



Colleagues, Clients & Friends:

Despite the often-changing regulatory landscape in our industry, rarely do we see regulatory changes that affect the predrill survey process. On Saturday (February 5, 2011), changes to 25 PA Code Chapter 78 were officially published in the Pennsylvania Bulletin and go into effect immediately. A complete outline to all Chapter 78 changes can be found at <http://www.pabulletin.com/secure/data/vol41/41-6/239.html>.

As your predrill survey provider, I feel it necessary for Environmental Service Laboratories (ESL) to highlight the changes that specifically affect the predrill survey process to ensure you all can continue to utilize our services as defensibly as possible. Changes are listed below:

§ 78.51. Protection of water supplies

The act requires an operator who affects a water supply by pollution or diminution as a result of gas or oil well drilling to restore or replace the affected water supply. Section 78.51 reflects current case law regarding an operator's duty to replace or restore a water supply.

Section 78.51(d)(2) provides that a restored or replaced water supply must meet safe drinking water standards. If the precontamination water supply did not meet safe drinking water standards, the operator shall restore or replace the contaminated water supply with a supply that is comparable to the water supply that existed prior to contamination.

Section 78.51(d)(1)(v) requires the operator to provide permanent payment for any increased cost to operate or maintain the restored or replaced water supply. Section 78.51(d)(3)(i) and (ii) clarifies that the replaced or restored water supply must be able to satisfy the water user's needs.

The final-form rulemaking modifies proposed § 78.51(d) to provide uniform terms and add clarity and amends § 78.51(h) in response to public comment, providing that an operator who receives notice that a water supply has been affected by pollution or diminution shall notify the Department within 24 hours of receiving that notice.

§ 78.52. Predrilling or prealteration survey

Section 78.52(d) provides that an operator shall provide the Department and the landowner or water purveyor with the results of their predrilling survey within 10 business days of receiving the survey results. The final-form rulemaking establishes that survey results not received within 10 days may not be used to preserve the operator's defenses under section 208(d)(1) of the act (58 P.S. § 601.208(d)(1)).

I confirmed with both Scott Perry and Alan Eichler of DEP this morning – predrill reports should be mailed to the regional office that the proposed well(s) will reside in. DEP will be filing these reports by Township & County or preferably by well permit number(s) if it/they exist at the time any predrill surveys are conducted. ESL will be revising its field sheets immediately to accommodate this additional

information. If known at the time you request predrill services, please provide this information to ESL. In addition, both Scott and Alan indicated the DEP is moving towards an online reporting format similar to what the DEP uses to track municipal drinking water results submitted directly by the laboratories conducting the testing. ESL will be more than willing to accommodate these changes once implemented by the DEP but will continue to mail hard-copy reports to you in the interim for your submission as **it is unknown at this time whether direct submission from the lab to the DEP is acceptable**. I would advise using a delivery method that can be proved (i.e. certified mail) when sending copies of the predrill survey reports from your office.

Please note that ESL will be placing this information in letter format to send with well depth faxes and hard-copy reports as reminders of the reporting changes.

On a related note, the DEP years ago had a readily-available “recommended” list of predrill constituents. This list disappeared for some time but resurfaced again in November 2010 on the DEP’s website. I would advise at a minimum testing for all listed constituents found at <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-82193/5500-FS-DEP4300.pdf>. Please note that “Residue-Filterable” and “Residue-Non Filterable” are the same as Total Suspended Solids and Total Dissolved Solids. For those following the MSC Predrill BMP, the MSC list does not in fact include Strontium – a parameter easily added for little cost.

If you should have any questions regarding the changes to Chapter 78 or would like to discuss your predrill analytical list in detail, please contact me. Environmental Service Laboratories appreciates your business and will continue to keep you informed of applicable regulatory changes that affect the services we provide to you.

Regards,

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