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**National Fuel Gas Midstream Corporation**

March 14, 2014



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

**Re: Comments on Proposed Amendments to 25 Pa. Code Chapter 78, Environmental Protection Performance Standards at Oil and Gas Well Sites (43 Pa.B. 7377-7415)**

To whom it may concern,

Enclosed please find an electronic copy of National Fuel Gas Midstream Corporation's ("Midstream Corporation") comments on proposed amendments to 25 Pa. Code Chapter 78, Environmental Protection Performance Standards at Oil and Gas Well Sites (43 Pa. B. 7377-7415).

Midstream Corporation appreciates this opportunity to provide comments regarding the proposed modifications to 25 Pa. Code, Chapter 78 and looks forward to working with the DEP to resolve the issues identified.

Please contact me at (716) 857-7501, if you have any questions concerning this matter.

Sincerely,

Duane A. Wassum  
President, National Fuel Gas Midstream Corporation

DAW/eml  
Enclosures

BEFORE THE  
ENVIRONMENTAL QUALITY BOARD

Proposed Rulemaking to Amend :  
The Provisions of 25 PA Code, Chapter : COMMENTS  
78, Environmental Protection Performance :  
Standards at Oil and Gas Well Sites :  
[43 Pa.B. 7377-7415] :

**COMMENTS OF  
NATIONAL FUEL GAS MIDSTREAM CORPORATION  
ON THE PROPOSED RULEMAKING**

To the Environmental Quality Board:

**I. INTRODUCTION**

On August 27, 2013, a proposed rulemaking was adopted by the Environmental Quality Board (the “EQB”) to amend 25 PA Code Chapter 78, relating to oil and gas wells. The proposed rulemaking would amend Chapter 78 to update the requirements regarding surface activities associated with the development of oil and gas wells, and would address recent statutory changes in the act of February 14, 2012 (P. L. 87, No. 13) (Act 13), codified at 58 Pa.C.S. §§ 2301—3504.<sup>1</sup> On December 13, 2013, the EQB published the proposed rulemaking in the Pennsylvania Bulletin, at 43 Pa.B. 7377, inviting comments, suggestions or objections from interested parties on or before February 12, 2014. On February 1, 2014, the EQB extended the deadline for written comments to March 14, 2014.<sup>2</sup>

National Fuel Gas Midstream Corporation (“Midstream Corporation”) is a National Fuel Gas Company subsidiary. Midstream Corporation's wholly-owned subsidiaries are engaged in

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<sup>1</sup> See 44 Pa.B. 7377 (Dec. 14, 2014); available at <http://www.pabulletin.com/secure/data/vol44/44-5/239.html>

<sup>2</sup> See 44 Pa.B. 648 (Feb. 1, 2014); available at <http://www.pabulletin.com/secure/data/vol44/44-5/239.html>

gathering production in Pennsylvania, by building, owning and operating natural gas processing and pipeline gathering facilities in Pennsylvania.

## **II. GENERAL COMMENTS**

The primary business of Midstream Corporation's subsidiaries is to build, own and operate natural gas processing and pipeline gathering facilities. As a subsidiary of the National Fuel Gas Company, Midstream Corporation shares in more than 100 years of experience in gathering and processing natural gas. Midstream Corporation has a vested interest in its subsidiaries conducting construction and operations in a safe and effective manner to protect the environment. In that regard, Midstream Corporation expects and supports strong meaningful regulatory oversight of oil and gas development in the Commonwealth by the Pennsylvania Department of Environmental Protection (the "DEP").

The proposed amendments to Chapter 78, however, would exceed statutory authority, by expanding regulatory provisions beyond the terms of Act 13<sup>3</sup>, and introduce operational complexity or obligations that have no meaningful environmental benefit. Indeed, while these proposed amendments contain many appropriate provisions to enhance environmental protections, they also contains several excessive and costly provisions that go beyond Act 13, impose unique and unnecessary administrative and operations burdens on the industry and are overly prescriptive with little if any environmental benefit.

