

# FREQUENTLY ASKED QUESTIONS

## Environmental Protection Performance Standards at Oil and Gas Well Sites

### Protection of Water Supplies

(§§ 78a.51, 78a.52)

*The purpose of this Frequently Asked Questions (FAQ) document is to highlight changes in and address questions about the new regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa.Code Chapter 78a and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.*

*This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.*

### **§ 78a.51. Protection of water supplies.**

- 1) For purposes of section 78a.51(d)(2), how will "comparable" be determined? What constituents will be considered in that determination?

Predrill/prealteration surveys, historical monitoring data, investigative samples will be some of the tools used to determine the pre-impact quality of the water supply source in question.

- 2) The predrilling survey mainly covers the establishment of baseline water quality, yet there is little mention of baseline quantity conditions. Does DEP intend to establish parameters of quantity testing for rebuttable presumption, much like the Bureau of Mining and Reclamation does? How will the department determine the quantity to be restored?

Section 78a.51(d)(3) states:

A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following, as determined by the Department:

- (i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.
- (ii) It is established through a connection to a public water supply system that is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.
- (iii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses include the reasonable expansion of use where the water supply available prior to drilling exceeded the actual use."

The quantity of water available that needs to be restored is based upon the current needs and demands the water supply provides and any reasonably foreseeable uses that could have been expected from the water supply. Also, if it is a water supply used for agriculture, the restored water supply quantity must address the potential for the expansion of use when the water supply that was available prior to drilling exceeded the actual use. Therefore, each water supply will need to be judged on a case by case basis. Since well drillers' logs may be unavailable or inaccurate and water well yields may diminish over time, the Department will primarily rely on current demand and reasonably foreseeable uses of the water supply to make its final determination as to what amount of quantity needs to be readily available through yield and storage to meet the water user's water demand needs. Operators may determine a water supply's yield and the demands on it when conducting the predrill/prealteration surveys, so that the results may be used as a defense when diminution is being claimed.

### **§ 78a.52. Predrilling or prealteration survey.**

- 3) What exactly is meant by the requirement in Section 78a.52(d) that the survey results must be provided 10 business days prior to drilling? Does that mean exactly 10 business days prior to drilling, or at least 10 business days prior to drilling? Can operators assume that we can submit all the data at once 14 days or some other time before commencement of drilling rather than exactly 10 business days? Please clarify when the operator shall submit predrill water quality results to the Department of Environmental Protection (DEP)?

DEP must have possession of the predrill survey 10 business days prior to drilling. If the Department receives the predrill survey before 10 business days prior to drilling, then this requirement is met. An operator may submit the predrill survey sample results to DEP any time prior to the 10 business day deadline.

- 4) Is the operator no longer required to submit testing results to DEP within 10 days of receiving data from lab, but within 10 days of drilling?

Yes. Unconventional operators may now submit all the samples results for all the water supplies that are part of the predrilling/prealteration survey subject to the unconventional oil or gas well in question at least 10 business days prior to commencement/alteration of the oil or gas well. This allows the operator to submit to the Department all the multiple water supplies' sample data at once instead of submitting the results piece meal. This also allows the driller to take samples much closer in time to when drilling will occur.

- 5) Will there be a technical guidance document (TGD) on water supply and restoration released by the DEP for public comment for use with this regulation under Chapter 78? When will the TGD be finalized? Are public comments going to be accepted and possibly result in a revised document?

DEP is working on a TGD for the replacement or restoration of private water supplies impacted by unconventional operations. Notice of availability as interim final will be published contemporaneous to the publication of the final rulemaking in the *Pennsylvania Bulletin*. This means the TGD will be used as guidance by DEP until the final document is published. There will be a 30-day public

comment period on the interim final TGD and DEP will make changes to the TGD based upon the comments it receives. The finalized TGD will be published along with the comment and response document after this process concludes.

- 6) What is the distinction between treating an impacted water supply vs. complete replacement? Does the impacted water supply need to be restored to all drinking water standards or only for “constituents of concern?”

There is a distinction between the operator’s obligations between a restoration of a water supply and a replacement of a water supply with a new source. An operator is responsible to restoring parameters impacted by oil and gas operations to Pennsylvania Safe Drinking Water Maximum Contaminant Levels (MCLs), at a minimum, or to a better quality if any of those impacted parameters were better than MCL established under the Pennsylvania Safe Drinking Water Act. If the parameter(s) impacted by oil and gas operations can be restored through treatment or other rehabilitation measures, then only those parameters will need to be addressed. If the operator needs to replace the impacted water supply with a new water supply source, then DEP will require that the new water supply meets all the Pennsylvania Safe Drinking Water Act MCLs, at a minimum.

- 7) Is it permissible for employees of a well owner/operator or employees of the accredited laboratory that is analyzing water source samples to actually collect water samples, or should the samples be collected by an independent third party (e.g., consultant)?

In accordance with Section 78a.52(c), employees of a well owner/operator would not be considered independent of the operator. An employee of an independent, accredited laboratory may take water samples and so may an independent consultant take samples provided they follow the sampling techniques, documentation, handling, transportation, and chain-of-custody requirements of the independent Pennsylvania accredited laboratory. Also, the person taking the samples needs to be qualified to take water samples.

- 8) How long is a water survey considered valid before it would need to be repeated?

A water survey does not have an expiration date, but the more current a survey is the more validity the data probably has. If there are multiple surveys conducted on a water source, it is most likely the most recent survey will be given more weight than a survey that is much older. Other factors may need to be taken into consideration to determine the relevance of an older survey since water quality data is both spatial and temporal and watersheds and water supply recharge areas can be altered over time.

- 9) If further investigation is required by the state, is there any maximum timeframe the Department has to ultimately make a final determination?

