

2857

# SGNG COMPANY

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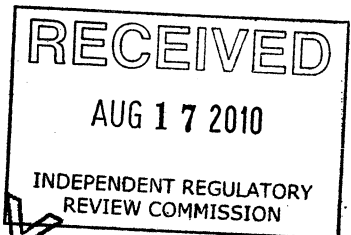
STEPHENSON GROUP NATURAL GAS COMPANY  
912 McCORMICK ROAD  
SMICKSBURG, PA 16256  
ENVIRONMENTAL QUALITY BOARD

August 04, 2010

VIA CERTIFIED MAIL ARTICLE NUMBER 7192 6390 0010 0000 0664

Environmental Quality Board  
16 th Floor, Rachel Carson State Office Building  
(PO Box 8477)  
400 Market Street  
Harrisburg, PA 17101-2301

COPY



Re: Public comments; Proposed Rulemaking; Oil and Gas Wells; Title 25, Part I, Subpart C, Article I, Chapter 78, Subchapter A, (Pennsylvania Bulletin, Vol. 40, No. 28, July 10, 2010.) IRRC No. 2857, Reg. No. 7-459.

Environmental Quality Board:

On or about November 24, 2009 Stephenson Group Natural Gas Company, "SGNGCO", submitted a rulemaking petition, the "Petition", to the Environmental Quality Board, "EQB", pursuant to Chapter 23, §23.3. The Petition requested amendments to Title 25, Chapter 78, §78.51 and §78.52. A copy of the Petition is attached.

On or about January 19, 2010 SGNGCO submitted a revised version of the Petition to the EQB addressing the assessment of the Petition by the EQB. A copy of the revised Petition is attached.

On March 16, 2010 the EQB accepted the revised Petition pursuant to 25 Pa Code, Chapter 23. (See 40 Pa.B.1635, Saturday March 27, 2010, copy enclosed.) A copy of the minutes of the EQB meeting is attached.

The EQB accepted the Petition for further review at 40 Pa.B.1635 under the premise as follows:

**" In lieu of proceeding with § 23.6 (relating to notice of acceptance and Department report) of the Board's Policy for Processing Petitions, which requires the Department of Environmental Protection (Department) to prepare a report evaluating the petition within 60 days, the Department will review the petitioner's suggested amendments as it proceeds with a proposed rulemaking to amend Chapter 78. At 40 Pa.B. 623 (January 30, 2010), the Department requested**

**comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with amendments to Chapter 78, it will address the petitioner's recommendations within the proposed rulemaking package."**

Furthermore the EQB by letter to SGNGCO dated March 02, 2010, stated as follows:

**" Your petition will be submitted to the EQB for consideration at its next meeting scheduled for March 16, 2010. The Department will summarize the petition for the Board members who will take action to either accept or reject the petition as identified in Section 23.5 of the EQB's petition policy. At the meeting, the Department will recommend the EQB's approval of the petition for further review and study; however, in lieu of proceeding with Section 23.6 of the EQB's petition policy, which requires the Department to prepare a report evaluating the petition within 60 days, the Department will recommend to the Board that it review and further study your petition as it proceeds with a proposed rulemaking to amend 25 Pa Code, Chapter 78. In the January 30, 2010, issue of the *Pennsylvania Bulletin*, at 40 Pa.B. 623, the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with the proposed Chapter 78 regulations, it will address your recommendations within the proposed rulemaking package. You will be notified when the proposed rulemaking is submitted to the EQB for consideration."**

The proposed amendments referenced at 40 Pa.B.623 (January 30, 2010) and by the EQB in both communications are the predecessor of the proposed rulemaking at 40 Pa.B. 3850 (July 10, 2010).

As of this date SGNGCO has been unable to find any evidence of the EQB or the DEP having reviewed the Petition or addressed the recommendations in the Petition as part of the current regulatory package despite the EQB having acknowledged to do so by virtue of the aforementioned letter of March 02, 2010 or as per 40 Pa.B.1635, (Saturday March 27, 2010). In addition the DEP is currently proposing amendments to the very same sections as referenced in the Petition (Chapter 78, §78.51 and §78.52) however again has not addressed the content of the Petition. Furthermore, SGNGCO has not been notified of the proposed rulemaking being submitted to the EQB for consideration.

SGNGCO submits the Petition in the entirety, as accepted and approved by the EQB, as a public comment with respect to the subject proposed rulemaking. SGNGCO requests that the EQB suspend any further progression of the current proposed rulemaking package until such time that it has reviewed and addressed the Petition as required in accordance with Chapter 23, §23.6 and as set forth by previous admission of the EQB.

In addition SGNGCO submits the following comments in relation to the proposed rulemaking.

**78.51**

SGNGCO incorporates the Petition and the proposed regulatory language as set forth in the Petition in the entirety as a written comment for the purposes of this comment forum.

**78.51(A)**

What will be "...**reasonably foreseeable uses**..." and who will determine this? With respect to property not zoned for construction purposes a 60 gallon per day water supply for a residential dwelling could be come the 60,000 gallon per day water supply for a car wash in the future. Would this scenario qualify as "...**reasonably foreseeable uses**..." for which an operator should be liable? This term is too ambiguous and will lead to unnecessary debate and litigation.

**78.52**

SGNGCO incorporates the Petition and the proposed regulatory language as set forth in the Petition in the entirety as a written comment for the purposes of this comment forum.

**78.84**

The term "**new**" needs defined. "New" as in never previously purchased from a supplier for installation in a well? "New" as in purchased from one operator by another but never having been installed in a well? "New" as in installed in a well for a few hours for a particular operation then removed to be immediately reinstalled? "New" as in never installed in a well but has weathered from storage to a point of more or less being "used". Conversely the term "**used**" should be defined as well.

**78.89 (a)**

The term "**natural gas migration incident**" is too broad and ambiguous and needs further definition. An operator would be placed under the undue duress of unilaterally defining what this term means for proper compliance with this section. In addition an operator could deem that no notification of such an "incident" would qualify as a "natural gas migration incident". Without a clear definition the DEP would have no definition on which to rely to enforce compliance with this section therefore rendering this section useless.

An operator could be notified by a complainant of a "natural gas migration incident" at an area several miles from the location of any facilities owned, operated or controlled by the owner or operator. Language should be included such as "**...owner is notified of or otherwise made aware of a natural gas migration incident (occurring within 2500 feet of the location of any wells or facilities owned, operated or under the control of the operator), the operator...**".

**78.89 (b)(1)**

This commentator is not aware of any other situation where a complainant and an operator or owner must confront each other concerning a complaint. The DEP has historically vigorously defended the confidentiality of the identity of a complainant. The policy proposed here is inherently flawed and irresponsible to the general public. An unsuspecting complainant, without knowledge of their civil rights, could be subject to possible vigorous and intimidating interrogation by an operator including but not limited


to an entourage of investigators and legal counsel. An operator may be pulled into a fraudulent complaint and ill intentioned, yielding a situation risking harm, bodily injury or death. Conversely an individual posing as an agent for an operator could use this regulation as a premise for ill intentioned activities (burglary, robbery, assault, rape, etc.) which has happened many times in the past in like situations. If the DEP wants this regulation then it should perform the police function of the same.

