

Budget Testimony of
Secretary Michael Krancer
Department of Environmental Protection
Governor's Proposed 2012-2013 General Fund Budget
Submitted before the House and Senate Appropriations Committees

Chairmen and members of the committee, thank you for the opportunity to discuss Governor Tom Corbett's 2012-2013 Executive Budget for the Department of Environmental Protection. Joining me today is Jeffrey M. Logan, Executive Deputy Secretary for Administration and Management.

The Department of Environmental Protection welcomes the Governor's budget proposal as embodying the principles of reform, restraint and responsibility. Over the last year at DEP we have been taking great strides on all of these fronts.

Let me first say that this budget is the second year in a row that the Governor has closed a huge budget deficit with a budget that calls for zero furloughs at DEP.

DEP is proud to be an active partner in the delivering on the Governor's promise and his vision of reforming of the way we do government in Pennsylvania to be more efficient, customer service oriented and getting DEP back to the basic function of protecting the environment. In fact, I would say that DEP has been at the forefront of that effort.

Our reorganization, which we announced in July, puts into practice a more efficient, business-like way of doing our important job of protecting the environment. Through more accurate cost accounting undertaken this past year we were able to find that \$2.5 million of expenses being charged to the General Fund should more accurately be charged to dedicated funds such as the Clean Air Fund. We undertook a major initiative to review how we conducted

inspections and enforcement and found inconsistencies in our processes among our regions. So now, sensibly, we have one consistent inspection process instead of many. The Governor asked us, as he did with all Agencies, to review all of our policies, guidelines and regulations to eliminate wasteful redundancies and we are in the midst of that process.

We do have objective and independent proof that our reform measures are working. That proof came in the form of the independent peer review of our laboratory. The story was so remarkable that it was covered in a full story by the Pittsburgh Business Journal. Obviously, our laboratory is at the heart of our fact-based, science-based business of protecting the environment.

We sought an independent peer review audit of our lab to make sure it was operating well and to see how our reform measures to do more with less were working. As the PBJ reported, “[t]he state Department of Environmental Protection received a stellar review of its laboratories, despite significant erosion in funding and staff over the past half-dozen years.”

The auditors found that our lab was “a well-managed, efficient and highly functional laboratory” that is “driven by a culture of customer service.” This budget is also marked by appropriate restraint at a time when we need restraint.

We are in the midst of taking another run at economic recovery. There certainly is great promise to do just that and more in Pennsylvania by responsible and environmentally sensitive development and use of all of Pennsylvania’s diverse resources of available, abundant, domestic, cheap, clean and safe sources of energy. This is not the time to return to the old and discredited “tax and spend” theory of government. You cannot tax your way to recovery. This is not the time to ask Pennsylvania families to carry a heavier burden on the road to recovery.

The budget is also hallmarked by responsibility, especially with respect to DEP. DEP is at the forefront of filling the essential function of government, protecting public safety and, in

our case, protecting the environment. As I said, this is the second year in a row that the Governor has closed a huge budget deficit with no furloughs of DEP personnel. We have delivered more environmental protection services over the last year than the year before. We conducted double the amount of oil and gas inspections. Also, we concluded two very significant enforcement actions, including the largest penalty action in the history of the program.

Let me now summarize briefly some of the other things we have been doing at DEP since I appeared before this Committee about one year ago. The Department has accomplished many objectives that have been in line with the Governor's and my vision of getting DEP back to its core mission of protecting the environment.

Of the many tasks undertaken and successfully completed, I wish to highlight the following:

- Departmental Reorganization
- Flood Response and Recovery
- DEP "Call" to Drillers to Cease Delivery of Flowback Wastewater to "Grandfathered" or "Exempted" Publically Owned Treatment Facilities (POTWs) and Centralized Waste Treatment facilities (CWTs)
- Strong Enforcement
- Permit Backlog Review and Analysis
- Comprehensive Review of Regulations and Policies
- DEP's Study Aimed at More Consistent Enforcement of Oil and Gas Regulations

DEP Reorganization. We accomplished a major reorganization of DEP aimed at recasting the Department to reflect Governor Corbett's and my policy priorities of, among other things, getting DEP back to its basic mission, consistency in application of rules and regulations,

and emphasizing brownfields redevelopment. Among the salient features of the reorganization are:

