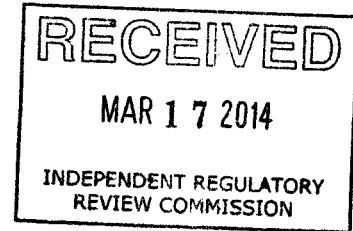


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National Fuel

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 Supply Corporation's ("Supply 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).

Supply 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) 857-6884, if you have any questions concerning this matter.

Sincerely,

Ramon P. Harris, Jr.
Assistant Vice President, National Fuel Gas Supply Corporation

RPH/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 SUPPLY 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—3504.¹ 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, 2014.²

National Fuel Gas Supply Corporation (“Supply Corporation”) is a National Fuel Gas Company subsidiary, which provides interstate natural gas transportation and storage through (i)

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

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

an integrated gas pipeline system extending from southwestern Pennsylvania to the New York - Canadian border at the Niagara River and eastward to Ellisburg and Leidy, Pennsylvania, and (ii) 27 underground natural gas storage fields owned and operated by Supply Corporation, as well as four other underground natural gas storage fields owned and operated jointly with other interstate gas pipeline companies.

II. GENERAL COMMENTS

Supply Corporation owns and operates a 2,877 mile pipeline network extending from the Canadian gateway at Niagara, south to the Ellisburg-Leidy Hub located in Pennsylvania, and west to the Appalachian Basin. In addition, Supply Corporation owns and operates 31 underground natural gas storage areas in New York and Pennsylvania (4 of which are co-owned and operated). Most of Supply Corporation's operations are regulated by the Federal Energy Regulatory Commission under the Natural Gas Act.

As a subsidiary of the National Fuel Gas Company, Supply Corporation shares in more than 100 years of experience in successfully serving utilities, pipelines, marketers, and energy generators in the growing markets of the northeastern United States. As a result, Supply Corporation has a vested interest in conducting its construction and operations in a safe and effective manner to protect the environment. Supply 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 (i) exceed statutory authority, by expanding regulatory provisions beyond the terms of Act 13³; (ii) impose standards on oil and gas operations that are more stringent than those currently imposed by the Federal Energy

³ See 1 Pa. C.S. § 1921

Regulatory Commission (“FERC”) with respect to the transmission and storage operations of interstate pipelines; and (iii) 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 Section IV) create duplicative and/or unnecessary regulation, as further described herein and by other parties to this proceeding, Supply Corporation requests that they be deleted from the proposed amendments to Chapter 78.

III. REGULATORY REVIEW ACT

Supply Corporation believes that the DEP has greatly underestimated both pipeline companies' and conventional well operators' 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, the DEP only briefly discusses the potential costs to conventional operators and does not include any analysis concerning the costs to pipeline companies. For example, 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 companies would actually realize a cost savings of \$300,000.⁴ The DEP is incorrect, there will be significant added cost to such 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. Supply Corporation incurs expenses 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 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 operations. It would put an undue burden on pipeline companies and conventional well operators, both financially and practically, to impose the proposed regulations on existing operations already working within the scope of DEP’s current regulations. Supply Corporation therefore requests that the DEP include a provision clearly stating that the new standards do not apply to 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.

⁴ 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>

IV. COMMENTS ON SPECIFIC SECTIONS

78.58(b). Onsite Processing

Section 78.56(b) lists specific activities at the well site or centralized impoundment not requiring prior approval from the DEP, including mixing fluids with freshwater, aerating fluids and filtering solids from fluids. Supply Corporation suggests that these permitted activities be expanded to include adding lime or other non-hazardous substances (as approved by the DEP), to flow-back in order to neutralize its pH level for disposal, where necessary.

§ 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 - pipeline companies would need to maintain a significant amount of documentation and to complete substantial testing to verify topsoil thicknesses.

Supply Corporation suggests that § 78.68(c) be revised in accordance with the FERC 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.”⁵ Accordingly, Supply 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:

Further, unlike 25 Pa. Code §§ 77.512(c), 87.97(c), and 90.79(c)⁶, which clearly define the required depth for topsoil segregation, § 78.68(c) fails to specify any such depth. Where the

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

⁶ “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)).

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. Supply 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.⁷ Therefore, Supply 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 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, Supply 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.

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

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, Supply 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, Supply 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 statutes, 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, Supply Corporation suggests leaving the PPC plan, as 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, Supply Corporation 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 Supply Corporation's opinion, it is not necessary or practical to report every minor instance of loss of circulation.

Based on the above, Supply 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)

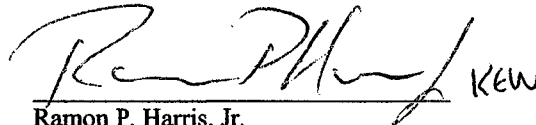
Supply Corporation supports the beneficial reuse of drilling fluid and the potential disposal of rock cuttings, sand and gravel removed from the borehole as co-products, and requests that provisions for such be included in this proposed subsection. Supply Corporation requests modification of the propose § 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

Supply 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: 3/14/14



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