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SENECA RESOURCES

May 19, 2015

VIA ELECTRONIC FILING
John Quigley, *Secretary*
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

RE: Advance Notice of Final Rulemaking
25 PA Code, Chapters 78 and 78a
Environmental Protection Performance
Standards at Oil and Gas Well Sites
EQB Regulation #7-484 (IRRC #3042)
[45 Pa.B.1615]

Dear Secretary Quigley:

Attached for electronic filing is Seneca Resources Corporation's *Comments* in the above-referenced proceeding.

Best regards,

Christopher M. Trejchel

Christopher M. Trejchel
Assistant General Counsel

Enclosure

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BEFORE THE
ENVIRONMENTAL QUALITY BOARD

Advance Notice of Final Rulemaking	:	
25 PA Code, Chapters 78 and 78a	:	COMMENTS
Environmental Protection Performance	:	
Standards at Oil and Gas Well Sites	:	
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[45 Pa.B.1615]	:	

COMMENTS OF
SENECA RESOURCES CORPORATION
TO THE
ADVANCE NOTICE OF FINAL RULEMAKING

To the Environmental Quality Board:

I. INTRODUCTION

On August 27, 2013, the Environmental Quality Board (the "EQB") adopted a proposed rulemaking to amend 25 PA Code Chapter 78 to update requirements for surface activities associated with development of oil and gas wells and to address statutory changes under the act of February 14, 2012 (P.L. 87, No. 13) ("Act 13"). The Proposed Rulemaking was subsequently published in the Pennsylvania Bulletin on December 14, 2013, at 43 Pa.B. 7377, allowing for comments to be submitted by interested parties on or before February 12, 2014. The deadline for submitting written comments was later extended to March 14, 2014. After reviewing the Proposed Rulemaking and the numerous comments filed in response, the Independent Regulatory Review Commission ("IRRC") published its comments on April 14, 2014. On April 4, 2015, the Pennsylvania Department of Environmental Protection ("DEP") published its Advance Notice of Final Rulemaking ("ANOFR") in the Pennsylvania Bulletin at 45 Pa. B.

1615. In its ANOFR, DEP established a 30-day comment period. DEP subsequently extended the comment period and set May 19, 2015, as the deadline for submission of written comments.

Seneca Resources Corporation ("Seneca") is the exploration and production segment of National Fuel Gas Company. Seneca explores for, develops and produces natural gas and oil reserves in California, New York and Pennsylvania, including the Marcellus and Utica Shales.

In addition, the Marcellus Shale Coalition (the "MSC"), of which Seneca is a member, is contemporaneously submitting comments regarding this Proposed Rulemaking. Seneca incorporates herein and supports the Comments submitted by the MSC.

II. GENERAL COMMENTS

Seneca has operated in Pennsylvania for over 100 years and owns/leases oil and gas interests in approximately 780,000 net acres in the Commonwealth. As a result, Seneca has a vested interest in conducting its development operations in a safe and effective manner to protect the environment. In that regard, Seneca expects and supports strong meaningful regulatory oversight by the Pennsylvania Department of Environmental Protection (the "DEP") of oil and gas development in the Commonwealth.

The EQB, in interpreting and implementing Act 13 or any other existing statute, must interpret and give effect to the legislative intent of the statute. See, 1 Pa. C.S. §1921. That is, when promulgating regulations based on a statute, the EQB must do so in a manner that is not contrary to the clear and plain meaning of that statute. See, Bethenergy Mines, Inc. v. Commw. Dept. of Environ. Protection, 676 A.2d 711 (Pa. Commw. 1996).

Upon reviewing the ANOFR, it was disappointing to discover that the EQB and DEP failed to address the numerous comments issued by the IRRC regarding the Proposed Regulation wherein the IRRC requested that the EQB provide explanation of its statutory authority for

imposing the proposed rules; provide clarity as to how the Proposed Regulation is consistent with Act 13; and explain how certain provisions of the Proposed Rule do not conflict with existing federal and state law. No explanation of these important legal matters is provided in the Preamble to the ANOFR. These issues could also be addressed in the Regulatory Analysis Form ("RAF"), however, an updated RAF has not yet been submitted to IRRC. As a result, most of the legal issues raised by all the various commenters to the Proposed Regulation remain in question with the filing of the ANOFR.

