFWE-1), p. CR-144 (DFWF-3 & 4) |
| 3. Pit construction, lining and maintenance. | page CR-20 (I-168), p. CR-30 (I-291 to 296), p. CR-54 (I-572 to 574), p. CR-78 (ENG-14), p. CR-82 (ENG-35 & 36), p. CR-99 (URH-8), p. CR-111 to 113 (URH-23 to 25), p. CR-133 (CCD-31) |
| 4. Tank overflow/leakage prevention and control. | page CR-22 (I-192), p. CR-30 (I-298 to 300), p. CR-32 (I-319), p. CR-53 (I-560), p. CR-79 (ENG-20), p. CR-101 (URH-11), p. CR-105 (URH-16), p. CR-132 (CCD-27), p. CR-141 (DFWE-11), p. CR-145 (DFWF-6) |
| 5. Site reclamation deadlines. | page CR-18 (I-145), CR-53 (I-555), p. CR-54 (I-579), p. CR-75 (ENG-8), p. CR-95 (URH-3), p. CR-130 (CCD-15), p. CR-141 (DFWE-11), CR-145 (DFWF-7) |
| 6. Notification/approval requirements for changes in wellbore configuration. | page CR-33 (I-328), p. CR-116 (URH-28), p. CR-171 (PHLW-9) |

The Department's responses to the public comments on the above issues reflect the position the Department will maintain while formally drafting revisions to the regulations.

2. Reevaluation of Regulations Proposed in the Draft GEIS

In some cases, the public input has presented reasonable alternatives to the Department's original recommendations which also meet the Department's resource management and environmental protection goals. This caused the Department to reexamine several of the draft GEIS proposals. Not all of the proposals reconsidered are among the controversial issues listed

above. Sometimes a single comment prompted the Department to consider a new approach. Listed below are the original recommendations with a brief discussion of the Department's reevaluation of each one.

- 1) Original recommendation: Requirement that the plat accompanying the drilling application show the location of all private water wells of public record within 1,000 feet of the wellsite.

Department reevaluation: The Department's stringent drilling, aquifer, completion and plugging requirements make it extremely unlikely an oil or gas well drilled in compliance with the Department's regulations would impact a shallow water well over 1/10th mile away. A review of Department complaint records revealed that the most commonly validated impact from oil and gas drilling activity on private water supplies was a short term turbidity problem. This temporary problem usually occurred when oil and gas drilling activity was conducted close to the minimal existing 100' setback distance required between a private dwelling and the wellbore location. Since most water wells are located close to the dwelling served, this old requirement indirectly provides protection to some, but not all, private water wells. To address this issue directly, the Department's new proposed regulations contain a 150' setback between private water supplies and oil and gas wells.

It has been decided to recommend that the operator be required to only show the location of all private water wells within a distance of 660' from the wellbore. This distance was chosen because it is within the statewide legal spacing unit. This distance reflects both the review of the landowner water supply complaint records and the complaints by oil and gas operators about the difficulty

of finding information on private water wells outside the lease acreage. A permit is not needed to drill a private water well and water wells are not routinely recorded in public records. There are also numerous seasonal hunting and vacation cabins in the rural areas of western New York where most oil and gas drilling occurs.

The Department maintains that it is in an operator's best interest to determine the location and predrilling water quality of all private water supplies within 1000'. Should a landowner make a claim of damage, an oil and gas operator would have a difficult time proving his innocence. The Department has determined, however, that it is inappropriate to require undesired excessive efforts from operators for their own protection.

- 2) Original recommendation: Comprehensive pit liner requirements which included detailed specifications of minimum thickness, tear strength, tensile strength, low temperature cold crack, seam strength and pit construction techniques including pit orientation.