**General comment:**

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania as set forth therein. At 40 Pa B. 4154, Saturday, July 24, 2010, (Pa. B. Doc. No. 10-1324. Filed for inspection July 23, 2010 9:00a.m.) the EQB announced the scheduling of an additional hearing with respect to the proposed rulemaking. The hearing was scheduled for July 26, 2010 at 7:00p.m. at the Department of Environmental Protection, Southwest Regional Office, Waterfront Conference Rooms A and B, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. It would be impossible for the general public, and not privy to the printer's press or inside information, to be in possession of a hard copy of the bulletin dated Saturday, July 26, 2010 to be made aware of the said additional public hearing occurring Monday, July 26, 2010. Such an action by the EQB is unscrupulous and unduly spontaneous at best.

Please also find attached a one page summary of the above written comments, suggestions and objections to be provided to each member of the Environmental Quality Board prior to consideration of the final-form rulemaking with respect to the proposed regulations as set forth above.

Respectively submitted,



DIGITIZED SIGNATURE

Gregory W. Stephenson  
Vice-President  
Stephenson Group Natural Gas Company

COPY

Enclosure

Cc: John Hanger, Chairman EQB  
Michele Tate, Regulatory Coordinator, EQB  
J. Scott Roberts, Deputy Secretary, Mineral Resource Management  
Representative Samuel H. Smith  
Senator Donald White

Environmental Quality Board  
(Comment summary)

**Public comments; Proposed Rulemaking; Oil and Gas Wells; Title 25, Part I, Subpart C, Article I, Chapter 78, Subchapter A, (Pennsylvania Bulletin, Vol. 40, No. 28, July 10, 2010.) IRRC No. 2857, Reg. No. 7-459.**

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Respectfully submitted, Gregory W. Stephenson, Vice President, Stephenson Group Natural Gas Company

2857

# SGNG COMPANY

STEPHENSON GROUP NATURAL GAS COMPANY  
912 McCORMICK ROAD  
SMICKSBURG, PA 16256

RECEIVED  
AUG 17 2010  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

November 24, 2009

VIA CERTIFIED MAIL ARTICLE NUMBER 7192 6390 0010 0000 0206

Secretary  
Department of Environmental Protection  
Rachel Carson State Office Building  
PO Box 2063  
400 Market Street  
Harrisburg, PA 17105-2063

RECEIVED

NOV 30 2009

ENVIRONMENTAL QUALITY BOARD

**RE: Commonwealth of Pennsylvania, Environmental Quality Board;  
Petition Form, 0120-FM-PY0004, Rev. 3/2003**


To the Secretary:

Please find enclosed a Petition Form pursuant to Chapter 23; Environmental Quality Board Policy for Processing Petitions-Statement of Policy, with respect to regulations at Title 25, Chapter 78, §78.51 and §78.52.

Should you have any additional questions or should you have any comments please feel free to contact me at the address as set forth above.

Thank you in advance for your time and consideration in this matter.

Sincerely,



Gregory W. Stephenson  
Vice-President  
Stephenson Group Natural Gas Company

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C. Describe the types of persons, businesses and organizations likely to be impacted by this proposal.

See attached Exhibit A and Referenced attachments.

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D. Does the action requested in the petition concern a matter currently in litigation? If yes, please explain.

See attached Exhibit A and Referenced attachments.

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E. For stream redesignation petitions, the following information must be included for the petition to be considered complete. Attach supporting material as necessary.

1. A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.
2. The current designated use(s) of the watershed or segment.
3. The requested designated use(s) of the watershed or segment.
4. Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates and/or fishes), or instream habitat. If such data are not included, provide a description of the data sources investigated.
5. A description of existing and proposed point and nonpoint source discharges and their impact on water quality and/or the aquatic community. The names, locations, and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.
6. Information regarding any of the qualifiers for designation as high quality waters (HQ) or exceptional value waters (EV) in §93.4b (relating to qualifying as High Quality or Exceptional Value waters) used as a basis for the requested designation.
7. A general description of land use and development patterns in the watershed. Examples include the amount or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural and the like).
8. The names of all municipalities through which the watershed or segment flows, including an official contact name and address.
9. Locational information relevant to items 4-8 (except for contact names and addresses) displayed on a map or maps, if possible.

**All petitions should be submitted to the  
Secretary of the Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17105-2063**



## **EXHIBIT A**

### **II (B)**

#### **Background**

Pursuant to Section 601.201 (b) of the Oil and Gas Act, the "Act", a permit applicant applying for a well permit is required to forward by certified mail a copy of a plat for the well to all landowners or water purveyors whose water supplies are within 1000 feet of the location of the proposed well. With respect to surface landowners notification shall be accomplished by sending notice to the persons to whom the tax notices for said surface property are sent as indicated in the assessment books in the county in which the property is located.

Pursuant to Section 601.208 (b) of the Act a well operator may be held responsible or liable by the Department, upon investigation, for the pollution or diminution of a water supply as a result of the drilling, alteration or operation of an oil or gas well or in the alternative a well operator may be presumed to be responsible or liable by the Department for the pollution or diminution of a water supply unless the well operator can rebut the presumption by proving one of the following defenses:

- (1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration survey.
- (2) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.
- (3) The water supply is not within 1,000 feet of the well.
- (4) The pollution occurred more than six months after completion of drilling or alteration activities.
- (5) The pollution occurred as the result of some cause other than the drilling or alteration activity.

A well operator may preserve certain defenses above by conducting a predrilling or prealteration survey of water supplies by retaining the services of an independent certified laboratory for the purpose of testing the quality of the water from the water supplies prior to the drilling or alteration of a well.

#### **Problematic issues under current regulations**

##### **Notifications/Notices**

A water supply may exist and be utilized by a person or entity that does not own the surface land on which the water supplies are located. While the owner of the surface land or the agent thereof and associated mailing address of the same is a matter of public record the ownership or utilization rights of a water supply is generally not a matter of public record in the Commonwealth

of Pennsylvania. In many instances no written documents are of public record addressing the relationship between the ownership or utilization of a water supply and the land on which it is so located. In some instances there may only exist a verbal understanding addressing the relationship between the ownership or utilization of a water supply and the land on which it is so located.

Accordingly a well operator must attempt to ascertain the ownership or the right of a purveyor of a water supply, the determination of which can be problematic as aforementioned. Many times such determinations must be ascertained by nothing more than verbal statements by varying owners, conflicting statements by varying owners, sound assumptions by the well operator or simple reliance on hearsay which is certainly not a viable method but nonetheless the only method available to a well operator many times. In addition issues may exist where varying claims as a civil matter remain unresolved or disputed with respect to the right to ownership or the right to the utilization of the same. While many times it can be generally assumed that the owner of the surface lands would be the owner or purveyor of water supplies located thereon this may not always be a sound assumption.

A well operator could be held to have not made proper notification despite the potential inability or impossibility of the well operator to make proper notification for the reasons aforementioned.

The proposed regulatory language codified herein as **§78.52 (h)** would clarify the notification process in a manner that a well operator can be assured that it will be deemed by the Department to have made proper notification.