III. COMMENTS TO SPECIFIC SECTIONS

§§ 78a.1 and 78.1. Definitions

The definition of the terms "Floodplain" and "Freeboard" should be modified to reference the "term as defined in § 105.1" (*e.g.*, see the proposed definitions of "Watercourse" and "Wetland"). Because impoundments will require permitting under 25 Pa. Code Chapter 105, defining the terms differently in Chapters 78a and 78 will only result in confusion. To maintain consistency between DEP's regulations, Chapters 78a and 78 should simply reference the definitions of the terms "floodplain" and "freeboard" as set forth in Chapter 105.

Subparagraph (iv) of the definition of "Freshwater Impoundment" limits the definition to impoundments that service "multiple well sites." This seems to preclude a freshwater impoundment for a single well or a single well site. In order to clarify this definition and eliminate what is presumably an unintended limitation, we suggest that subpart (iv) of the definition be modified to reference "servicing *one or more wells.*"

The definition of "Gathering Pipeline" is a line that transports gas or oil to an "intrastate or interstate transmission pipeline." The IRRC's comments recommended that this definition should not conflict with definitions of this term utilized by other federal and state agencies, such

as the US Department of Transportation ("USDOT") and the PA Public Utility Commission ("PUC"). USDOT defines a gathering line as "a pipeline that transports gas from a current production facility to a transmission line or main." 49 CFR § 192.3. The PUC utilizes the same definition as USDOT in its regulations at 52 Pa. Code § 59.1. Rather than introducing a new definition for a gathering pipeline, DEP should simply adopt the definition utilized by USDOT and the PUC. Notably, the definition set forth in the ANOFR does not address the situation where a transmission pipeline is not part of the pipeline path and instead the first utility pipeline downstream is a local distribution pipeline (a common situation for conventional wells).

The definition of "Mine Influenced Water" is too generic and requires scientific criteria to clearly define what constitutes mine influenced water. As noted by the IRRC in its comments, this definition "is not regulatory because it does not establish a binding norm." *IRRC Comments* at pg 6.

The definition of "Oil and Gas Operations" includes the construction, maintenance and repair of transmission pipelines under subparagraph (iii)(A). We question DEP/EQB's authority to include transmission pipelines and related facilities under these regulations as such pipelines/facilities are already regulated under the rules and regulations of the Federal Energy Regulatory Commission and USDOT.

The definition of "Other Critical Communities" raises significant regulatory concerns. As questioned by the IRRC in its comments, "What is EQB's authority to define "other critical communities" as "species of special concern""? *IRRC Comments* at pg 7. Agencies, such as DEP, require a statutory basis for the adoption and implementation of such rules and certainty as to how the regulated community is to comply with such rules. The definition set forth in the ANOFR provides no regulatory certainty. What is the scientific basis for this new rule which is

simply another layer on top of existing regulations (*e.g.*, *Endangered Species Act*)? Why is this classification needed? What are the definitions of "rare", "tentatively undetermined", "candidate", "taxa of conservation concern", "special concern plant populations", "features essential to the conservation of the species", "special consideration or protections", "significant non-species resources", "significant natural features", and "significant natural communities"? None of these terms are defined in the regulation and as a result it is unclear exactly what scientific standards would qualify a plant or animal to constitute an other critical community.