- Elevation of former Bureau of Oil and Gas into a separate Deputate. This change stresses our policy that proper and coordinated oversight and regulation of this industry is important for the future of the Commonwealth.
- Creation of the Bureau of Environmental Cleanup and Brownfields. This recognizes the importance of brownfields redevelopment and job creation. Brownfields redevelopment in the former DEP had lost its focus and prominence and was buried in a multi-purposed Deputate.
- Moving the Bureau of Conservation and Restoration to the Water Management Deputate. This is our Acid Mine Drainage program. Water quality degradation due to abandoned mine drainage (AMD) is one of Pennsylvania's largest environmental problems. This is a water quality focused program so we separated this from the Abandoned Mine Reclamation Program which is related to construction projects. This approach also allows us to better target and leverage state and federal restoration funding sources.
- Realignment of DEP Harrisburg and Regional Office structure to match each other. There had been an inherent disconnect within DEP because the Central Office structure did not match the various Regional Office structures. Our theme from the start has been "we are one DEP, not seven" and this is aimed at assuring more consistency of decision-making within DEP.
- Creation of Office of Pollution Prevention and Energy Assistance. This change stresses the policy priority of prevention, compliance assistance and education. Creation of the Office of Program Integration. This program is aimed at assuring a multi-media approach to our work so that we have communications between various programs and are not regulating in silos. This Office will also assure that DEP regulates in a more consistent manner across programs and across regions.

Flood Response. The budget, as proposed by the Governor, provides the necessary state funding needed to trigger matching funds from the federal government. As you know, DEP played an integral role in the flood response and recovery following the Governor's declaration of Level 1 Emergency in response to Hurricane Irene and Tropical Storm Lee and thereafter. In addition to our usual role of staffing the State Emergency Operations Center (SEOC) we:

- Partnered with our fellow Executive Agencies at the Secretary level at the SEOC for real time multi-agency responses to emergency matters.
- Issued in hard copy and posted on our website at least 15 real-time public advisories and fact sheets on topics such as disinfection of home water wells, disposal of flood debris, safe food cleanup, what to do with your septic system, storage tank issues, permitting for flood recovery and more. Four of these fact sheets were translated into Spanish within 48 hours of issuance.
- Responded to numerous instances of flooded and non-operational wastewater treatment plants.
- Issued over 1,000 emergency permits in very short order for flood debris cleanup.
- Distributed about 3,000 drinking well water test kits and waived the usual \$10 testing charge.
- Enhanced our vector control program to monitor and spray in 18 counties and over 58,000 acres to assure that mosquitoes brought on by flood water pooling would not be a threat to public health.
- In partnership with municipal authorities allowed for creation of county- centralized satellite debris collection centers and issued waivers from landfill daily tonnage and hours of operation restrictions.
- Secured a gasoline shortage declaration for Western Pennsylvania from the EPA and the EPA's waiver of seasonal gasoline requirements allowing temporary use of non-seasonal gasoline.
- Launched the "Phoenix Initiative" small business loan program to assist small businesses to recover and rebuild with new energy efficient equipment.

On November 16, 2011, DEP's Deputy Secretary for Water Management presented testimony on DEP's response and recovery efforts at a joint public hearing of the Senate Environmental Resources and Energy Committee and Senate Majority Policy Committee. The legislators complemented DEP on the agency's swift and effective actions during and after the storms.

The Call to Drillers. On April 19, 2011, at the direction of Governor Corbett, I called on all Marcellus Shale natural gas drilling operators to cease by May 19, delivering wastewater

from shale gas extraction to 15 facilities that then accepted it under an exemption from being covered by the 2010 Total Dissolved Solids (TDS) regulations. The most common total dissolved solids at issue are chlorides and sulfates but TDS also includes bromides. Surface water sampling found elevated levels of bromide in rivers in the Western portion of the state, where the majority of natural gas drilling is taking place. Bromide, itself non-toxic, turns into a combination of potentially unsafe compounds called Total Trihalomethanes once it is combined with chlorine used for disinfection at water treatment facilities. The next day the industry publically stated its commitment to compliance.

From what we can see today, a dramatic sea change has occurred in Pennsylvania on this as we have virtually overnight gone from millions of gallons being delivered to those facilities and discharged to virtually none. We are still in the process of verifying compliance both from the supply side and the demand side. In that regard, we sent a letter in July 2011 to approximately 88 drilling operators seeking their certification that they are no longer using any of the "grandfathered" facilities for wastewater from deep gas production. On the demand side, several NPDES permits are in-house for renewal and those renewed permits, if appropriate, will contain specific numerical limits for total dissolved solids.