#### Notifications/Notices-Predrilling or prealteration survey

Pursuant to Section 601.208 (a) of the Act and §78.51 (a) a well operator who affects a public or private water supply by pollution or diminution is responsible for the restoration or replacement of the water supply. A well operator is presumed to be responsible for pollution of a water supply that is within 1000 feet of the oil or gas well where the pollution occurred within six months after the completion of drilling or alteration of a well pursuant to section 601.208(c) of the Act. A well operator may exonerate itself of such claims of pollution and/or pollution or diminution of a water supply by conducting a predrilling or prealteration survey of the water supply by retaining the services of an independent certified laboratory to determine the quality of the water from the water supply prior to such drilling or alteration. Pursuant to 78.52 (f) a well operator may also exonerate itself of such claims of pollution and/or diminution of a water supply if the well operator can document that the landowner or water purveyor refused access to conduct a predrilling or prealteration survey.

To document such a refusal a well operator is required to issue notice to the landowner, water supply owner, or water purveyor of the desire to conduct the survey and that access was refused by issuing notice to the person by certified mail or otherwise document that access was refused.

These provisions can be problematic for a well operator by various issues. A well operator attempting such notification can be subject to the inability to make proper notification as

previously set forth under the section "Notifications" herein. Furthermore a well operator may not be able to conduct a predrilling or prealteration survey in the absence of an actual in person refusal. Such a scenario may be an eventuality where a well operator has provided notification to a landowner, a water supply owner or water purveyor pursuant to Section 601.201 (b) of the Act. The notice may also contain the expressed desire to drill or alter a well and to conduct a predrilling or prealteration survey of the respective water supply pursuant to §78.52 (f) (1) (2). However, the notice is returned as refused, unclaimed or undeliverable by the United States Postal Service. Upon receipt of the same the well operator sends another identical notice which is again returned as refused, unclaimed or undeliverable by the United States Postal Service. Subsequently the well operator conducts an investigation to contact the applicable party by telephone however cannot find a listed telephone number for the party. (This is becoming more prevalent with individuals either having unlisted telephone numbers or are relying more on cell phone service for primary phone service over traditional "land line" telephones for which no listing is available.) Subsequently the well operator or an agent thereof makes a visit to the physical location of the water supply. Upon arriving the well operator or an agent thereof finds what appears to be a residence and/or buildings or barren land which is fully gated and fenced in. In this scenario the well operator has neither actually obtained an actual written or verbal refusal yet nonetheless the well operator also cannot conduct the predrilling or prealteration survey thus leaving the well operator subject to potential liabilities without the ability to defend itself whatsoever. Obviously the effort the well operator may make to either conduct such a survey can range from the reasonable to at the outermost, the ridiculous. (Please see attached actual notices as described above.)

In addition the Department apparently has a less than clear policy of what the Department would accept unequivocally as a refusal. (Please see attached correspondence and response by the Department relating to the same.) Furthermore the landowner, water supply owner or water purveyor may be absent from the physical location of the same for long periods of time, unable to be notified as aforementioned, or simply lost. In such scenarios the well operator cannot be expected to indefinitely curtail operations to exonerate it of potential liabilities or presumptions against it. The well operator must be able to reasonably proceed with its operations without the potential of liabilities arising from such scenarios.

Neither the Department nor a well operator can efficiently operate under the existing regulatory framework. The proposed regulatory language codified here has **§78.52(g)** would bring closure to this issue in conjunction with the proposed regulatory language codified here at **§78.52 (h)**.

The proposed regulatory language codified here as **§78.52 (i)** would bring final closure to the issues raised here especially where a landowner, water supply owner or water purveyor has chosen either to be unresponsive, uncooperative, otherwise remain unavailable or desiring privacy to such an extent that it must expect the forfeiture of some protections.

#### Investigations/determinations

Pursuant to Section 601.208 of the Act and §78.51 a well operator that affects or is purported to have affected a water supply is subject to the performance of certain remedies or obligations or may be presumed to be subject to the performance of certain remedies or obligations. The current regulatory framework may, however, preclude a well operator

knowledge of the existence or purported existence of an affect that it is or may be obligated to remedy. If the well operator remains unaware of allegedly having affected a water supply it cannot be expected to take necessary actions to remedy the action. In addition the current regulatory framework may result in the Department conducting a unilateral investigation in making a determination of the responsibility of the well operator. During the time period required by the Department to conduct the investigation the well operator, if unaware of the same, may be precluded from the right to gather samples, sample medium, collect evidence and take statements that may be irretrievably lost during this time period especially with respect to physical mediums or substances or evidence that can be destroyed during this time. The affect of the current regulatory framework and Department policy may preclude a well operator and the right of the well operator according to law and statute to conduct a proper investigation of its own to develop a legal defense, at law and pursuant to Section 601.208 (d) of the Act, to any allegations of purported pollution or diminution of a water supply.

The proposed regulatory language codified here as **[\$78.51 (c)(1)]** , amending existing §78.51 (c), would ensure that a well operator is guaranteed its right as a matter of law and as prescribed by statute to develop a proper defense and also protect the Department which currently may be expending resources conducting investigations that are not required to be substantiated to some extent by the party requesting the investigation, beyond hearsay or simple assertions with respect to the purported pollution or diminution of a water supply.

### **Conclusions**

Pursuant to Section 601.102 and Section 601.104 of the Act the Department and the Environmental Quality Board is obligated and has the authority to adopt the proposed regulatory language.

The problems encountered under current regulations, the factual and legal contentions and supporting documentation are as set forth herein or the attachments hereto. Suggested regulatory language is embodied and referenced herein.

In accordance with Chapter 23, §23.2, the petitioner believes that the petition is complete as required by §23.1, the petition requests an action that can be taken by the Environmental Quality Board and the requested action does not conflict with Federal law.

### **II (C)**

Landowners with water supplies, water supply owners, water purveyors, well operators and well operators making application for a well permit pursuant to the Oil and Gas Act and the Department would be impacted by this proposal.

### **II (D)**

No, not to the knowledge of petitioner.

## PROPOSED REGULATORY LANGUAGE

### **[§78.51 (c)(1)]**

The Department shall cause the information required under §78.51 (b)(1)-(5) to be reduced to writing in the form of an affidavit which shall be signed by the landowner, water purveyor, water supply owner or affected person purporting the pollution or diminution of a water supply which affidavit shall subsequently be attested to under oath before a notary public and notarized by a notary public as prescribed by law.

Within 3 days of the receipt of an investigation request the Department shall notify the well operator by certified mail of the name and address of the landowner, water purveyor, water supply owner or affected person requesting the investigation which notification shall contain a copy of the affidavit filed by the person requesting the investigation and copies of all notes and information gathered by the Department until such time of the notice.

The Department shall notify the well operator of any and all dates and times of the investigation to be performed by the Department. The well operator or any agents thereof may be present during such investigations to take, share in or otherwise participate in any sampling, the gathering of evidence or the taking of statements performed by the Department in the conduct of its investigation. Upon receipt by the Department of the investigation request or upon receipt of the notification by the well operator of the investigation request the well operator or any agents thereof may, at all reasonable times, enter upon the surface lands on which the water supply purported to be affected is located to conduct its own investigation of the purported pollution or diminution of the affected water supply including the taking of samples, collecting evidence or otherwise compiling data relating to the water supply purported to be affected.