The definition of "Public Resource Agency" should not include municipalities and school districts as these entities are not resource agencies and DEP/EQB doesn't have the authority to declare them to be resource agencies. Municipalities already receive advance notice of oil and gas activities under existing regulations so there is no need to create new additional notification requirements under these proposed regulations. Regarding school districts, what is the justification for declaring them resource agencies? A school district only exercises control of the real property on which its facilities in the district are situated. It does not exercise any control over the rest of the property within the boundary of its district. That being the case, why should a school district receive special notice/consideration under DEP's regulations regarding oil and gas activity that is miles away from any real property directly owned by and controlled by the school district? Also, by adding municipalities and school districts to the definition of "public resource agency", DEP/EQB is creating unnecessary burdens on these entities to respond to matters that are clearly outside their areas of expertise. For example, §§ 78a.15(d) and 78.15(d) require an applicant to demonstrate "to the satisfaction of the applicable public resource agency" that potential impacts identified in a PNDI receipt will be avoided or minimized/mitigated. Presumably municipalities and school districts will be public resource agencies for purposes of

this rule. Given their lack of expertise and resources, municipalities and school districts will be unable to properly evaluate this information and provide a timely clearance letter as required. No public benefit will be derived from including municipalities and school districts in this process.

The last sentence of the definition of "Threatened or Endangered Species" should be deleted. The definition provides a list of statutes that define this term and that are being adopted for purposes of these regulations. However, the final sentence is an unreasonable expansion of the definition to include species that are merely "proposed for listing" under the *Endangered Species Act*. This effectively treats species that are not threatened or endangered under the *Endangered Species Act* as if they are actually threatened or endangered. What is DEP/EQB's statutory authority and justification for adopting a broader definition than that established under federal law? To provide regulatory certainty and clarity, the last sentence of the definition should be deleted and DEP should adopt the definition as set forth in the statutes cited.

The definition of "Well Site" should be updated to expressly narrow it to the surface area required for oil and gas development. This would clarify that a horizontal well bore does not expand the well site beyond what is intended by the regulations. Seneca recommends modifying the definition of well site to read as follows: "the area occupied *at the surface* by the equipment or facilities necessary for or incidental to the drilling, production or plugging of a well."

§§ 78a.15 and 78.15 Application Requirements

i. §§ 78a.15(f)(1)(ii) and 78.15(f)(1)(ii)

Section 78.15(f)(1)(ii) references a "corridor" of a state or national scenic river. This term is not defined within the regulations and the subparagraph does not reference a separate law, rule or regulation for the definition of "corridor." As a result it is unknown what the

meaning of "corridor" is for purposes of this subparagraph and Chapter 78. The IRRC's comments also suggest that clarity could be improved by defining this term. *IRRC Comments* at pg. 7.

ii. §§ 78a.15(f)(1)(iv) and 78.15(f)(1)(iv)

These sections would require notification to public resource agencies when the project will impact other critical communities. As noted above, the term "other critical communities" is vague and uncertain. Seneca continues to suspect that other critical communities is intended to refer to critical habitat as that term is defined under the *Endangered Species Act*, and that the reference to special concern species is referring to that term as defined in the DEP's *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation*. Assuming that is the case, treating PNDI as equivalent to the *Endangered Species Act* is inappropriate as the standards for PNDI are vague, undeveloped and significantly different from the *Endangered Species Act*. It is rather arbitrary for the DEP/EQB, absent any direction from the General Assembly and absent vetting the processes, procedures and standards of PNDI through full regulatory review and scrutiny in accordance with the *Regulatory Review Act*, 71 P.S. §§ 745.1 *et seq.*, to take a DEP Policy and make it equivalent to a Federal standard for purposes of state well permit applications. Seneca recommends that the definition of "other critical communities" be removed from the proposed regulations and that this subparagraph be revised to read: "(iv) In a location that will impact a critical habitat or species as defined in the Endangered Species Act."

iii. §§ 78a.15(f)(1)(viii and 78.15(f)(1)(viii)

The terms "wellhead protection area" and "wellhead protection plan" need to be defined.

§ 78a.18 Disposal and Enhanced Recovery Well Permits

The preamble to the ANOFR does not provide an explanation as to why section 18 was deleted from Chapter 78a. What is the intent of deleting this section?

§ 78a.41. Noise Mitigation

The ANOFR includes an entirely new section to Chapter 78a regarding noise mitigation. What is the DEP/EQB's statutory authority for imposing regulations regarding noise? Does the DEP regulate noise for any other activities in the Commonwealth of Pennsylvania? For example, is noise regulated for forestry/timber activities, mining activities, or road construction or new housing development that may involve significant earth moving with heavy equipment and months or years of activity? If it does not, it seems quite arbitrary and capricious for the DEP/EQB to single out unconventional oil and gas activity for purposes of regulating noise.