Some critics questioned DEP's method, saying that the Department should have "ordered" compliance or sued the treatment facilities back in April. But any orders would have likely resulted in protracted litigation. Instead, through our cooperative approach, we achieved compliance in 28 hours instead of 28 months.

Enforcement Activities. On May 17, 2011, the Department fined Chesapeake Energy \$1,088,000 for violations related to natural gas drilling activities - \$900,000 for contaminating private water supplies in Bradford County and \$188,000 for a tank fire at its drill site in Avella,

Washington County. This is the largest single penalty DEP has ever assessed against an oil and gas operator. DEP legal and program staff worked very hard to accomplish this landmark.

As I stated at the time, "it is important to me and to this administration that natural gas drillers are stewards of the environment, take very seriously their responsibilities to comply with our regulations, and that their actions do not risk public health and safety or the environment." "...The water well contamination fine is the largest single penalty DEP has ever assessed against an oil and gas operator, and the Avella tank fire penalty is the highest we could assess under the Oil and Gas Act. Our message to drillers and to the public is clear."

DEP has shown its agility and demonstrated its seriousness in other enforcement contexts as well. DEP issued an immediate cease operations order to Chesapeake Energy when its erosion and sedimentation controls failed on a well pad being constructed in Galeton Borough, Potter County. Silt and mud had gotten into a stream and was threatening a water intake of the Galeton Borough Water Authority. We later received a letter from the Executive Director of the Authority stating,

We would like to express our sincere gratitude for the immediate response from your department to the situation we encountered...The issues that our operator had to deal with could have been much worse and our community could have suffered severely had it not been for the efforts and support we received from you. This situation has reinforced our belief that the interest and importance of our water source is of the utmost importance to all that Pennsylvania Department of Environmental Protection works hard to sustain this valuable resource.

In August 2011, when Laser Pipeline's boring activities in Susquehanna County caused several inadvertent returns to surface (IRTS) of boring mud, which consists of bentonite clay and water, DEP acted quickly. DEP immediately called Laser's head management for a meeting

with DEP technical staff and me in Harrisburg. DEP insisted, and Laser agreed, to implement contingency plans at Laurel Lake Creek and at the other stream crossings in the event other IRTS occurred. The contingency measures included construction of coffer dams and flumes, so that any material would be fully contained by the dam while the flume protected the stream from any contact with the slurry. The plans were in place when a third IRTS occurred in September and the measures prevented any material from making its way to the stream.

I visited the site of the IRTS in October and found that everything appeared back to normal and that one would never know that boring operations ever occurred there. Also, good news was the DEP report on the incidents that was released later in the summer, reported that the IRTS incidents had resulted in no adverse impact to the stream or to aquatic life.

On February 9, 2012, just a few days ago, DEP announced its civil penalties against Chesapeake Appalachia LLC totaling \$565,000 for erosion and sediment control violations, wetland encroachment violations and the April 2011 "Atgas" well control incident. As we said then, "[t]he governor and I expect the highest standards to be met and when they are not, we take strong enforcement action and "we will continue to be vigilant on that front" as "the protection of the state's water is paramount."

Permit Backlog Review and Analysis. Beginning in May 2011, we have taken concrete business-like steps to examine the "permit backlog" problem, diagnose it and resolve it. The first step was to diagnose two specific permitting programs in order to provide a platform for a more global DEP-wide solution. We first concentrated on oil and gas drilling and well construction permits (regulated under Chapters 78 and 102, respectively). To date, the Department has analyzed, documented and developed a uniform permit review process for oil and gas well drilling and well construction permits. Permits for oil and gas activities, under the

Department's Chapter 105 regulations are currently undergoing the documentation process. Once complete, all of these processes will have been fully documented, which is a first in the history of DEP.

Our web-based 102 training initiative is also key to reducing the permit backlog. This initiative -another agency first- will provide consistent and uniform training to better educate our staff, the county conservation districts and private sector consultants. The web-based training course is scheduled for completion in March. Improving the quality of permit applications and removing individual reviewer bias will greatly improve the 102 permit review throughput and reduce backlog.