### **[§78.52 (g)]**

A well operator shall be deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner for the purposes of conducting a predrilling or prealteration survey in accordance with this section and Section 601.208 (d) (2) of the Act when the well operator can demonstrate to the Department that it has provided two separate notices by certified mail in accordance with Section 601.201 (b) of the Act and containing the information required pursuant to §78.52 (f) (1),(2),(4) and such notices have been returned to the well operator as being refused, unclaimed or undeliverable or the equivalent thereof as determined by the United States Postal Service.

If such notice as provided in Section 601.201(b) of the Act and **[§78.52 (h)]** are delivered, claimed or accepted by the landowner, water supply owner or water purveyor and subsequently the well operator or agents thereof are refused access to conduct a predrilling or prealteration survey the well operator may notify the Department in writing of such refusal. Upon notice the Department shall, within 15 days of receipt of notice from the well operator, attempt to contact the landowner, water supply owner or water purveyor and shall document such refusal in writing which shall then be deemed as a refusal pursuant to Section 601.208 (d) of the Act. In the event the Department cannot contact the landowner, water supply owner or water purveyor within 30 days of receipt of the notice as provided by the well operator to document such refusal the assertion by the well operator of the original refusal shall be deemed final and conclusive upon the well operator providing an affidavit to the Department attesting to the same.

**PROPOSED REGULATORY LANGUAGE**

**[\$78.52 (h)]**

A well operator shall be deemed by the Department to have sufficiently provided the notices provided for in this section when the well operator has provided the notices to the landowner, water purveyor or water supply owner pursuant to Section 601.201 (b) of the Act and this section.

Notices sent to any surface owner or landowner as provided for in Section 601.201 (b) of the Act shall be deemed for all purposes as notification or notice to the owner or purveyor of any water supply located on the lands of such surface owner or landowner.

**[\$78.52 (i)]**

A well operator deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner in accordance with **[\$78.52 (g)]** and Section 601.208 (d) (2) of the Act for the purposes of conducting a predrilling or prealteration survey may petition the Department to issue an order to the landowner, water purveyor or water supply owner requiring that access be provided to the well operator to conduct a predrilling or prealteration survey. The order shall be issued by the Department within 15 days of receipt of the petition from the well operator. The order shall require that the landowner, water purveyor or water supply owner shall, within 30 days following the receipt of the order, make arrangements with the Department and the well operator to conduct a predrilling or prealteration survey during the 30 day period following the receipt of the order. Failure by the landowner, water purveyor or water supply owner to comply with the order shall result in the loss of any rights afforded the landowner, water purveyor or water supply owner pursuant to Section 601.208 (a) (b) (c) of the Act and §78.51.

2857

# SGNG COMPANY

RECEIVED

JAN 22 2010

STEPHENSON GROUP NATURAL GAS COMPANY

912 McCORMICK ROAD  
SMICKSBURG, PA 16256

ENVIRONMENTAL QUALITY BOARD

RECEIVED

AUG 17 2010

INDEPENDENT REGULATORY  
REVIEW COMMISSION

January 19, 2010

VIA CERTIFIED MAIL ARTICLE NUMBER 7192 6390 0010 0000 0381

Michele L. Tate  
Regulatory Coordinator  
Environmental Quality Board  
16 th Floor, Rachel Carson State Office Building  
(PO Box 8477)  
400 Market Street  
Harrisburg, PA 17101

COPY

**RE: Revised petition to Amend 25 Pa. Code §78.51 and §78.52  
Commonwealth of Pennsylvania, Environmental Quality Board**

Ms. Tate:

Please find enclosed a revised Petition Form pursuant to Chapter 23;  
Environmental Quality Board Policy for Processing Petitions-Statement of Policy, with  
respect to regulations at Title 25, Chapter 78, §78.51 and §78.52.

Please find attached revised proposed regulatory language responding to the  
Department Assessment, in accordance with Chapter 23, §23.3, of the original  
proposed regulatory language.

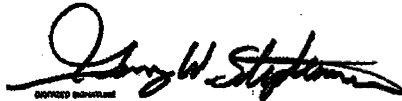
For ease of reference the revised proposed regulatory language is being  
presented here in two formats being the original text with the revisions notated; and the  
revised regulatory language with the revisions integrated.

Please note that the original proposed §78.52 (h) has been deleted in the entirety  
with the original proposed §78.52 (i) as revised now being codified as §78.52 (h).

Should you have any additional questions or should you have any comments please feel free to contact me at the address as set forth above.

Thank you in advance for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory W. Stephenson". The signature is written in a cursive style with a large initial "G".

Gregory W. Stephenson  
Vice-President  
Stephenson Group Natural Gas Company





C. Describe the types of persons, businesses and organizations likely to be impacted by this proposal.

**\*See attached Revised Proposed Regulatory Language**

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D. Does the action requested in the petition concern a matter currently in litigation? If yes, please explain.

**\* See attached Revised Proposed Regulatory Language**

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E. For stream redesignation petitions, the following information must be included for the petition to be considered complete. Attach supporting material as necessary.

1. A clear delineation of the watershed or stream segment to be redesignated, both in narrative form and on a map.
2. The current designated use(s) of the watershed or segment.
3. The requested designated use(s) of the watershed or segment.
4. Available technical data on instream conditions for the following: water chemistry, the aquatic community (benthic macroinvertebrates and/or fishes), or instream habitat. If such data are not included, provide a description of the data sources investigated.
5. A description of existing and proposed point and nonpoint source discharges and their impact on water quality and/or the aquatic community. The names, locations, and permit numbers of point source discharges and a description of the types and locations of nonpoint source discharges should be listed.
6. Information regarding any of the qualifiers for designation as high quality waters (HQ) or exceptional value waters (EV) in §93.4b (relating to qualifying as High Quality or Exceptional Value waters) used as a basis for the requested designation.
7. A general description of land use and development patterns in the watershed. Examples include the amount or percentage of public lands (including ownership) and the amount or percentage of various land use types (such as residential, commercial, industrial, agricultural and the like).
8. The names of all municipalities through which the watershed or segment flows, including an official contact name and address.
9. Locational information relevant to items 4-8 (except for contact names and addresses) displayed on a map or maps, if possible.

All petitions should be submitted to the  
Secretary of the Department of Environmental Protection  
P.O. Box 2063  
Harrisburg, PA 17105-2063

## **REVISED**

### **PROPOSED REGULATORY LANGUAGE**

(Original text with notated revisions)

Note: Text appearing with ~~strikethrough~~ to be deleted.

Text appearing as **[bold in brackets]** indicates revised text.

#### **[§78.51 (c)(1)]**

The Department shall cause the information required under §78.51 (b)(1)-(5) to be reduced to writing in the form of an affidavit which shall be signed by the landowner, water purveyor, water supply owner or affected person purporting the pollution or diminution of a water supply which affidavit shall subsequently be attested to under oath before a notary public and notarized by a notary public as prescribed by law.

**[The affiant, with respect to the information as set forth in the affidavit, shall be subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, which include fine and imprisonment and notice thereof shall be provided by the Department to affiant.]**

Within 3 days of the receipt of an investigation request the Department shall notify the well operator by certified mail of the name and address of the landowner, water purveyor, water supply owner or affected person requesting the investigation which notification shall contain a copy of the affidavit filed by the person requesting the investigation and copies of all notes and information gathered by the Department until such time of the notice.

