

July 22, 2013

Alisa Harris, Special Deputy Secretary for External Affairs
Scott Perry, Deputy Secretary of the Office of Oil and Gas Management
Pennsylvania Department of Environmental Protection
400 Market Street
Harrisburg, PA 17101

Cc: Christopher Abruzzo, Acting Secretary
Martina McGarvey, Director, Bureau of Laboratories
Kevin Sunday, Deputy Press Secretary

Dear Ms. Harris and Mr. Perry:

Thank you for meeting with us on July 2. We greatly appreciated your time, as well as the opportunity to exchange information and discuss shared concerns about environmental protection in the face of natural gas development.

All of our groups welcome the opportunity to continue the dialogue during a follow up meeting with you in the early fall. We discussed devoting part of that meeting to a presentation by the Department on how water complaint investigations are conducted. We would like to reiterate our interest in seeing two challenging cases, one in which the Department made an affirmative determination and another in which it made a negative determination.

In addition, there are a few topics that we feel warrant further discussion and that we hope can be part of the agenda for our next meeting (as well as other communication going forward), including:

Clarification on the number and types of positive determinations made by the Department on water contamination cases. Mr. Perry indicated that the Department agrees that there have been 161 cases (as reported by the *Times Tribune* in May). However, we remain concerned that the number of cases may be underreported due to the Department's own statements about inconsistent recordkeeping of letters and documents (such as water tests) that are the basis for decisions, as well as possible consolidation of individual households into one case based on water supply.

We also consider it very important for the Department to map the aquifers that have been contaminated by oil and gas activities. This would help the Department to accurately identify the location and scope of groundwater pollution so that clean up can be accomplished; pollution is not exacerbated; and community and agency planning and development is supported.

Data on the accounting of the number and location of water contamination should also be made available to the public on the Department's website (with personal information of course redacted from the records).

Fixing gaps in water testing standards and protocols. As mentioned, we are concerned that the Department's own list of recommended pre-drill parameters and its actual post-drill testing parameters (per Suite Code 946) do not match.

This is particularly problematic with regard to ethane and methane. As you are aware, recent scientific studies indicate much higher levels of methane in water supplies closer to natural gas wells, as well as underground pressure affecting the migration of contaminating substances. We would appreciate knowing what the Department is doing to integrate such findings into its testing and, subsequently, its process for making determinations.

In addition, Mr. Perry stated that operators do not need to be required to conduct pre-drill testing, as the Rebuttable Presumption of Liability in the Pennsylvania Oil & Gas Act encourages them to do so. However, we believe that comprehensive tests that are conducted regularly and consistently by all operators are essential to ensuring that homeowners across the state do not in actuality end up bearing the "burden of proof." We would also welcome further discussion on possible mechanisms to require all operators to report pre-drill data and make it available to the public (rather than voluntary reporting on a Marcellus Shale Coalition database accessible only to the Department).

We remain concerned that in areas where water wells aren't located within the Zone of Presumption (i.e., where an operator may perform pre-drill sampling), contamination can occur without any record of the cause and no accountability by the responsible party. This puts future water well owners in that area at risk and without recourse to remedy the problem. Mandatory comprehensive testing across aquifers could address this issue. We would also like to discuss ways to increase pre-drill testing frequency to more closely resemble the water quality data collection required for mining operations in Pennsylvania.

Department actions to ensure that gas operators provide replacement water to those households for which positive determinations of contamination have been made. As discussed, our organizations and the Department share appreciation for the Rebuttable Presumption of Liability. Yet there are many impacted households across the Commonwealth that remain without replaced or restored water supplies. We would appreciate hearing what the Department is doing to hold operators accountable and ensure that impacted homeowners do not continue to face health and safety risks. We would also like to discuss possible mechanisms to ensure that affected households have access to clean water while Department investigations are underway.

Considerations for effective oversight and enforcement. Mr. Perry has indicated that time and expense are key factors in water testing protocols and other aspects of the Department's work. As you know, we have long called for budgetary increases that would enable the Department to have the field inspectors, technical experts, and other staff necessary to protect the environment in the face of a statewide gas boom. Some of our organizations have also developed recommendations to improve industry oversight and enforcement, including higher permitting fees and expanded issuance of fines in response to violations; freezing permits for repeated "bad actors" and

operations while violations are being addressed; and limiting the number of permits issued to what the Department can effectively oversee.

Thank you again for your time and commitment to fruitful exchanges with a variety of stakeholders. When you are ready to schedule our next meeting, please contact Steve Hvozdoch at shvozdoch@cleanwater.org or 412-765-3053, ext. 210.

Sincerely,

Thomas Au, Sierra Club Pennsylvania Chapter

Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network

Karen Feridun, Founder, Berks Gas Truth

Steve Hvozdoch, Marcellus Shale Policy Associate, Clean Water Action

Erika Staaf, Clean Water Advocate, PennEnvironment

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John Stolz, Director, Center for Environmental Research and Education, Duquesne University

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