

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Power Gas Marketing &	:	Oil and Gas Act
Transmission, Inc.	:	Water Supply Replacement
33 N. Wickliffe Circle	:	[REDACTED]
Austintown, Ohio 44515-2926	:	Cherryhill Township
	:	Indiana County

ORDER

Now, this 15TH day of January, 2008, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Oil and Gas Act, Act of December 19, 1984, P.L. 1140, *as amended*, 58 P.S. §§ 601.101-601.605 ("Oil and Gas Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulation ("rules and regulations") promulgated thereunder.

Power Gas Marketing & Transmission, Inc.

B. Power Gas Marketing & Transmission, Inc. ("Power Gas") is a Delaware corporation engaged in the exploration and production of oil and gas resources in Pennsylvania. Power Gas's mailing address is 33 N. Wickliffe Circle, Austintown, OH 44515-2926.

The [REDACTED] Water Supply

C. [REDACTED] is a [REDACTED] facility located in Cherryhill Township, Indiana County, and operated by [REDACTED], which has a mailing address of [REDACTED] has a fully equipped kitchen,

bathroom and showers and is used year round on average twice a month to host groups of up to 200 people. [REDACTED] can accommodate forty overnight guests at a time.

D. A water well provides the water supply serving [REDACTED] for drinking, cooking, bathing and all other domestic purposes ("Water Well"). The Water Well is a water supply as the term is defined by Section 78.1 of the rules and regulations, 25 Pa. Code § 78.1 ("Water Supply").

The [REDACTED] and [REDACTED] Gas Wells

E. On April 18, 2007, the Department issued well Permit No. [REDACTED] to Power Gas authorizing Power Gas to drill the [REDACTED] gas well in Cherryhill Township, Indiana County, Pennsylvania [REDACTED].

F. On or about June 6, 2007, Power Gas commenced drilling the [REDACTED]. Drilling of the [REDACTED] was completed on June 11, 2007.

G. On May 25, 2007, the Department issued Permit No. [REDACTED] to Power Gas authorizing Power Gas to drill the [REDACTED] gas well in Cherryhill Township, Indiana County, Pennsylvania [REDACTED].

H. On or about June 17, 2007, Power Gas commenced drilling the [REDACTED]. Drilling of the [REDACTED] was completed on June 21, 2007.

Water Supply Pollution/Diminution Investigation

I. On or about July 9, 2007, [REDACTED] notified the Department that on July 7, 2007, following commencement of drilling operations at the [REDACTED] and [REDACTED], the Water Well ran dry. [REDACTED] requested that the Department conduct an investigation.

J. On July 12, 2007, the Department initiated an investigation of the alleged diminution of the Water Supply.

K. The Water Well is located approximately 880 feet from the [REDACTED] and 925 feet from the [REDACTED]

L. When the Water Well was drilled in June 2003, it was capable of producing five (5) gallons per minute. Until July 7, 2007, the Water Well has at all times adequately served the [REDACTED]

M. Analysis of a sample of the Water Well taken on July 9, 2003, by a certified laboratory for [REDACTED] shows iron and manganese were present in the Water Well at concentrations of 0.01 and 0.03 milligrams per liter ("mg/l"), respectively.

N. Analyses of samples of the Water Well taken by the Department on July 12, 2007 and October 18, 2007 show the presence of iron and manganese in the following concentrations in mg/l:

DATE	IRON	MANGANESE
July 12, 2007	14.7	1.724
October 18, 2007	28.3	1.880

O. The concentrations of iron and manganese in the July 12, 2007 and October 18, 2007 samples exceed the concentrations of iron and manganese present in the [REDACTED] July 9, 2003 analytical sample and exceed the established drinking water standards for these parameters as set forth at 25 Pa. Code § 109.202. The drinking water standards for iron and manganese are 0.3 and 0.05 mg/l, respectively.

P. The Water Supply is unfit and inadequate, among other things, for drinking, cooking, bathing, and other domestic uses served by the Water Supply.

Q. The Water Supply is polluted and diminished in quantity.

R. Well operators who affect a private or public water supply by pollution or diminution are required to restore or replace the affected water supply with an alternate water

supply adequate in quantity and quality for the purposes served by the supply. 58 P.S.

