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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Mark M. Stephenson : Oil and Gas Act
912 McCormick Road : Water Supply Replacement
Smicksburg, PA 16256 : ██████████
: West Mahoning Township
: Indiana County

ORDER

Now, this 12TH day of February, 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.

Mark M. Stephenson

B. Mark M. Stephenson ("Stephenson") is an individual engaged in the exploration and production of oil and gas resources in Pennsylvania. Stephenson's mailing address is 912 McCormick Road, Smicksburg, PA 16256.

The ██████████ Water Supply

C. ██████████ own a vacation residence ("Cabin") located in West Mahoning Township, Indiana County, and have a mailing address of ██████████

██████████ The ██████████ use the Cabin primarily in the warm weather months of the year. A water well provides the water supply serving the Cabin for all domestic purposes ("Water Well"). The Water Well is a water supply as the term is defined by Section 78.1 of rules and regulations, 25 Pa. Code § 78.81 ("Water Supply").

The Gas Well

D. On July 7, 2006, the Department issued well Permit No. ██████████ to Stephenson authorizing Stephenson to drill the ██████████ Gas Well in West Mahoning Township, Indiana County, Pennsylvania ("Gas Well").

E. On or about July 15, 2006, Stephenson commenced drilling the Gas Well. Drilling of the Gas Well was completed on July 18, 2006.

Water Supply Pollution Investigation

F. On or about August 17, 2006, ██████████ notified the Department that following the commencement of drilling operations at the Gas Well site, the Water Supply acquired an unpleasant smell. ██████████ requested that the Department conduct an investigation.

G. On August 24, 2006, the Department initiated an investigation of the alleged pollution of the Water Supply.

H. The Gas Well is located approximately 292 feet from the Water Well.

I. In July 2006, after the Gas Well drilling operations began, the Water Supply acquired a "rotten egg" odor. A "rotten egg" odor is indicative of the presence of hydrogen sulfide.

J. Prior to the drilling of the Gas Well, the Water Supply did not have a "rotten egg" odor.

K. The Water Supply continues to smell like "rotten eggs," has been rendered impotable and cannot be used, among other things, for drinking, cooking, bathing, or other domestic uses served by the Water Supply.

L. The alteration of the odor of the Water Supply constitutes pollution according to the definition of this term set forth in the Clean Streams Law.

M. Analyses of samples of the Water Supply taken by the Department on August 24, 2006; October 17, 2006, May 31, 2007 and October 31, 2007 show the presence of manganese in the Water Supply in the following concentrations in milligrams per liter (mg/l):

Date	Manganese (mg/l)
August 24, 2006	0.160
October 17, 2006	0.097
May 31, 2007	0.184
October 31, 2007	0.188

N. Analysis of a sample of the Water Supply taken by Stephenson on October 31, 2007 shows the presence of manganese in the Water Supply at a concentration of 0.186 mg/l.

O. The concentrations set forth in Paragraphs M and N hereof exceed the drinking water standards for manganese set forth at 25 Pa. Code § 109.202. The drinking water standard for manganese set forth at 25 Pa. Code § 109.202 is .05 mg/l.

P. The Water Supply is polluted.

Q. 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).

R. 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).

S. The Department advised Stephenson of the pollution of the [REDACTED] Water Supply. Stephenson 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.

T. Section 78.51(d) of the 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 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. a. Within thirty (30) days of receipt of this Order, Stephenson shall provide the Department with a written plan and schedule which describes 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 Stephenson will compensate the [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 Stephenson and the [REDACTED] in this regard should be submitted with the proposed Plan and Schedule.

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

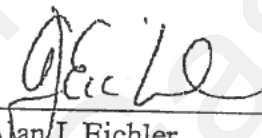
c. Stephenson shall respond to any Department requests for additional information concerning the Plan and Schedule or comments concerning the Plan and Schedule within ten (10) days of such request for comments.

2. In complying with this Order, Stephenson shall not be affected by pollution or diminution of 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
Manager
Oil and Gas Management
Southwest Region