In addition, several of the proposed revisions/additions create ambiguities or duplicative requirements, including unnecessary cross-references to existing laws set forth in 25 Pa. Code Chapter 102 (erosion and sediment control) and 25 Pa. Code Chapter 105 (relating to dam safety and waterway management). To the extent that these proposed revisions/additions (discussed in

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<sup>3</sup> See 1 Pa. C.S. § 1921

Section IV) create duplicative and/or unnecessary regulation, as further described herein and by other parties to this proceeding, Midstream Corporation requests that they be deleted from the proposed amendments to Chapter 78.

### III. REGULATORY REVIEW ACT

Midstream Corporation believes that the DEP has greatly underestimated midstream/pipeline companies' costs to comply with the proposed amendments to Chapter 78 in its Regulatory Analysis Form. Specifically, the DEP has failed to include any estimate for the costs associated with new oil and gas gathering lines (Section 78.68) and horizontal directional drilling (Section 78.68a) requirements. In fact, while discussing (albeit briefly) the potential costs to unconventional and conventional operators, the DEP does not include any analysis concerning the costs to pipeline/midstream companies. Rather, without any detail of its analysis, the DEP claims that despite significant amendments to the existing Chapter 78 and the numerous additional requirements that would be imposed, pipeline/midstream companies would actually realize a cost savings of \$300,000.<sup>4</sup> The DEP is incorrect, there will be significant added cost to midstream companies for compliance.

Given the lack of analysis, the DEP has not complied with the Regulatory Review Act, 71 P.S. § 745.5(a) ("RRA"). It has failed to perform a complete assessment of the costs of the proposed amendments and has, therefore, underestimated the full economic burden being placed on the industry. Midstream Corporation's subsidiaries incur expense to comply with the DEP's requirements aimed at environmental protection; however, here the DEP proposes numerous provisions which are duplicative, unnecessary and/or excessive. When computing the cost of

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<sup>4</sup> See Regulatory Analysis Form for proposed amendments to 25 Pa. Code Chapter 78, at p. 20-21; available at <http://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2013/August%2027%20EQB/Proposed%20Rulemaking%20-%20Ch%2078/RAF.pdf>

these new requirements, the costs, as well as a factual description of the benefits, must be identified. The DEP has failed to do so.

Moreover, as currently proposed, it is unclear as to how the new and revised requirements will apply to existing gathering lines. It would put an undue burden on pipeline/midstream companies, both financially and practically, to impose the proposed regulations on existing operations already working within the scope of DEP's current regulations. Midstream Corporation therefore requests that the DEP include a provision clearly stating that the new standards do not apply to gathering operations that have been already constructed, are being constructed under issued permits and for other related operations for which permit applications have been submitted to the DEP, prior to the effective date of the final rulemaking.

#### **IV. COMMENTS TO SPECIFIC SECTIONS**

##### **§ 78.68. Oil and Gas Gathering Lines**

##### **78.68(c) Topsoil segregation**

As drafted, § 78.68(c)(1) states that "topsoil and subsoil must remain segregated until restoration," mandating topsoil segregation regardless of whether construction is upland, agricultural or residential. Requiring full ROW width topsoil segregation for all pipeline construction, regardless of location, would significantly increase the cost of gathering installations, including the following additional costs:

- acquiring the additional easement width of the ROW - wider right of ways would be needed to store the segregated topsoil, as right of ways typically must be increased by 25% (from 75 to 100 feet) to properly segregate the topsoil;
- timber damages for the additional width;
- cutting any additional timber;

- stumping the additional width;
- stripping and piling the topsoil;
- maintaining topsoil/subsoil separation during the construction - this is particularly difficult on steep slopes, side slopes and narrow, and constrained ROW's;
- re-spreading the topsoil over the right of way;
- re-vegetating the additional width of the right of way where the topsoil was stored;
- erosion controls (filter sock, silt fence, slope breakers) across the additional ROW;
- and
- inspection and documentation to show that topsoil was preserved - pipelines and/or midstream companies would need to maintain a significant amount of documentation and to complete substantial testing to verify topsoil thicknesses.