Assuming arguendo that the DEP has statutory authority to regulate noise, the draft provision is horribly vague and unclear. No benchmarks are provided as to what acceptable noise ranges are. No standards are established for where and how noise is to be measured. The generic undefined term "servicing activities" is introduced. An operator's plan requires an assessment of impacts on indoor noise levels, however, the proposed rule fails to explain how operators are expected to evaluate indoor noise levels. What is considered a "nearby resident" for purposes of this regulation? The regulation does not explain what DEP's standards will be for determining that a noise mitigation plan is adequate or inadequate. The regulation does not explain the standards for inspections. For example, inspections appear to be required at the "site", but is this meant to be the defined term "well site" or something else? What is meant by "regular, frequent and comprehensive" inspections?

Rather than attempting to initiate a new unfamiliar area of regulation for DEP, Seneca suggests that this entire section be revised to require operators to adopt and incorporate best

practices regarding noise management into their procedures for drilling and stimulation activities. This will obligate operators to address noise concerns in their operating procedures and it will preserve the flexibility and balance needed to address noise issues in the field which can vary significantly based on atmospheric conditions, time of year, wind direction, etc.

§§ 78a.51 and 78.51 Protection of Water Supplies

i. §§ 78a.51(d)(2) and 78.51(d)(2)

Under these subparagraphs, an operator is required to restore an impacted water supply to its pre-impact condition if the water quality of the sources was higher than minimum standards required under the *Pennsylvania Safe Drinking Water Act.* This standard reasonably requires operators to restore the source to its pre-existing condition. However, this provision does not separately address the situation where the pre-existing condition of the water source failed to meet minimum *Pennsylvania Safe Drinking Water Act* standards. In that scenario, the operator is obligated to bring the water quality of the source up to minimum *Pennsylvania Safe Drinking Water Act* standards, effectively resulting in a windfall to the owner of the water source. The standard should not be punitive as to the operator and should simply require the operator to restore the water quality to its pre-existing condition.

§§ 78a.52 and 78.52 Predrilling or Prealteration Survey

i. §§ 78a.52(d) 78.52(d)

Existing and proposed §§ 78a.52(d) and 78.52(d) require that predrilling or prealteration surveys be submitted to the DEP within 10 business days of receiving the results or the survey may not be used to preserve the operator's defense that it is not responsible for the pollution. This strict bright-line rule is both arbitrary and unnecessarily punitive, especially considering that the statute does not expressly or impliedly impose such a harsh evidentiary rule. Without

any rational or legal basis, DEP's rule requires it to totally disregard valid direct evidence of pre-existing conditions. Facts are facts and they should not be deemed inadmissible before a complaint is even submitted to the DEP. This prejudicial rule is totally inconsistent with well-established rules of evidence and should be modified.

§ 78.52a Area of Review

What is the basis for establishing different areas of review for stimulation of a gas well or horizontal oil well and a vertical oil well? Seneca suggests that the areas of review for both should be 500 feet of the vertical well bore.

§§ 78a.53 and 78.53 Erosion and Sediment Control and Stormwater Management

This section proposes to adopt a number of DEP manuals and guidance documents as regulation. This is inappropriate and in violation of the *Regulatory Review Act*. Currently, such documents are non-binding on operators and are agency policies rather than regulations. Notably, none of the text of the referenced guidance documents was published as part of this regulatory process. Also, once adopted as regulation, these unvetted guidance documents policies would have the force and effect of law without having been subjected to scrutiny and review in accordance with regulatory review procedures established by IRRC under the *Regulatory Review Act*. This also creates a concern going forward that any amendments or modifications to these documents will likewise circumvent the regulatory review process and enable DEP to unilaterally impose and implement new rules that will have the force and effect of established law by virtue of their being incorporated into these sections of Chapter 78 and 78a.

