

# MarcellusGas.Org

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

|                       |   |                          |
|-----------------------|---|--------------------------|
| William McIntire Coal | : | Oil and Gas Act          |
| Oil and Gas           | : | Water Supply Replacement |
| P.O. Box 171          | : | [REDACTED]               |
| Shelocta, PA 15774    | : | [REDACTED]               |
|                       | : | East Wheatfield Township |
|                       | : | Indiana County           |

ORDER

Now, this 20<sup>th</sup> day of September, 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.

William McIntire Coal Oil and Gas

B. William McIntire Coal Oil and Gas ("McIntire") is engaged in the exploration and production of oil and gas resources in Pennsylvania. McIntire's mailing address is P.O. Box 171, Shelocta, PA 15774.

The [REDACTED] Water Supply Spring

C. A single spring ("Spring") provides the water supply for all domestic purposes at five homes ("Water Supply"). The current owners and addresses of the five homes are as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The Gas Well

D. On May 20, 2008, the Department issued well Permit No. 37-063-36063-00 to McIntire authorizing McIntire to drill the [REDACTED] gas well in East Wheatfield Township, Indiana County, Pennsylvania [REDACTED].

E. On or about July 13, 2008, McIntire commenced drilling operations at the [REDACTED] site. Drilling of the [REDACTED] was completed on July 17, 2008.

F. On or about July 30, 2008, McIntire commenced operations for completion and stimulation of the [REDACTED] so that the well would be able to produce gas.

Water Supply Pollution Investigation

G. On or about August 1, 2008, two of the homeowners served by the Water Supply notified the Department that the water from the Spring serving their homes had developed a salty taste and oily consistency. Another reported that after washing his car a white residue remained on the car. The homeowners requested that the Department conduct an investigation.

H. On August 1, 2007, the Department initiated an investigation of the alleged pollution of the Water Supply.

I. The [REDACTED] is located topographically upgradient and roughly 658 feet measured horizontally from the Spring.

J. Prior to commencing drilling operations at the [REDACTED] McIntire conducted a pre-drilling survey of the Water Supply on May 20, 2008, ("Pre-Drilling Survey").

K. The analytical sampling results from the Pre-Drilling Survey show all parameters, except for pH and alkalinity, to be within established drinking water standards set forth in 25 Pa. Code § 109.202 and the state recommended limits for unregulated contaminants.

L. Analyses of samples of the Water Supply taken by the Department on August 1, 2008, show that chloride, barium, calcium, hardness, manganese, sodium, and total dissolved solids were present in the Water Supply at levels exceeding the concentrations present in the Pre-Drilling Survey. The concentrations of chloride, barium, manganese, and total dissolved solids exceed the Maximum Contaminant Levels ("MCL") set forth in 25 Pa. Code § 109.202; and calcium, hardness, and sodium exceed the state recommended levels for unregulated contaminants. The following chart summarizes the results of the Pre-Drilling Survey and the Department's August 1, 2008 sampling analyses.

| Parameter  | MCL's<br>*Recommended<br>Levels | Pre-Drilling<br>Results | DEP<br>Results | Units<br>In milligrams<br>per liter (mg/l) |
|------------|---------------------------------|-------------------------|----------------|--|
| Alkalinity | *30 to 500                      | 0.0                     | 0.0            | mg/l                                       |
| Chloride   | 250                             | 6.8                     | 1809.6         | mg/l                                       |
| Sulfate    | 250                             | 9.0                     | not tested     | mg/l                                       |
| Barium     | 2.0                             | 0.027                   | 3.396          | mg/l                                       |

| Parameter                 | MCL's<br>*Recommended<br>Levels | Pre-Drilling<br>Results | DEP<br>Results | Units<br>In milligrams<br>per liter (mg/l) |
|---------------------------|---------------------------------|-------------------------|----------------|--|
| Calcium                   | *75                             | 3.330                   | 272            | mg/l                                       |
| Hardness                  | *30 to 150                      | 17                      | 1039           | mg/l                                       |
| Iron                      | .3                              | 0.014                   | <.02           | mg/l                                       |
| Manganese                 | .05                             | 0.016                   | 10.5           | mg/l                                       |
| Sodium                    | *20                             | 3.342                   | 603            | mg/l                                       |
| pH                        | 6.5 to 8.5                      | 4.62                    | 4.6            | SU   |
| Total<br>Dissolved Solids | 500                             | 25                      | 4150           | mg/l                                       |

M. The Water Supply is polluted. The Water Supply cannot be used for the purposes for which it was used prior to the drilling of the Well.

N. 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).

O. On or about August 4, 2008, McIntire provided a temporary water supply by means of water buffalos at four homes including the [REDACTED] residences. McIntire did not provide a temporary water supply for the [REDACTED] residence located at [REDACTED] because it is not currently occupied.

P. 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).

Q. The Department advised McIntire of the pollution of the Water Supply. McIntire provided no information as to the cause of the pollution 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.

R. 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).

S. The pollution of the Water Supply constitutes 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. McIntire shall continue to maintain the temporary water supply by method of water buffalos that currently provides water to the [REDACTED] residences adequate in quality and quantity for the purposes served by the Water Supply until McIntire provides a permanent water supply as required in Paragraph 3 hereof.

2. In the event that the [REDACTED] residence located at [REDACTED] Pennsylvania [REDACTED] becomes occupied before a permanent water supply is provided to each of the affected residences, McIntire shall also provide a temporary water supply to the [REDACTED] residence adequate in quantity and quality for the purposes served by the Water Supply.

3. a. Within thirty (30) days of receipt of this Order, McIntire shall provide the Department with a written plan and schedule which describes in detail the methods and/or techniques proposed to provide each of the affected residences (i.e. the [REDACTED] [REDACTED] with a permanent water supply that is adequate in quantity or quality for the purposes served by the 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 McIntire will compensate the owners identified in Paragraph C hereof who are served by the Water Supply on a

permanent basis for any increased operation and maintenance costs associated with the restored or replaced water supply which exceeds those associated with the Water Supply. A copy of any signed agreements between McIntire and the homeowners identified in Paragraph C hereof in this regard should be submitted with the proposed Plan and Schedule.

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

c. McIntire 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.

4. In complying with this Order, McIntire 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.

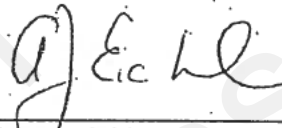
Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board.

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.



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Alan J. Eichler  
Regional Manager  
Oil and Gas Management