

SGNC Rulemaking Petition – 25 Pa. Code § 78.51 + § 78.52

Background – Procedural History

- Initial petition submitted November 24, 2009
 - Did not comply with 25 Pa. Code § 23.2
 - Requested action that could not be taken by EQB
- DEP notified SGNC of determination January 5.
- SGNC submits amended petition January 19.



Background - Protection of Water Supplies

- Well operator must restore or replace water supplies that are polluted or diminished in volume due to well drilling.
- Operator is presumed to have polluted supplies if water well is 1000' from O&G well and pollution occurred within 6 months of drilling.
- Presumption is rebutted if:
 - 1) Pre-drilling sample shows pre-existing contamination
 - 2) Owner refuses to grant operator access to take sample



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Substantive Revisions - § 78.51(c)(1)

- Complainants must submit the complaint via notarized affidavit subject to criminal penalties.
- DEP must notify the operator via certified mail within 3 days of receipt of the complaint and disclose identity of complainant.
- DEP must provide operator with all information and data resulting from investigation to well operator.



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Substantive Revisions - § 78.52(g)

- Water supply owner is deemed to have refused access to test water supply if owner fails to respond to two requests by the well operator via certified mail.
- If water supply owner affirmatively refuses access to test, the operator may notify DEP and DEP shall attempt to contact the water supply owner to confirm the refusal.
- If DEP cannot contact the water supply owner, they are deemed to have refused access to the operator if the operator submits an affidavit attesting to this fact.



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Substantive Revisions - § 78.52(h)

- A well operator deemed to have been refused access may petition DEP to ask water supply owner for access to test the water supply.
- Failure to respond is deemed refusal of access.



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Concurrent Regulation Amendments

- Revisions to 25 Pa. Code Chapter 78 are ongoing.
- Comment period to Advanced Notice of Proposed Rulemaking closed March 2, 2010.
- Include revisions to water supply replacement provisions.
- Proposed rulemaking for EQB consideration expected May 2010.



Rulemaking Petition Recommendations

- EQB may refuse to accept a petition due to policy or regulatory considerations 25 Pa. Code 23.5(3).
- DEP recommends that EQB accept the petition but require DEP to address the petition through the current regulatory revisions.
- Substance of the petition will be addressed as part of the comment and response document at final rulemaking.