§§ 78a.57a and 78.57a Centralized Tank Storage

i. General

These sections refer exclusively to the "well operator", however, centralized tank storage may be operated by a third party. As such, Seneca recommends that references to well operator be changed to "applicant" or "permittee" as appropriate throughout this provision.

ii. §§ 78a.57a(n)(2) and 78.57a(n)(2)

The proposed regulation requires restoration of the centralized storage tank site within a 9-month period after drilling of the last well serviced by the storage site or the expiration of the last well permit for the wells intended to be serviced by the storage site. DEP is erroneously considering all centralized storage tank sites as being equal. That is, DEP is crafting this rule assuming that all centralized storage tank sites will only be useful through the drilling phase for a production field. Considering a centralized storage tank site may continue to service wells throughout their production lives (*i.e.*, 40+ years), a 9-month restoration time frame tied to drilling activity will not work. Seneca recommends that the time period for performing restoration commence after the tank site is no longer being utilized.

Additionally, Seneca submits that the 9-month time frame for completing restoration work is unreasonable and will rarely be accomplished. Depending on the date the 9-month time period commences, it may have the unintended effect of forcing operators to perform restoration work during times of the year that are not favorable for conducting such work, primarily the winter months. The result is that most centralized storage tank site closures will require a request for an extension, which is simply more paperwork and an undue administrative burden on DEP. Seneca recommends an 18-month time frame for completing restoration work after the tank site is no longer being utilized.

<u>§§ 78a.59b and 78.59b. Freshwater Impoundments</u>

i. §§ 78a.59b(d) and 78.59b(d)

Seneca questions the requirement that a freshwater impoundment be constructed with a synthetic impervious liner under subparagraph (d). This is an unnecessary requirement that only serves to increase costs to operators without any associated benefit to the environment.

ii. §§ 78a.59b(g) and 78.59b(g)

Seneca has the same concerns about the strict 9-month time frame for restoring a freshwater impoundment as discussed for centralized storage tank sites above. The 9-month time frame for restoration is simply too short a time period under current development practices. Also it is inappropriate to tie the life of the freshwater impoundment to the drilling schedule. Seneca recommends an 18-month time frame for completing restoration work after the impoundment is no longer being utilized.

§§ 78a.59c and 78.59c Centralized Impoundments

i. §§ 78a.59c(a) and (b) and 78.59c(a) and (b)

Subparagraphs (a) and (b) of this section are duplicating requirements that are already part of the ESCGP-2 process. Provisions that duplicate ESCGP-2 requirements should be deleted from this section in order to avoid confusion.

Seneca also submits that subparagraph (b)(8) should be deleted. Considering this proposed rule is for a freshwater centralized impoundment, there is no need for a soil sampling plan and no need to report spills and leaks to DEP. This would be akin to DEP requiring homeowners to report spills and leaks regarding their swimming pools. This rule creates an unnecessary burden and expense on operators and will provide no associated benefit to the environment. As a result this rule should be removed from the ANOFR.

§§ 78a.61 and 78.61 Disposal of Drill Cuttings

i. §§ 78a.61(e) and 78.61(f)

This proposed rule requires notice to DEP and to the surface landowner of disposal of drill cuttings. This notice requirement imposes unnecessary additional expenses and administrative burdens on operators without any corresponding benefits. Regarding unconventional operations, drill cuttings are typically disposed of on a daily basis with all required manifests. As a result, under this proposed rule DEP would be inundated with reports that will provide no additional value to DEP. Because the handling/disposal for drill cuttings already requires manifests, DEP already has a means for auditing: the volumes of cuttings disposed, method of transport, and the location of disposal on a case-by-case basis.

The information captured in the manifest documentation referenced above is already being provided to DEP every 6 months in each operator's *Production Waste Report – Unconventional Wells*. The information provided by operators in this report is currently available to the public on DEP's website at http://www.portal.state.pa.us/portal/server.pt/community/dep_home/5968 under its Oil and Gas page → Oil and Gas Reports → Oil and Gas Production Reports → Waste Reports. Requiring operators to provide this information on a more frequent basis than every 6 months will not provide any additional benefit to the public and it is worth noting that DEP has failed to provide any explanation as to why it believes this information is needed on a more frequent basis.