§ 601.208(a) and 25 Pa. Code § 78.51(a).

S. . . . Section 208(c) of the Oil and Gas Act, 58 P.S. § 601.208(c), provides that as a matter of law, a well operator is presumed to be responsible for the pollution of a water supply that is within 1,000 feet of an oil and gas well, where the pollution occurred within six months after completion of drilling or alteration activities of such well, unless the presumption is rebutted by one of the five defenses as set forth in 58 P.S. § 601.208(d).

T. In order to preserve the defenses set forth at 58 P.S. § 601.208(d)(1) or (2); namely, that the pollution existed prior to the well drilling or that the water supply owner refused to allow the operator access to conduct a pre-drilling survey, the operator must retain the services of an independent certified laboratory to conduct a pre-drilling survey of the water supply ("Pre-Drilling Survey"). 58 P.S. § 601.208(e)

U. Power Gas did not conduct a Pre-Drilling Survey of the Water Supply prior to commencement of drilling of both the [REDACTED] and [REDACTED]

V. The Department advised Power Gas of the pollution and diminution of the Water Supply. Power Gas provided no information as to the cause of the pollution or diminution of the Water Supply, or any evidence that would establish any of the five defenses to the presumption of responsibility for the pollution of the Water Supply.

T. Section 78.51(d) of the Department's rules and regulations, 25 Pa. Code § 78.51(d), requires that the operator shall affirmatively demonstrate to the Department's satisfaction that the quality of the restored or replaced water supply to be used for human consumption is at least equal to the quality of the supply before it was affected by the operator. However, if the quality of the water supply before it was affected by the operator cannot be

affirmatively established, the operator shall demonstrate that the concentration of substances in the restored or replaced water supply does not exceed the primary and secondary maximum contaminant levels ("MCLs") established under 25 Pa. Code § 109.202 (relating to state MCLs and treatment technique requirements).

U. The pollution and diminution of the Water Supply constitute a public nuisance and unlawful conduct pursuant to Sections 502 and 509(2) of the Oil and Gas Act, 58 P.S. §§ 601.502 and 601.509(2).

NOW, THEREFORE, pursuant to Sections 208 and 503 of the Oil and Gas Act, 58 P.S. §§ 601.208 and 601.503; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17, the Department hereby orders that:

1. Within five (5) days of receipt of this Order, and until Power Gas completes the permanent restoration or replacement of the [REDACTED] Water Supply as required in Paragraph 2 hereof, Power Gas shall provide a temporary water supply to [REDACTED] adequate in quality and quantity for the purposes served by the Water Supply.

2. a. Within thirty (30) days of receipt of this Order, Power Gas shall provide the Department with a written plan and schedule which describe in detail the methods and/or techniques proposed to restore or replace permanently the [REDACTED] Water Supply and when it will do so ("Plan and Schedule"). The proposed Plan and Schedule shall include, at a minimum:

i. A proposed schedule for completing the permanent replacement or restoration of the Water Supply. However, the proposed replacement or restoration of the Water Supply shall be constructed, installed and operating no later than thirty (30) days after the Department's approval or approval with modifications of the Plan and Schedule;

ii. A method of demonstrating to the satisfaction of the Department that the quantity and quality of the permanently restored or replaced water supply meet the requirements of 25 Pa. Code §§ 78.51(a), (d), (e), (f), and (g);

iii. A description of how Power Gas will compensate [REDACTED] on a permanent basis for any increased operation and maintenance costs associated with the restored or replaced water supply which exceed those associated with the Water Supply. A copy of any signed agreements between Power Gas and [REDACTED] in this regard should be submitted with the proposed Plan and Schedule.

b. Power Gas shall commence implementation of the Plan and Schedule as approved by the Department upon the Department's approval or approval with modifications.

c. Power Gas shall respond to any Department requests for additional information concerning the Plan and Schedule or comments concerning the Plan and Schedule within ten (10) days of such request for comments.

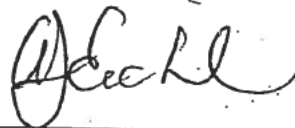
3. In complying with this Order, Power Gas shall not affect by pollution or diminution any other water supply.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and

of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.



Alan J. Eichler
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