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JAN 22 2010

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

ENVIRONMENTAL QUALITY BOARD

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

**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.

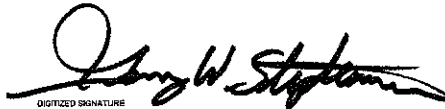
For ease of reference the revised proposed regulatory language is being presented here in two formats being the original text with the revisions notated, and the revised regulatory language with the revisions integrated.

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,



DIGITIZED SIGNATURE

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**

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

*** See attached Revised Proposed Regulatory Language**

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.



January 5, 2010

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

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

Dear Mr. Stephenson:

The Department of Environmental Protection (Department) has completed its review of the petition you submitted to the Environmental Quality Board (EQB) to amend 25 Pa. Code by adding the following amendments to Chapter 78 – Oil and Gas Wells: § 78.51(c)(1), § 78.52 (g), § 78.52 (h), and § 78.52 (i). Based upon its review, the Department has determined that the petition, in part, does meet the requirements for acceptance as identified in § 23.2 of the EQB's Policy for Processing Rulemaking Petitions (copy enclosed). A detailed description concerning the acceptability of each amendment you propose is elaborated below.

Proposal:

Department Assessment:

§ 78.51(c)(1)

The EQB does not have the statutory authority to provide a well operator with the right to enter a surface owner's property. Furthermore, compelling a land owner to give access to their property where there is no underlying property right to do so, raises 4th and 5th amendment Constitutional issues.

The remainder of the proposal meets the requirements of acceptability under § 23.2 of the EQB's petition policy.

§ 78.52 (g)

The proposal meets the requirements of acceptability under § 23.2 of the EQB's petition policy

§ 78.52 (h)

The EQB does not have the statutory authority to adopt this amendment, which would violate sections 201(b) and 208(d) of the Oil and Gas Act.

§ 78.52 (i)

The EQB does not have the statutory authority to adopt this amendment, as it would implement provisions that are contradictory to Sections 208(a) and (d) of the Oil and Gas Act.

In accordance with § 23.3 of the EQB's petition policy, a petitioner may have 30 days upon notification by the Department to modify its petition request. Based upon the Department's assessment of your petition, including the areas that have been determined to be not appropriate for submittal to the EQB, I am requesting confirmation from you on or before February 15, 2010, regarding how you would like to proceed with your petition, including modifications to your petition request.

If you would like to discuss the Department's assessment of your petition, please contact me by phone at 717-783-8727, or by e-mail at mtate@state.pa.us.

Sincerely,

Michele L. Tate

Michele L. Tate
Regulatory Coordinator

Enclosure

SGNG COMPANY

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

November 24, 2009

VIA CERTIFIED MAIL ARTICLE NUMBER 7192 6390 0010 0000 0206

RECEIVED

NOV 30 2009

ENVIRONMENTAL QUALITY BOARD

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

**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,



DIGITIZED SIGNATURE

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 Exhibit A and Referenced attachments.

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.

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.