~~The Department shall notify the well operator of any and all dates and times of the investigation to be performed by the Department. The well operator or any agents thereof may be present during such investigations to take, share in or otherwise participate in any sampling, the gathering of evidence or the taking of statements performed by the Department in the conduct of its investigation. Upon receipt by the Department of the investigation request or upon receipt of the notification by the well operator of the investigation request the well operator or any agents thereof may, at all reasonable times, enter upon the surface lands on which the water supply purported to be affected is located to conduct its own investigation of the purported pollution or diminution of the affected water supply including the taking of samples, collecting evidence or otherwise compiling data relating to the water supply purported to be affected.~~

**[The Department, within 10 days of the compilation of any reports, the preparation of any documentation or notes, the receipt of any testing results, the taking of any statements or otherwise obtaining any material information relating to the complaint as a result of the Department's investigation, shall forward copies of the same to the well operator.]**

#### **[§78.52 (g)]**

A well operator shall be deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner for the purposes of conducting a predrilling or prealteration survey in accordance with this section and Section 601.208 (d) (2) of the Act when the well operator can demonstrate to the Department that it has provided two separate notices by certified mail in accordance with Section 601.201 (b) of the Act and containing the information required pursuant to §78.52 (f) (1),(2),(4) and such notices have been returned to the well operator as being refused, unclaimed or undeliverable or the equivalent thereof as determined by the United States Postal Service.

## REVISED

### PROPOSED REGULATORY LANGUAGE (Original text with notated revisions)

Note: Text appearing with ~~strikethrough~~ to be deleted.

Text appearing as **[bold in brackets]** indicates revised text.

#### **[§78.52 (g)]** (continued)

If such notice as provided in Section 601.201(b) of the Act and ~~§78.52 (h)~~ are delivered, claimed or accepted by the landowner, water supply owner or water purveyor and subsequently the well operator or agents thereof are refused access to conduct a predrilling or prealteration survey the well operator may notify the Department in writing of such refusal. Upon notice the Department shall, within 15 days of receipt of notice from the well operator, attempt to contact the landowner, water supply owner or water purveyor and shall document such refusal in writing which shall then be deemed as a refusal pursuant to Section 601.208 (d) of the Act. In the event the Department cannot contact the landowner, water supply owner or water purveyor within 30 days of receipt of the notice as provided by the well operator to document such refusal the assertion by the well operator of the original refusal shall be deemed final and conclusive upon the well operator providing an affidavit to the Department attesting to the same.

#### ~~§78.52 (h)~~

~~A well operator shall be deemed by the Department to have sufficiently provided the notices provided for in this section when the well operator has provided the notices to the landowner, water purveyor or water supply owner pursuant to Section 601.201 (b) of the Act and this section.~~

~~Notices sent to any surface owner or landowner as provided for in Section 601.201 (b) of the Act shall be deemed for all purposes as notification or notice to the owner or purveyor of any water supply located on the lands of such surface owner or landowner.~~

#### **[§78.52 (i)]** **[§78.52 (h)]**

A well operator deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner in accordance with **[§78.52 (g)]** and Section 601.208 (d) (2) of the Act for the purposes of conducting a predrilling or prealteration survey may petition the Department to **[request]** issue an order to the landowner, water purveyor or water supply owner requiring that access be provided to the well operator **[or the Department]** to conduct a predrilling or prealteration survey. The order **[request]** shall be issued by the Department within 15 days of receipt of the petition from the well operator. The order **[request]** shall require that the landowner, water purveyor or water supply owner shall, within 30 days following the receipt of the order **[request]**, make arrangements with the Department and **[or]** the well operator to conduct a predrilling or prealteration survey during the 30 day period following the receipt of the order **[request]** . **[Failure by the landowner, water purveyor or water supply owner to respond to the Department or the well operator during the 30 day period following the receipt of the request shall be deemed by the Department as a refusal and the Department shall document such refusal in a report. A copy of the report shall be sent to the landowner, water purveyor or water supply owner and the well operator].** ~~Failure by the landowner, water purveyor or water supply owner to comply with the order shall result in the loss of any rights afforded the landowner, water purveyor or water supply owner pursuant to Section 601.208 (a) (b) (c) of the Act and §78.51.~~

## **REVISED**

### **PROPOSED REGULATORY LANGUAGE** (Revisions integrated)

#### **[§78.51 (c)(1)]**

The Department shall cause the information required under §78.51 (b)(1)-(5) to be reduced to writing in the form of an affidavit which shall be signed by the landowner, water purveyor, water supply owner or affected person purporting the pollution or diminution of a water supply which affidavit shall subsequently be attested to under oath before a notary public and notarized by a notary public as prescribed by law.

The affiant, with respect to the information as set forth in the affidavit, shall be subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, which include fine and imprisonment and notice thereof shall be provided by the Department to affiant.

Within 3 days of the receipt of an investigation request the Department shall notify the well operator by certified mail of the name and address of the landowner, water purveyor, water supply owner or affected person requesting the investigation which notification shall contain a copy of the affidavit filed by the person requesting the investigation and copies of all notes and information gathered by the Department until such time of the notice.

The Department shall notify the well operator of any and all dates and times of the investigation to be performed by the Department.

The Department, within 10 days of the compilation of any reports, the preparation of any documentation or notes, the receipt of any testing results, the taking of any statements or otherwise obtaining any material information relating to the complaint as a result of the Department's investigation, shall forward copies of the same to the well operator.

#### **[§78.52 (g)]**

A well operator shall be deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner for the purposes of conducting a predrilling or prealteration survey in accordance with this section and Section 601.208 (d) (2) of the Act when the well operator can demonstrate to the Department that it has provided two separate notices by certified mail in accordance with Section 601.201 (b) of the Act and containing the information required pursuant to §78.52 (f) (1),(2),(4) and such notices have been returned to the well operator as being refused, unclaimed or undeliverable or the equivalent thereof as determined by the United States Postal Service.

If such notice as provided in Section 601.201(b) of the Act are delivered, claimed or accepted by the landowner, water supply owner or water purveyor and subsequently the well operator or agents thereof are refused access to conduct a predrilling or prealteration survey the well operator may notify the Department in writing of such refusal. Upon notice the Department shall, within 15 days of receipt of notice from the well operator, attempt to contact the landowner, water supply owner or water purveyor and shall document such refusal in writing which shall then be deemed as a refusal pursuant to Section 601.208 (d) of the Act. In the event the Department cannot contact the landowner, water supply owner or water purveyor within 30 days of receipt of the notice as provided by the well operator to document such refusal the assertion by the well operator of the original refusal shall be deemed final and conclusive upon the well operator providing an affidavit to the Department attesting to the same.

**REVISED**

**PROPOSED REGULATORY LANGUAGE**

(Revisions integrated)

**[§78.52 (h)]**

A well operator deemed by the Department to have been refused access by a landowner, water purveyor or water supply owner in accordance with §78.52 (g) and Section 601.208 (d) (2) of the Act for the purposes of conducting a predrilling or prealteration survey may petition the Department to request the landowner, water purveyor or water supply owner that access be provided to the well operator or the Department to conduct a predrilling or prealteration survey. The request shall be issued by the Department within 15 days of receipt of the petition from the well operator. The request shall require that the landowner, water purveyor or water supply owner shall, within 30 days following the receipt of the request, make arrangements with the Department or the well operator to conduct a predrilling or prealteration survey during the 30 day period following the receipt of the request. Failure by the landowner, water purveyor or water supply owner to respond to the Department or the well operator during the 30 day period following the receipt of the request shall be deemed by the Department as a refusal and the Department shall document such refusal in a report. A copy of the report shall be sent to the landowner, water purveyor or water supply owner and the well operator.