Midstream Corporation suggests that § 78.68(c) be revised in accordance with FERC's Upland Erosion Control, Revegetation, and Maintenance Plan (the "FERC Plan"). This plan has been adopted for FERC regulated pipeline construction and requires topsoil segregation where one would expect, i.e. "in (a) cultivated or rotated croplands, and managed pastures; (b) residential areas; (c) hayfields; and (d) other areas at the landowner's or land management agency's request."<sup>5</sup> Accordingly, Midstream Corporation suggests that the EQB modify § 78.68(c) to read as follows:

The operator shall maintain topsoil and subsoil during excavation **in (i) cultivated or rotated croplands, and managed pastures; (ii) residential areas; (iii) hayfields; and (iv) other areas at the landowner's or land management agency's request** pursuant to the following, unless otherwise authorized by the Department:

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<sup>5</sup> See FERC Plan, at p. 8 (May 2013); available at <http://www.ferc.gov/industries/gas/enviro/plan.pdf>.

Further, unlike 25 Pa. Code §§ 77.512(c), 87.97(c), and 90.79(c)<sup>6</sup>, which clearly define the required depth for topsoil segregation, § 78.68(c) fails to specify any such depth. Where the topsoil depth is six feet, is a pipeline/midstream company required to segregate all six feet? Such a requirement would be unnecessarily onerous and would force pipelines/midstream companies to obtain additional right of way width in order to accommodate potentially large topsoil piles, at significant additional cost. Midstream Corporation advocates that the DEP adopt the existing (and identical) topsoil segregation requirements in §§ 77.512(c), 87.97(c), and 90.79(c), respectively. These Sections are also consistent with the FERC Plan, which provides that topsoil should be segregated 12 inches in deep soils and up to 12 inches otherwise.<sup>7</sup> Therefore, Midstream Corporation requests that the EQB modify the proposed § 78.68(c)(1) to read as follows:

**Topsoil and subsoil must remain segregated until restoration; provided, however, that if topsoil is less than 12 inches, a 12-inch layer which includes the topsoil and the unconsolidated materials immediately below the topsoil shall be removed, segregated, conserved and replaced as the final surface soil layer. If the topsoil and the unconsolidated material measure less than 12 inches, the topsoil and unconsolidated material shall be removed, segregated, conserved and replaced as the final surface soil layer.**

Equally important, during wintertime construction, segregating topsoil during frozen conditions would not be feasible since topsoil is often frozen and bound together with the subsoil. Furthermore, by imposing a substantial need to cut more trees and disturb additional

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<sup>6</sup> "If topsoil is less than 12 inches, a 12-inch layer which includes the topsoil and the unconsolidated materials immediately below the topsoil shall be removed, segregated, conserved and replaced as the final surface soil layer. If the topsoil and the unconsolidated material measure less than 12 inches, the topsoil and unconsolidated material shall be removed, segregated, conserved and replaced as the final surface soil layer." 25 Pa. Code § 77.512(c) (identical language in 25 Pa. Code §§ 87.97(c) and 90.97(c)).

<sup>7</sup> See FERC Plans, at p. 8 (May 2013); available at <http://www.ferc.gov/industries/gas/enviro/plan.pdf>.

acreage, as proposed, § 78.68(c) is contrary to land owner and public land management agencies' continued efforts to minimize right of way width. Thus, Midstream Corporation suggests a performance based alternative rather than this prescriptive approach taken by the DEP, i.e., allowing or requiring topsoil to be imported into sites where re-vegetation attempts have not been successful.

**78.68(c)(2)**

Section 78.68(c)(2), requiring that “topsoil and subsoil must be prevented from entering watercourses and bodies of water”, is already addressed in 25 Pa. Code Chapter 105 (“Chapter 105”) and thus should be removed as duplicative and unnecessary.