Department reevaluation: Pits for fluids used in the drilling, completion, and recompletion of wells should be constructed, maintained and lined to prevent pollution of surface and subsurface waters and to prevent pit fluids from contacting surface soils or ground water zones. Department field inspectors are of the opinion that adequate maintenance after pit liner installation is more critical to halting pollution than the initial pit liner specifications. Damaged liners must be repaired or replaced promptly. Instead of very detailed requirements in the regulations, the regulatory and enforcement emphasis will be on a general

performance standard for initial review of liner-type and on proper liner maintenance.

The type and specifications of the liner proposed by the well drilling applicant will require approval by the DEC Regional Minerals Manager. The acceptability of each proposed pit construction and location should be determined during the pre-site inspection. Any pit site or pit orientation found unacceptable to the Department must be changed as directed by the regional site inspector.

- 3) Original recommendation: A complete site reclamation timetable of 45 days.
Department reevaluation: Industry commentators pointed out that because of the possible unforeseen delays caused by weather and other uncontrollable circumstances and events, a 60-90 day timetable would be more reasonable. However, because of the potential for leakage, pit fluid must be removed for proper disposal within a shorter required time period. Removal of pit fluids should still be required within 45 days of the cessation of drilling operations.
- 4) Original recommendation: Notification/approval requirements for changes in wellbore configuration.
Department reevaluation: It is critical that the Department have accurate records of the existing condition of all wells under its regulatory authority. The Department agrees with industry's recommendation to limit the requirement for a permit to three actions: 1) redrilling or deepening any well, 2) plugging back and setting any type of a permanent plug and 3) converting a well. Other, more routine, actions which change the permanent wellbore configuration will not require a permit, but will require notification and approval of the appropriate DEC regional office. Those operations requiring prior notification will include,

but will not be limited to, the following:

- Perforating casing in a previously unperforated interval for the purpose of production, injection, testing, observation, or cementing.
- Milling out or removal of casing or liner.
- Running and cementing of casing or tubing.
- Drilling out any type of permanent plug.
- Running and setting and/or cementing an inner string of casing, liner, or tubing except after routine pulling operations.
- Setting any type of plug.
- Repairing damaged casing.

5) Original recommendation: Plugging requirement specifying that an attempt must be made to recover uncemented casing and that in the event uncemented casing cannot be recovered from the hole, the casing must be perforated or ripped with cement squeezed or placed into the annular space.

Department reevaluation: A reasonable attempt must be made to recover uncemented casing from the wellbore in critical areas with multiple freshwater aquifers of differing water quality, but the recovery of old uncemented casing is very difficult and frequently unsuccessful. Unless specific conditions are known that would warrant continued efforts, only one conscientious attempt would be required. A minimal reasonable attempt to recover uncemented casing is the pulling of 120 percent of the casing's weight from the casing freepoint. In the event that uncemented casing cannot be retrieved, cement should be placed behind the uncemented pipe as specified by the DEC Regional Minerals Manager.

Exemption Areas Designated in the Old Oilfields

In DEC and USEPA designated exemption areas where it has been determined that the recovery of casing would not result in any incremental environmental benefit, the requirement to pull, rip, perforate and/or cement uncemented surface casing may be waived.

Exemptions from the DEC requirement to pull uncemented surface casing are available only in the heavily developed old fields where groundwater quality will not be compromised by the practice of leaving uncemented surface casing in place. Additionally, wells located in the less developed relatively newer oil fields having a single aquifer, not several freshwater zones of different quality, may also receive exemptions. In every case, the exemption request must be included with the plugging application and be subject to approval by the DEC.

3. Promulgation of New Regulations

Inclusion of recommendations for revised regulations in the draft GEIS enabled the Department to meet the requirements of SEQR, stimulate public input and evaluate feasible alternative means of achieving its mandated objectives. The revised recommendations listed above will be incorporated into the Division's formal regulatory proposal. In compliance with the State Administrative Procedure Act (SAPA), there will be a public comment period and public hearings on all the proposed regulations. The Department appreciates the extensive comments it received on the draft GEIS and hopes for continuing public involvement in the regulatory promulgation process.