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**PROPOSED RULEMAKING****ENVIRONMENTAL  
QUALITY BOARD****[25 PA. CODE CH. 23]****Acceptance of Rulemaking Petition for Study****[40 Pa.B. 1635]****[Saturday, March 27, 2010]**

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On March 16, 2010, the Environmental Quality Board (Board) accepted a rulemaking petition for study under 25 Pa. Code Chapter 23 (relating to Environmental Quality Board Policy for processing petitions—statement of policy). The petition, submitted by the Stephenson Group Natural Gas Company, requests the amendment of 25 Pa. Code §§ 78.51 and 78.52 (relating to protection of water supplies; and predrilling or prealteration survey) to clarify procedures a well operator must adhere to in order to rebut the presumption of liability for contamination of a water supply within 1,000 feet of a proposed well. Under the Oil and Gas Act (58 P. S. §§ 601.101—601.605), a well operator is presumed to have contaminated a water supply if a well is drilled within 1,000 feet of a water supply and the supply becomes contaminated within 6 months. An operator can rebut the presumption of liability if the operator took a sample from the water supply prior to drilling and the test results show that the condition preexisted drilling, or the owner of the water supply refused to grant the operator access to test the supply. The petitioner claims that it is problematic if not difficult to ascertain the ownership or the right of a purveyor of a water supply, thus making it difficult to notify these parties. The petitioner proposes to amend 25 Pa. Code Chapter 78 (relating to oil and gas wells) to add a provision that would "deem" the well operator to have been refused access to test the supply if the operator sends two separate certified letters to the water supply owner and the owner either refuses to accept the letters or the letters are unclaimed or are undeliverable.

In lieu of proceeding with § 23.6 (relating to notice of acceptance and Department report) of the Board's Policy for Processing Petitions, which requires the Department of Environmental Protection (Department) to prepare a report evaluating the petition within 60 days, the Department will review the petitioner's suggested amendments as it proceeds with a proposed rulemaking to amend Chapter 78. At 40 Pa.B. 623 (January 30, 2010), the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with amendments to Chapter 78, it will address the petitioner's recommendations within the proposed rulemaking package.

The previously-referenced petition is available to the public by contacting the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 and is accessible on the Department's web site [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (select "Public Participation;" "Public Participation Center;" "Environmental Quality Board;" "Meeting/Agendas Handouts/Minutes;" "March 16, 2010").

JOHN HANGER,  
Chairperson

[Pa.B. Doc. No. 10-552. Filed for public inspection March 26, 2010, 9:00 a.m.]

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MINUTES  
ENVIRONMENTAL QUALITY BOARD MEETING  
March 16, 2010

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VOTING MEMBERS OR ALTERNATES PRESENT

John Hanger, Chairman, Secretary, Department of Environmental Protection  
Kenneth Graham, alternate for Secretary Sandi Vito, Department of Labor and Industry  
Danielle Spila, alternate for Secretary Allen D. Biehler, Department of Transportation  
Wayne Gardner, alternate for Chairman James H. Cawley, Public Utility Commission  
Edward Yin, alternate for Representative Camille George  
Joseph Deklinski, alternate for Representative Scott E. Hutchinson  
Richard Fox, alternate for Senator Raphael J. Musto  
Patrick Henderson, alternate for Senator Mary Jo White  
Bill Capouillez, alternate for Carl Roe, Executive Director, PA Game Commission  
John Arway, Executive Director, Pennsylvania Fish and Boat Commission  
William Sisson, alternate for Barbara Franco, PA Historical and Museum Commission  
Joanne Denworth, alternate for Secretary Donna Cooper, Governor's Office of Policy and Planning  
Cynthia Carrow, Citizens Advisory Council  
Jolene Chinchilli, Citizens Advisory Council  
Peter Wilshusen, Ph.D., Citizens Advisory Council  
Walter Heine, Citizens Advisory Council  
David Strong, Citizens Advisory Council  
Paul Opiyo, alternate for Secretary George Cornelius, Department of Community and Economic  
Development  
Michael Pechart, alternate for Secretary Russell Redding, Department of Agriculture  
Dr. James Logue, alternate for Secretary Everette James, Department of Health

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Doug Brennan, Director, Bureau of Regulatory Counsel  
Kelly J. Heffner, Policy Office Director  
Michele Tate, Regulatory Coordinator

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman Hanger called the meeting to order at 9:05 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board considered its first item of business - the February 16, 2010, EQB meeting minutes.

Michael Pechart moved to approve the February 16, 2010, EQB meeting minutes.  
Walter Heine seconded the motion, which was unanimously approved by the Board.

CONSIDERATION OF PROPOSED RULEMAKING: AMBIENT WATER QUALITY  
CRITERION - CHLORIDE (25 Pa Code, Chapter 93)

John Hines, Deputy Secretary for the Office of Water Management presented a summary of the proposed rulemaking. Dana Aunkst, Director, Bureau of Water Standards and Facility Regulation, and Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the conclusion of Deputy Secretary Hines' presentation, Joe Deklinski asked for clarification whether the Department currently has a standard in place for chloride. Mr. Aunkst replied there is a standard in place for chloride which is applied at the point of intake for the protection of potable water supply use; however, he noted that since the standard is only applied at the point of intake, there can be long stretches of a stream where chloride may exceed values that are necessary to protect aquatic life as long as there is adequate dilution from the point of discharge to the point of compliance. For this reason, Mr. Aunkst noted that the Department is pursuing this rulemaking in order to establish chloride criterion that would be applicable statewide and would therefore provide additional protection for aquatic life. In response, Mr. Deklinski inquired if the Department currently has a chloride criterion for the protection of fish and aquatic life. Mr. Aunkst responded no and elaborated that the current chloride criterion is only applicable at the point of water withdrawal.

Walter Heine inquired whether the U.S. EPA requires states to adopt aquatic life criterion, such as the criterion for chloride included in the proposed rulemaking. Mr. Aunkst clarified that EPA does not mandate states to incorporate specific aquatic life criterion and noted that EPA develops aquatic life criterion frequently and that states have the option of including that criterion within their approved water quality standards program. Mr. Aunkst further noted that in 2002, the Department chose not to incorporate specific chloride criterion into its regulations because it was believed at that time that osmotic pressure was a better criterion for the protection of fish and other aquatic life. Since that time, the Department has learned that there are difficulties associated with osmotic pressure as an aquatic life criterion and are therefore now seeking to incorporate specific aquatic life criterion for chlorides in the proposed rulemaking. In closing, John Arway commended the Department for moving forward with the rulemaking and stated that the regulations are necessary for the protection of aquatic life. He further noted that as science continues to evolve to enhance aquatic life protection, he hopes the Department stays abreast of those advancements and continues to apprise the Board of any such developments.