The Department’s goal is to conclude an investigation into a water supply complaint and make a determination within 45 calendar days of receipt of a water supply investigation request. In those situations where extenuating circumstances prevent the Department from making a determination within 45 hynymcalendar days, a letter shall be sent to the water supply user/owner

containing a summary of the investigation to date and an explanation that additional investigation is necessary. See [Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations, Document No. 820-4000-001](#).

- 10) I have seen in the past that a well owner complains of an issue with their well, but the only unconventional well is more than 0.5 mile away (or 1 mile away). Therefore, the well was not sampled. How does DEP handle this?

DEP will conduct a water supply investigation to determine if there is correlating and corroborating evidence that the water supply was impacted by oil and gas activities and who is the responsible party.

- 11) If the operator rebuts the presumption of liability under Section 3218 of the 2012 Oil and Gas Act, does the operator need to provide temporary water?

If the rebuttal of the presumption is deemed to be satisfactory by the DEP and that determination is made prior to the 24-hour deadline for the operator to provide temporary water, then the operator will not be required to provide temporary water. Otherwise the operator will be expected to provide the temporary water until the Department deems the presumption to be rebutted.

- 12) If a water supply owner declines to allow an operator of an unconventional well access to the water supply to take a predrill survey sample, creating a defense to presumption under Section 3218(d)(2)(ii), how does the operator submit that information to the Department?

Sections 78a.52(f) and (g) are not explicit about when the written notice to the landowner or water purveyor indicating that the presumption established under Section 3218(c) of the 2012 Oil and Gas Act may be void if the landowner or water purveyor refuses to allow the operator access to conduct a predrilling or prealteration survey needs to be submitted to the DEP. Section 78a.52(a) states that a well operator who wishes to preserve its defense under Section 3218(d)(2)(i) of the 2012 Oil and Gas Act (relating to protection of water supplies) that the pollution of a water supply existed prior to the drilling or alteration of the well shall conduct a predrilling/prealteration survey in accordance with this Section. The Department interprets this as meaning that copies of the letters sent to the landowner or water purveyor indicating that the presumption established under Section 3218(c) of the 2012 Oil and Gas Act may be void if the landowner or water purveyor refused to allow the operator access to conduct a predrilling/prealteration survey should be sent to the Department as part of the sample results survey required under section 78a.52(a).

- 13) What if the predrill water quality of a water source did not meet the Safe Drinking Water Act standards before drilling? Is the operator required to replace all water quality parameters to drinking water standards? Is the operator responsible for only the water parameter that is affected?

If a water supply has been impacted by oil and gas operations, the parameter(s) determined to be impacted by oil and gas operations need to be restored to Pennsylvania Safe Drinking Water Act MCLs at a minimum or better than its

corresponding Pennsylvania Safe Drinking Water Act standard(s), if the parameter(s) were of better quality. Otherwise, the Department will be allowing operators to degrade a natural resource relied upon as a water supply resource.

Water supplies that need to be replaced by a new water supply (regardless of previous quality) must be replaced with a new water supply source that meets all the Pennsylvania Safe Drinking Water Act standards, at a minimum. Otherwise the Department would be derelict in its duties if it allowed operators to provide replacement drinking water that by its own standards is not fit to drink simply because the pre-existing water supply was poor.

- 14) What standards do operators need to comply with if a water supply is impacted for parameters that do not have an established MCL?

If a water quality parameter with no primary or secondary drinking water MCL established under the Pennsylvania Safe Drinking Water Act is determined to be impacted by oil and gas operations, the concentration of the parameter in the restored water supply should be comparable to the pre-impact water quality as determined in the predrilling/prealteration survey.

If a water quality parameter is impacted by oil and gas operations and that parameter has no primary or secondary drinking water MCL established under the Pennsylvania Safe Drinking Water Act and the pre-impact concentration is unknown, the restored water supply should meet an applicable health-based criteria used by the Safe Drinking Water Program and/or the Statewide Health Standards for Groundwater used by DEP's Environmental Cleanup and Brownfields Program. These programs will be consulted to determine an acceptable level for restoration requirements.

- 15) What is the status of the form on website for submitting the predrill/prealteration survey data as required under section 78a.52(d)?

The form will be ready for use in the Department's eLibrary as of the effective date of the final rulemaking.

- 16) Other than drilling and completing a well, what are examples of other activities where water sampling must occur?

Predrill/prealteration water samples are not compulsory and are an option an operator may utilize as a potential defense of the statutory rebuttable presumption, as noted in Section 3218(d) of the 2012 Oil and Gas Act.

- 17) Does or will the Department notify operators if they have or have not submitted sufficient information to rebut the presumption, and is there an opportunity to supplement an operator's submission regarding the rebuttable presumption?

No, DEP will not be critiquing the strength or weakness of an operator's predrill/prealteration survey, since they are not compulsory to be conducted. An operator may choose how thorough or broad of a survey to conduct.

- 18) If a landowner does not respond to a water sampling notification request and the notification is returned to the operator, does this equate to a landowner decline?

Yes, provided that the protocol found in Section 3212 of the 2012 Oil and Gas Act is followed and that this information is submitted to DEP as part of the predrilling/prealteration survey.

- 19) Will the Department be adopting a water quality database, similar to the Bureau of Safe Drinking Water? What is the status of the electronic submittal protocol for predrill data?

No. Although, the Office of Oil and Gas Management's goal is to have a predrill database, the Safe Drinking Water Program's DWELR system is not appropriate for use by unconventional operators. While such a system is under development, operators will use an Excel spreadsheet summary along with scanned PDFs, both of which will be submitted to DEP electronically through eSubmissions. This process will be ready as of the effective date of the rulemaking.