**78.68(g)**

The requirements of § 78.68(g) are addressed in Chapter 102, therefore, Midstream Corporation requests that this section be deleted from the proposed Chapter 78 as duplicative and unnecessary. If this section is retained, then the § 78.68 reference to a requirement to “maintain” the pipeline right of way, service roads and points of access must be defined. “Maintain” is not defined within the proposed amendments to Chapter 78 or within 25 Pa. Code Chapter 102 (“Chapter 102”). To the extent this section remains within Chapter 78, Midstream Corporation requests that the EQB define the term “maintain.”

**78.68(h)**

Requiring that all buried metallic gathering lines comply with the entirety of the requirements in 40 CFR 192 and 195, as proposed, goes well beyond the Act 13, § 3218.4(a) requirement, which references compliance with 49 CFR 192, Subpart I (relating to corrosion control). This paragraph should be revised to reference only the relevant corrosion control aspects of the Federal regulations, consistent with Act 13.

§ 78.68a. Horizontal Directional Drilling for Oil and Gas Pipelines

**78.68a(a) and 78.68a(b)**

Section 78.68a(a), requires that horizontal directional drilling ("HDD") (including such drilling in connection with oil and gas operation) under waterbodies or watercourses must be authorized by the DEP, in accordance with Chapter 102 and Chapter 105. Similarly, § 78.68a(b) requires that an HDD operator develop a PPC plan in accordance with Chapter 102. As these Sections are merely cross-references to existing regulations, they should be deleted from the proposed Chapter 78 as duplicative and unnecessary.

**78.68a(i)**

The reporting regulations in § 78.68a(i) are already substantively provided and covered in existing regulations, in light of the PPC plan required by Chapter 102. Moreover, as drafted, this subsection is unclear and ambiguous as to how an operator should follow the PPC plan required in Chapter 102, which describes the measures to be taken to control, contain and collect any discharge of drilling fluids, while also waiting for the Department to issue an emergency permit under Chapter 105. Therefore, Midstream suggests leaving the PPC plan in Chapter 102 as the place where reporting requirements are covered.

However, should the Department consider these proposed requirements different and additional to the PPC plan requirements, then the proposed requirement that a "loss of drilling circulation shall be immediately reported to the Department" should not be required in every instance. Instead, Midstream suggests that reporting requirements should be triggered by inadvertent returns to the surface. During an HDD operation, loss of circulation is common and can happen for a very short duration for various reasons, including the settling out of excess cuttings in the hole. Such a condition is easily corrected and is not a precursor to an inadvertent

return to the surface. Thus, in Midstream Corporation's opinion, it is not necessary or practical to report every minor instance of loss of circulation.

Based on the above, Midstream Corporation requests that the following exception be added to the reporting requirement in § 78.68a(i): A momentary or short duration temporary loss of circulation does not need to be reported by the operator if drilling is ceased, and circulation is quickly re-established.

**78.68a(k)**

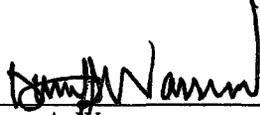
Midstream Corporation supports the beneficial reuse of drilling fluid and the potential disposal of rock cuttings, sand and gravel removed from the borehole as co-products, and requests that provisions for such be included in this proposed subsection. Midstream Corporation requests modification of the propose § 78.68a(k) to read as follows: "Horizontal directional drilling fluid returns, drilling fluid discharges, and co-product, including rock cuttings, sand and gravel, shall be contained, stored, recycled. disposed of or beneficially reused in accordance with Part I, Subpart D, Article IX (relating to residual waste management).

**V. CONCLUSION**

Midstream Corporation appreciates this opportunity to provide comments regarding the proposed modifications to 25 Pa. Code, Chapter 78 and looks forward to working with the DEP to implement rules that implement the legislative intent of Act 13.

Respectfully submitted,

Date: March 14, 2014

  
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