**Mr. Arway moved to adopt the proposed rulemaking, with a 45-day public comment period. David Strong seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.**

**CONSIDERATION OF RULEMAKING PETITION: STEPHENSON GROUP NATURAL GAS COMPANY AMENDMENTS TO 25 Pa Code, Chapters 78.51 and 78.52**

J. Scott Roberts, Deputy Secretary for the Office of Mineral Resources Management, introduced Scott Perry, Director, Bureau of Oil and Gas Management, who presented an overview of the rulemaking petition to the Board. Pam Bishop, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following Mr. Perry's presentation, Bill Capouillez asked for clarification regarding the regulations that are referenced in the petition. The petition seeks to amend the Commonwealth's regulations to address, in the petitioner's assessment, ambiguities concerning the regulatory requirements that a well permit applicant notify all landowners or water purveyors whose water supplies are within 1,000 feet of the location of the proposed well. Mr. Capouillez inquired, with respect to the 1,000 feet limitation, whether the regulations – and therefore the petition – refer to the well head or the lateral length of the well. Mr. Perry replied that the Department interprets the regulatory provision to be applicable to the well head because it is the vertical portion of the well that penetrates the fresh ground-water zone; therefore making the well head the appropriate place to apply the 1,000 feet presumptive distance area. In response, Mr. Capouillez asked for clarification if the 1,000 foot presumptive distance would apply in those situations where a gas well fracs an aquifer that is above the point of fracture, but is within the 1,000 feet

presumptive distance. Deputy Secretary Roberts responded that in the Commonwealth, gas well operators are typically not fracing aquifers and that fracing is predominantly taking place 6,000 feet below an aquifer. In response, Mr. Capouillez inquired whether the 1,000 feet presumptive limitation is also applicable to coal bed methane wells. Mr. Perry responded that the 1,000 feet presumptive liability provision, relative to coal bed methane wells, applies to the vertical portion of the well, but clarified that if a well operator affects a water supply, regardless if that supply is within a 1,000 feet of the well head, the operator must restore and replace the water. He further stated that the regulatory provision in question does not provide a mechanism that allows for the contamination of groundwater. He emphasized that groundwater contamination is absolutely prohibited and that the regulatory provision being discussed merely identifies that an operator is presumed to have caused groundwater contamination if contamination is found within 1,000 feet of the well and predrilling surveys were not completed. In response, Mr. Capouillez asked for clarification of the substance of the petition. He asked whether the basis of the petition implies that a permit applicant must obtain a sworn statement relative to the condition of a water supply before the Department could act on the petition application. Mr. Perry responded in the affirmative.

Patrick Henderson inquired whether the petition seeks to amend existing presumption provisions provided under Federal law or if the petition seeks to amend the administrative procedures that are used to implement the provision. Mr. Perry clarified that the substance of the petition includes whether a permit applicant has been deemed to have been refused access to a property in order to conduct predrilling surveys.

Wayne Gardner asked for clarification on the Board's action on the petition. Chairman Hanger clarified that the Board would vote to either accept or reject the petition based solely on whether the petition is administratively complete and emphasized that the Board's vote on the petition would not speak to the merits of the actions requested in the petition. Mr. Gardner asked for further clarification concerning the Department's intended review of the petition. Mr. Perry explained that in lieu of submitting a separate report to the Board that would highlight the Department's evaluation of the petition, the Department would include its evaluation of the petition in a comment/response document that will be completed by the Department when it finalizes a rulemaking on amendments to Chapter 78.

In a related note, Mr. Arway asked the Department for its position on the accuracy of the 1,000 feet presumptive liability provision in the regulations, given the changes in technology. Deputy Secretary Roberts responded that the question needs to be addressed from two different aspects – including water quality and quantity. With regard to water quantity, the Department doesn't believe it makes sense to increase the 1,000 feet presumptive liability limitation; however, with respect to water quality, the Department is currently analyzing that question in response to several legislative amendments that are being pursued.

**Mr. Henderson moved to accept the rulemaking petition for further review by the Department. Mr. Heine seconded the motion, which was unanimously approved by the Board.**

#### **CONSIDERATION OF PROPOSED RULEMAKING: COAL MINING PROGRAM AMENDMENTS (25 Pa Code, Chapters 86-90)**

J. Scott Roberts, Deputy Secretary for the Office of Mineral Resources Management, presented an overview of the rulemaking. Bill Allen, Acting Director, Bureau of Mining and Reclamation, and Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

At the conclusion of the Department's presentation, Mr. Strong inquired why the Department would permit coal exploration in areas designated as unsuitable for mining. Deputy Secretary Roberts responded that with respect to the Commonwealth that the Department doesn't receive a predominance of requests for coal exploration in unsuitable for mining areas, but clarified that the rulemaking amendments were being pursued in order to ensure consistency with Federal rules.

**Mr. Heine moved to adopt the proposed rulemaking, with a 30-day public comment period. Joanne Denworth seconded the motion, which was unanimously approved by the Board.**

**CONSIDERATION OF PROPOSED RULEMAKING: DESIGNATION OF AREA AS UNSUITABLE FOR SURFACT MINING (MUDDY RUN) (25 Pa Code, Chapter 86)**

J. Scott Roberts, Deputy Secretary for the Office of Mineral Resources Management, presented an overview of the rulemaking. Bill Allen, Acting Bureau Director, Bureau of Mining and Reclamation, and Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

After the Department presentation, Mr. Capouillez asked how reclamation projects would be affected if they were included within an unsuitable for mining area. Deputy Secretary Roberts replied that reclamation projects or treatment of discharges would not be affected. Mr. Capouillez further asked whether an unsuitable for surface mining designation could impact incidental coal removal, when the removal was part of a reclamation project. Deputy Secretary Roberts responded no, if the removal was truly part of a reclamation project. Mr. Arway asked whether there are any other unsuitable for mining requests that the Department has received. Mr. Allen responded that the Department has received three other requests and emphasized that the Department usually focuses on only one request at a time because the requests are very resource intensive.

Ms. Denworth inquired whether there are areas within the unsuitable for mining petition area that have been mined but not reclaimed. Deputy Secretary Roberts said yes and elaborated that out of the 3,200 acres that are in the petition area, only about 275 acres of coal remain in place that are conducive to mining. He further explained that the petitioner's interest in requesting the unsuitable for mining designation is to protect the water supply of the Reade Township Municipal Authority from near surface aquifer pollution. Mr. Henderson asked for clarification whether the water wells within the petition area are still producing high quality water despite the fact that approximately 90% of the petition area has already been mined. Deputy Secretary Roberts responded that the wells are producing high quality water but elaborated on the petitioner's concerns regarding pumping rates and the ability of those wells to start pulling water down into the aquifer during dry months.