In light of existing manifest and reporting requirements, this new rule only serves to increase expense and reporting burdens on operators without creating any new additional benefits to either the public or DEP's records review capabilities. As a result, this new reporting requirement is unnecessary and should be deleted from the final rule.

Additionally, Seneca has concerns about requiring operators to share this information with surface landowners. No benefit is derived from this new notice requirement considering the

average surface owner will not understand the information set forth in the documentation and their lack of understanding is likely to result in unnecessary alarm on their part, and therefore, unnecessary complaints to operators, legislators and the DEP. Also, similar to the DEP, surface owners will receive a large volume of these notifications and as a result are more likely to view such notices as an annoyance rather than useful information.

§ 78a.64a. Containment Systems and Practices at Well Sites

i. § 78a.64a(j)

Section 78a.64a(j) requires that "Inspection reports and maintenance records shall be available **at the well site** for review by the Department." (emphasis added) It is unreasonable and impractical to require operators to maintain inspection and maintenance documentation at the well site. There is no office, no maintenance building, and no file cabinets at a well site. DEP has conveniently failed to explain how an operator is supposed to maintain copies of 40 years' worth of documentation in the field at a well site. DEP has also failed to provide any justification or rationale as to why it believes it is critical that this documentation be physically available at the well site.

Such business records are better kept and maintained at the operator's office and can easily be made available to DEP upon request. The IRRC agreed with this position in its comments. *IRRC Comments* at pg. 16. As a result, this subparagraph should be modified to require that the documentation be maintained by operators and shall be made available to DEP upon request.

§ 78a.65. Site Restoration

i. § 78a.65(a)(1)

A recurring theme throughout these proposed regulations is the strict 9-month time period for closure/restoration. Seneca's comments regarding DEP's strict 9-month time frame provided above are equally applicable to this rule regarding site restoration. Nine months is simply too short a period of time for site restoration given unconventional well development activities.

Although the strict time frame for completing restoration is certainly of concern, Seneca submits that as a general matter, this proposed rule simply doesn't work for modern unconventional well development. Development of a field or even a single well site does not always start and continue with minimal interruption until all wells at a site are drilled and completed. For example, it is not unusual to construct a well site, drill one or more appraisal wells, and then return to the site a few years later to drill additional wells. This rule would require operators to commence site restoration long before development is actually completed. It is not efficient or logical to require operators to partially reclaim a well site, only to require them to re-excavate the same area a few years later to continue development. This regulation will result in an inefficient use of resources that results in significant unnecessary expenses to operators and therefore it should be appropriately modified or deleted from the final rule.

ii. § 78a.65(a)(1)(iv)

This section attempts to define the area necessary to safely operate a well. Seneca submits that such matters should not be decided upon and regulated based upon DEP's discretion. Rather, such matters are specific to oil and gas operations and must be left to each operator's discretion based on its operations and safety protocols. Any dispute that may arise over the use of surface space is a legal matter to be resolved between the surface owner and the lessee or mineral rights owner and is <u>not</u> a matter that DEP is qualified to or statutorily authorized to adjudicate.

iii. § 78a.65(a)(3)

Even more unreasonable than the DEP's 9-month restoration standard, is the 30-day restoration standard set forth in this proposed rule. Although a well site the operator may not have to decommission facilities and structures at a well site that was never drilled, 30 days is an incredibly short time frame to expect an operator to restore a site that could be in excess of 5 acres. Seneca recommends an 18-month time frame for completing site restoration if the permitted well is not drilled.

iv. § 78a.65(d)

This proposed rule should be modified to accommodate requests by the surface owner to not restore an area(s) and it should allow flexibility where there is a change in use of the property by the surface owner since the time the well site was originally constructed and the wells drilled.

v. § 78a.65(e)(6)

Seneca suggests that the requirement to provide disposal information in the report be deleted. Because the handling/disposal of waste requires manifests, DEP already has a means for auditing: the volumes of waste, method of transport, and the location of disposal on a case-by-case basis. In light of existing manifest requirements and DEP's existing ability to audit such records, this new requirement only serves to increase expense and reporting burdens on operations without creating any new additional benefits to DEP's records review capabilities.

