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June 3, 2014

James Zehringer, Director  
Ohio Department of Natural Resources  
2045 Morse Road  
Columbus, OH 43229-6693  
*Via certified mail and email*

RE: Demand for revocation of Chief's Orders for drilling waste disposal facilities

Dear Mr. Zehringer:

I am writing on behalf of citizens in Youngstown and in the Barnesville area, who are actively challenging the operations of fracking waste facilities, to demand an immediate end to a flagrant violation of state law. I am referring to the illegality of the Department of Natural Resources' issuances of Chief's Orders to create twenty-three (23) drilling waste treatment and disposal facilities across Ohio. Noncompliance with the explicit requirements of O.R.C. § 1509.22 requires the immediate revocation and cancellation of all Chief's Orders issued since January 1, 2014, because all of them have been improvidently issued.

Attached is a list of the facilities which have, to the best of our knowledge, each been issued a Chief's Order. Each of the orders contains boilerplate wording and contains zero conditions to assure workers' or the public's health and safety. The process culminating in issuance of these orders by the ODNR Chief of Oil and Gas Resources Management violates mandatory requirements of the Ohio Revised Code.

We learned of ODNR's facility approvals only by dedicated pursuit of public records requests. The unfortunate concealment of these public regulatory decisions may relate to the very nature of the facilities themselves. They all seek to handle, process, treat and/or dispose of oil and gas drilling wastes from horizontal hydraulic fracturing ("fracking") wells. The hundreds of thousands of tons of solid wastes, and millions of gallons of liquid wastes which result from fracking, are rife with radiation, heavy metals, and toxic chemicals used to extract oil and gas from deep shale formations. ODNR elicits almost no information from the facility applicants aimed at disclosure of their processes and technologies. But from even the little information provided to the Department, the facilities are obviously handling radioactive fracking wastes, and that requires far more regulatory involvement and stringency than the Department provides.

O.R.C. § 1509.22( C) states:

(C) The chief shall adopt rules regarding storage, recycling, treatment, processing, and disposal of brine and other waste substances . *The rules shall establish procedures and requirements in accordance with which a person shall apply for a permit or order for the storage, recycling, treatment, processing, or disposal of brine and other waste substances that are not subject to a permit issued under section 1509.06 or 1509.21 of the Revised Code and in accordance with which the chief may issue such a permit or order.*

(Emphasis supplied). This statute requires that before ODNR may consider facility applications, ODNR first must promulgate and publish rules which define the permit types, how one may apply, and the informational detail required for a considered decision to issue or deny such orders. But those rules do not exist; nothing can be found in the Ohio Administrative Code which has been promulgated pursuant to Ohio's Administrative Procedure Act (O.R.C. Chapter 119). According to O.R.C. § 1509.03(A),<sup>1</sup> the APA must be obligatorily followed.

If, as we have concluded, these orders are being issued without rules, then there is no legislative direction over the approval of these facilities, and the statute allowing them is void for unconstitutionally delegating legislative power to an executive agency. We submit that as to all 23 of the fracking waste facilities covered by Chief's Orders, Chief Simmers' decisions are unlawful, and his orders cannot stand. Accordingly, we urgently demand that the ODNR immediately revoke and cancel all of these orders in favor of undertaking the requisite Chapter 119 rulemaking(s) to comply with the obligations imposed by O.R.C. § 1509.22.

Please respond within twenty (20) days of receipt of this letter, indicating that ODNR is nullifying the existing chief's orders. Otherwise, we will consider ourselves free to pursue other options.

Thank you very much.

Very truly yours,

/s/ Terry J. Lodge  
Terry J. Lodge

cc: Rick Simmers  
Mike DeWine, Esq.

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<sup>1</sup>Which states: "(A) The chief of the division of oil and gas resources management shall adopt, rescind, and amend, in accordance with Chapter 119. of the Revised Code, rules for the administration, implementation, and enforcement of this chapter."

## LIST OF FACILITIES ISSUED ‘CHIEF’S ORDERS’

- |  |   |  |
|--|---|--|
| 1. 4 K Industrial Park, LLC<br>1001 Main St.<br>Martins Ferry, Ohio 43935  | Washington County,<br>Grandview Township  | 69500 Bannock Road<br>St Clairsville, OH   |
| 2. Antero Resources<br>Miley Pad, Noble County,<br>Ohio  | 11. Halliburton energy<br>services, Inc.<br>Zanesville, Ohio  | 20. Keystone Clearwater<br>Solutions, LLC<br>Grunder Pad to Jenkins<br>Pad to Ocel Pad<br>Carroll County |
| 3. Buckeye brine, LLC<br>6505 US 36<br>Tuscarawas, OH  | 12. Heckmann Water<br>Resources Inc.<br>935 E. Pike<br>Norwich Ohio                                     | 21. NuGlobal Water<br>Solutions, LLC<br>44995 Dickerson Church<br>Road<br>Cadis, OH                      |
| 4. Chesapeake Exploration<br>LLC<br>9125 Dawson Road.<br>Hopedale, OH  | 13. Iron Eagle<br>Sherrodsville, LLC<br>20 S. Church St.<br>Sherrodsville, OH                           | 22. Industrial Waste<br>Control/Ground Tech.<br>240 Sinter Court<br>Youngstown, OH                       |
| 5. CNX gas company LLC<br>Cowgill Road.<br>Sarahsville, OH   | 14. Liquid waste<br>solidification LLC<br>440 S. 3rd St.<br>Steubenville, Ohio                          | 23. K&H<br>28333 West Belpre Pike<br>Coolville, OH   |
| 6. Dow Cameron oil and<br>gas.<br>1470 Adamsville Rd<br>Zanesville, Ohio   | 15. Somerset regional<br>water resources.<br>43031 Industrial Park Dr.<br>Cadiz, OH                     |  |
| 7. EnerGreen 360 Holding<br>Company LLC<br>East Ohio regional<br>industrial Park<br>Belmont County, Warren<br>Township | 16. The Belden brick<br>company.<br>375 Dover Rd. NW.<br>Sugar Creek, Ohio                              |  |
| 8. Enviro Clean Services<br>515 Industrial Blvd.<br>Wooster, Ohio  | 17. Weavertown Transport<br>Leasing, Inc.<br>2741 Stonecreek Rd,<br>Southwest<br>New Philadelphia, Ohio |  |
| 9. Enviro Tank Clean.<br>Belpre, OH  | 18. Warren Drilling<br>305 Smithson Street<br>Dexter City, OH   |  |
| 10. GreenHunter Water<br>50810 State Route 7   | 19. CMS Oilfield Services   |  |