**Mr. Arway moved to adopt the proposed rulemaking, with a 30-day public comment period. Ms. Chinchilli seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the motion.**

**CONSIDERATION OF FINAL RULEMAKING: CONTROL OF NO<sub>x</sub> EMISSIONS FROM CEMENT KILNS (25 Pa Code, Chapter 145)**

Kenneth Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, presented an overview of the proposed rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Robert Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Henderson noted the length of time that had elapsed between the time the Board adopted the proposed rulemaking until the time the Department presenting the final regulations to the Board and asked whether the Board is nearing the two-year statutory limitation to finalize the rulemaking. Ms. Epps responded yes. Mr. Henderson inquired the reasons behind the delay in finalizing the rulemaking. Ms. Epps explained that in light of actions concerning the CAIR rulemaking, including its vacatur in July 2008 and its subsequent remanding back to EPA in 2009, EPA Headquarters voiced concerns about the proposed rulemaking because it included provisions that allowed the surrender of NO<sub>x</sub> allowances as a compliance strategy. The delay in finalizing the rulemaking was attributable both to the vacatur and remanding of the CAIR rulemaking as well as the time needed by the Department to resolve issues with EPA concerning the provisions in the rulemaking that referenced the surrender of NO<sub>x</sub> allowances. In response, Mr. Henderson inquired if there were any substantive changes included in the final rulemaking that were not reviewed by AQTAC. Ms. Epps responded that the Department shared the draft final rulemaking with AQTAC prior to its submission to the EQB.

**Mr. Gardner moved to adopt the final rulemaking. Mr. Yim seconded the motion, which passed unanimously by the Board.**

**CONSIDERATION OF FINAL RULEMAKING: CONTROL OF NO<sub>x</sub> EMISSIONS FROM GLASS MELTING FURNACES (25 Pa Code, Chapters 121 and 129)**

Kenneth Reisinger, Acting Deputy Secretary for Waste, Air and Radiation Management, presented an overview of the final rulemaking. Joyce Epps, Director, Bureau of Air Quality, and Robert Reiley, Assistant Counsel, Bureau of Regulatory Counsel, assisted with the presentation.

Following the Department's presentation, Mr. Henderson noted his appreciation of the Department's willingness to consider modifications to the alternate emission limit provisions in the rulemaking, which were included in the final rulemaking presented to the Board.

**Ms. Denworth moved to adopt the final rulemaking. Mr. Yim seconded the motion, which was approved by a majority of the Board members. Mr. Deklinski voted in opposition to the rulemaking.**

**OTHER BUSINESS:**

In response to an inquiry at the Board's February 16, 2010, meeting, Doug Brennan presented to the Board the Department's recommendation regarding the Board's appropriate response to the invalidation of the Commonwealth's Mercury Rule by the Pennsylvania Supreme Court. The Department's recourse is to proceed with a final-omitted rulemaking, which will remove the regulations from the *Pennsylvania Code*.

**ADJOURN:**

With no further business before the Board, Mr. Strong moved to adjourn the meeting. Mr. Yim seconded the motion, which was unanimously approved by the Board. The March 16, 2010, meeting of the Board was adjourned at 10:15 a.m.



Environmental Quality Board

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

p.o. box 8477 • Harrisburg, Pa. 17105-8477 • (717)787-4526

March 2, 2010

Mr. Gregory W. Stephenson  
Vice-President  
Stephenson Group Natural Gas Company  
912 McCormick Road  
Smicksburg, PA 16256

COPY

Re: Petition to Amend 25 Pa. Code § 78.51 and § 78.52

Dear Mr. Stephenson:

Thank you for submitting to the Environmental Quality Board (EQB) a revised petition, dated January 19, 2010, requesting the amendments of 25 Pa Code Chapters 78.51 and 78.52. The Department of Environmental Protection (Department) has reviewed the revised petition and has determined that it is appropriate for consideration by the EQB, as set forth in Section 23.2 of the EQB's Policy for Processing Petitions.

Your petition will be submitted to the EQB for consideration at its next meeting scheduled for March 16, 2010. The Department will summarize the petition for the Board members who will take action to either accept or reject the petition as identified in Section 23.5 of the EQB's petition policy. At the meeting, the Department will recommend the EQB's approval of the petition for further review and study; however, in lieu of proceeding with Section 23.6 of the EQB's petition policy, which requires the Department to prepare a report evaluating the petition within 60 days, the Department will recommend to the Board that it review and further study your petition as it proceeds with a proposed rulemaking to amend 25 Pa Code, Chapter 78. In the January 30, 2010, issue of the *Pennsylvania Bulletin*, at 40 Pa.B. 623, the Department requested comments on proposed changes to regulations it is developing for Chapter 78 regarding the construction of oil and gas wells. As the Department proceeds with the proposed Chapter 78 regulations, it will address your recommendations within the proposed rulemaking package. You will be notified when the proposed rulemaking is submitted to the EQB for consideration.

As directed by the EQB's petition policy, you are invited to make a five-minute presentation to the Board on the petition at the March 16, 2010, meeting. An agenda for the meeting is enclosed. The meeting will be held at 9:00 a.m. in Room 105, First Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Directions to the Rachel Carson State Office Building can be obtained on the Department's website at [http://www.portal.state.pa.us/portal/server.pt/community/about\\_dep/13464/driving\\_directions/585264](http://www.portal.state.pa.us/portal/server.pt/community/about_dep/13464/driving_directions/585264). If you plan to make a presentation at the meeting, please notify Kelly Heffner, by March 12, 2010, at (717) 783-8727 or by e-mail at [kheffner@state.pa.us](mailto:kheffner@state.pa.us).

Mr. Gregory W. Stephenson

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Thank you for your interest in the Environmental Quality Board's rulemaking petition process. If you have any questions, please contact me at the telephone number listed above or by e-mail at [mtate@state.pa.us](mailto:mtate@state.pa.us).

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosure



Environmental Quality Board

**ENVIRONMENTAL QUALITY BOARD**  
**MARCH 16, 2010, MEETING**  
Room 105, Rachel Carson State Office Building  
400 Market Street, Harrisburg, PA  
9:00 a.m.

## AGENDA

- I. *Approval of February 16, 2010, Minutes*..... John Hanger  
Chairman
- II. *Consideration of Proposed Rulemaking*..... John Hines  
Ambient Water Quality Criterion – Chloride  
25 Pa Code Chapter 93  
Deputy Secretary for  
Water Management
- III. *Consideration of Rulemaking Petition* ..... J. Scott Roberts  
Stephenson Group Natural Gas Company  
Amendments to 25 Pa Code Chapters 78.51 and 78.52  
Deputy Secretary for  
Mineral Resources  
Management
- IV. *Consideration of Proposed Rulemaking*..... J. Scott Roberts  
Coal Mining Program Amendments  
25 Pa Code Chapters 86 - 90  
Deputy Secretary for  
Mineral Resources  
Management
- V. *Consideration of Proposed Rulemaking* ..... J. Scott Roberts  
Designation of Area as Unsuitable for Surface Mining  
(Muddy Run)  
25 Pa Code Chapter 86  
Deputy Secretary for  
Mineral Resources  
Management
- VI. *Consideration of Final Rulemaking* ..... Ken Reisinger  
Control of NOx Emissions from Cement Kilns  
25 Pa Code Chapter 145  
Acting Deputy Secretary for  
Waste, Air and Radiation  
Management
- VII. *Consideration of Final Rulemaking* ..... Ken Reisinger  
Control of NOx Emissions from Glass Melting Furnaces  
25 Pa Code Chapters 121 and 129  
Acting Deputy Secretary for  
Waste, Air and Radiation  
Management
- VIII. *Other Business*..... John Hanger  
Chairman
- IV. *Adjourn* ..... John Hanger  
Chairman