vi. § 78a.65(g)

Seneca also disagrees with the proposed requirement under § 78.65(g) to acquire the written consent of the landowner regarding site restoration. This section does not clearly identify who is supposed to acquire this consent, but in Seneca's opinion, whether it is the operator or DEP, that documentation may be difficult to obtain as surface use can be a very sensitive issue

between landowners and operators, sometimes even being addressed via litigation before drilling even occurs. Also, the rule doesn't address what happens if the surface owner refuses to grant their consent. Seneca is not aware of any statutory authority under the *Oil & Gas Act* for DEP to require landowner consent to restoration. This consent requirement is an unnecessary intrusion on the landowner-operator relationship as the operator's use of the surface is a contractual and legal matter that is governed by the parties' agreements (*e.g.*, deed or lease) and well-established legal precedent. Matters of surface use, including the extent of surface use, should be left to the parties themselves to resolve and is not something that DEP should be unilaterally and arbitrarily attempting to dictate, control and manage through regulation.

§§ 78a.66 and 78.66 Reporting and Remediating Spills and Releases

i. §§ 78a.66(c)(2)(vi) and 78.66(c)(2)(vi)

Seneca submits that this proposed rule should be modified to provide a timeline within which the DEP regional office will issue its approval of the final report. Seneca suggests 30 days is a reasonable time for DEP to review/approve the final report.

§§ 78a.67 and 78.67 Borrow Pits

i. §§ 78a.67(c) and 78.67(c)

Regarding borrow pits, we again see DEP's standard time frame for restoration within 9 months of completion of drilling. As stated in comments previously set forth herein, this 9-month time frame it too strict and doesn't allow for the flexibility and economic/operational efficiency of leaving a borrow pit in place that is likely to be utilized for ongoing operations and development in the field. For example, stone from a borrow pit may be utilized to maintain the roads to the well sites which work will be ongoing activity long after drilling is completed.

Rather than linking the life of a borrow pit to drilling, the requirement to restore a borrow pit should not be triggered until it is no longer being used by the operator.

§ 78a.68. Oil and Gas Gathering Lines

i. § 78a.68(c)

Soil segregation is required during construction of gas gathering lines pursuant to § 78.68(c). Seneca is not opposed to a rule that requires reasonable segregation of topsoil and subsoil because live topsoil is important for stabilization and restoration success. However, the strict mandate to segregate soil in all circumstances is not feasible. Notably, these proposed standards for gathering lines go above and beyond what the Federal Energy Regulatory Commission requires for construction of regulated transmission pipelines. The DEP/EQB fails to explain its rationale for imposing more costly and burdensome standards on unregulated facilities than the federal government imposes on regulated pipelines. Seneca recommends that the DEP/EQB modify the Proposed Rule by removing the strict requirements for soil segregation and replacing them with standards requiring reasonable segregation of topsoil and subsoil to allow flexibility during construction operations.

ii. § 78a.68(g)

Seneca questions DEP/EQB's statutory authority to mandate that "all buried metallic gathering pipelines shall be installed and placed in operations in accordance with 49 CFR Part 192 or 195." These federal standards deal with constructing, operating and maintaining pipelines, which is outside the scope of DEP/EQB's statutory authority. Considering neither the USDOT, nor the PUC currently subject gathering pipelines to their complete jurisdiction, why does DEP/EQB believe that it has the authority to mandate that gathering pipelines fully comply with USDOT regulations? The IRRC similarly asked "for an explanation of why these sections

are needed, in light of other federal and state laws that cover these matters." *IRRC Comments* at pg. 17. Notably, no such explanation is provided in the ANOFR.

§ 78a.68a. Horizontal Directional Drilling for Oil and Gas Pipelines

i. § 78a.68a(i)

Under § 78.68a(i), a directional drilling operator will be required to immediately report a loss of drilling fluid circulation to DEP and request an emergency permit if necessary. This requirement fails to recognize that a temporary loss of drilling fluid circulation is a rather common occurrence during HDD operations, but it is not an absolute indicator that there is a problem and it certainly does not mean there is a discharge of fluid. Seneca presumes that the intent of this rule is to report discharges of fluid; however, DEP/EQB is incorrectly equating a loss of drilling fluid circulation to a discharge of fluid. That is an erroneous and arbitrary presumption that is not supported by any facts. Reporting every loss of drilling fluid circulation to the DEP would be unduly burdensome, would not further any regulatory or environmental objective, would create an unnecessary administrative burden on the DEP, and would provide no benefit to the operator, the DEP or the public. Seneca recommends that the reference to "loss of drilling fluid circulation" be removed from the proposed rule so it appropriately focuses on reporting of actual drilling fluid discharges to DEP.

§ 78a.68b. Well Development Pipelines for Oil and Gas Operations

i. § 78a.68b(b)

Section 78.68b(b) raises significant concerns for Seneca. This section imposes a blanket restriction on burying pipelines that are carrying any fluids other than fresh ground water, surface water, water from water purveyors or other approved sources. Seneca strongly disagrees with this restriction as it is an unreasonable limitation on field construction and operations.

Operators should be encouraged rather than discouraged from piping all their water sources to/from their well sites to reduce truck traffic, allow for efficient recycling of water, and better protection of the water line. Installation of water lines underground will better protect those pipelines from the elements, damage and vandalism. Operators should be permitted to utilize buried water lines to transport both fresh and flowback water as needed from the wellhead to/from storage and to/from active frac sites.

Yes, there are risks associated with buried pipelines, but most of those risks are the same (if not increased) if the pipeline is placed on the surface. Burying pipelines that carry flowback water will actually provide much greater protection than simply placing it on the surface. This arbitrary regulatory restriction is being imposed in a vacuum. DEP needs to publicize what its rationale is for a strict ban on burying pipelines carrying flowback water so that operators are provided a reasonable opportunity to suggest practices and procedures to avoid and/or mitigate DEP's as yet unknown concerns.

ii. § 78a.68b(i)

Additionally, EQB must clarify § 78.68b(i), which requires inspections prior to and during each use. What is meant by "during each use?" For example, if fluid is flowing for 14 consecutive days, how often is the operator to inspect the facilities based on this regulation?

§§ 78a.70a and 78.70a Pre-wetting, Anti-icing and De-icing

i. §§ 78a.70a(a) and 78.70a(a)

DEP/EQB provides no scientific basis for why it proposes to preclude the use of brines from unconventional wells but will allow the use of brine from conventional wells. An analytic standard would make more regulatory sense than simply presuming that brines from an

unconventional well are always bad. This is an arbitrary and unreasonable distinction that needs to be corrected.

ii. § 78.70a(e)(3)

This rule provides that "road-spreading must prevent direct infiltration to groundwater." How exactly is this to be accomplished? Every road in the Commonwealth experiences runoff that drains into a storm drainage pipe or ditch that ultimately drains directly into tributaries, streams or other waters of the Commonwealth. Notably, the thousands of tons of road salt utilized every winter by municipalities, counties and the Commonwealth drains in the same manner but is not subjected to special regulations.

§ 78a.89 Gas Migration Response

i. Meritless Claims

Seneca strongly urges the DEP/EQB to consider modifying this rule to address baseless meritless claims that are made by landowners. No matter how far away an operator's well is from the complainant's property, the operator must respond and investigate the allegations. These investigations can sometimes cost an operator tens of thousands of dollars to prove that it is not responsible for an alleged problem, which is often shown to be naturally occurring. Unfortunately there is currently no disincentive for disgruntled landowners to submit these baseless meritless claims that are sometimes filed solely out of spite, to delay development, or to harass and annoy an operator. Seneca encourages the EQB to consider changes to address the problem of burdening a single operator with 100% of the expense of investigating meritless claims and to discourage individuals from submitting meritless claims in the first instance.

IV. CONCLUSION

Seneca Resources Corporation appreciates this opportunity to provide comments regarding the proposed modifications to 25 Pa. Code, Chapters 78a and 78.

Respectfully submitted,

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