Additional benefits of this project include process clarity and transparency, increased efficiencies by matching workload analysis with available and appropriate resources, and a more effective process that meets or exceeds timeframes for permit and authorization reviews. Moving forward, this process will be duplicated for other permits based on Department priorities and perceived backlogs.

We have recently initiated several projects aimed at examining the creation of additional general permits. If appropriate and successful, this could drastically reduce the agency's workload, without negatively impacting the environment.

Comprehensive Review of Regulations and Policies. Per the pledge of Governor Corbett during the campaign, DEP has completed, within the first 90 days of the administration, a comprehensive review of all existing environmental regulations and technical guidance administered by the Department. The Department outlined the criteria for review as follows: necessity, clarity, administrative efficiency, economic competitiveness, federal consistency. DEP staff reviewed over 5,500 pages of environmental regulations and over 530 technical guidance

documents and established initial recommendations and priorities for implementation. The process of regulatory and technical guidance review is ongoing, in a staged manner, in coordination with the Governor's Policy Office.

DEP's Enforcement Consistency Study. Governor Corbett promised that we would run DEP programs with uniformity. From our first days on the job, if not before, we have repeatedly heard from legislators and stakeholders that DEP's enforcement of the oil and gas industry was often inconsistent from region to region. So, earlier this year, I established a DEP team comprised of staff members from Harrisburg and the regional offices that regulate oil and gas activity. The team studied our enforcement processes and actions in terms of violations reported, how these violations were recorded and reported, and enforcement actions taken against operators.

The results of this focused study were announced by DEP on November 15, 2011, along with recommended program changes aimed at achieving more consistency. The team noted regional discrepancies in the documentation and data entry of violations, as well as the inspection forms used. The team made several recommendations to be implemented in three phases: training, data entry streamlining, and the creation of a standard inspection report form; continuous statewide monitoring and program review; and development of a field manual for staff, providing standard equipment for field staff, adding compliance staff to each region, and improving compliance assistance programs for industry. We have already implemented a more detailed electronic inspection form for use in all three regions and we are working to develop additional training for inspectors and water quality specialists. With these changes, we should now be able to more swiftly close out Notices of Violation as having been corrected or, when necessary, elevate them to a higher enforcement level. We expect to implement all recommendations by December 2012.

Along with the matters and initiatives just discussed, I will address a few other topics which I know are of interest to you.

Marcellus Shale Well Numbers. The Department has been working diligently to address data quality issues both internally and with the regulated community in regards to the way information on these wells is recorded.

While it is certainly important that this information be accurately reported and provided to the public, it was never true that the absence of information on Marcellus Shale wells delayed resolution of the Marcellus Shale legislative package and any assertion to the contrary is simply false.

Marcellus Shale Air Issues. DEP and EPA have documented a significant downward trend over the past ten years in airborne pollutants across the state, including in areas where drilling is taking place. This, of course, demonstrates that that the department is doing a good job regulating air quality issues in the state. The increased downstream use of domestic clean-burning natural gas will further improve air quality, especially in our urban areas where vehicles are the number one source of emissions into the air.

In 2010, the DEP started conducting short-term air assessments where drilling is happening. Those assessments did not identify concentrations of any compound that would likely trigger air-related health issues associated with Marcellus Shale drilling activities. We are developing a protocol for long-term sampling and will begin that initiative this spring. The Pennsylvania Air Pollution Control Act and regulations adopted under the act provide strong statutory and regulatory authority for DEP to collect and publish information concerning air

emissions from Marcellus Shale operations including drilling activities. As we announced last month, the DEP has embarked, based on the authority we already have without any additional legislation or funding, on a comprehensive air-emissions inventory for the natural-gas sector. We will publish a comprehensive emissions inventory by the end of this year.

Southeastern Pennsylvania Refineries. The Department of Environmental Protection stands ready to work with the seller and any buyer for a clean and efficient transfer of existing permits or any new permitting which could be associated with a new owners operation. DEP will work with the transferor and transferee to bring creative solutions to any issues which may arise. DEP is also on the watch making sure that there are no public safety concerns during this process.

Spending Reductions in Environmental Program Management and Environmental Protection Operations. In both Environmental Program Management and Environmental Protection Operations we are operating more efficiently. This is a product of the reform that Governor Corbett has brought to government which I have already discussed. We have achieved some reductions in Environmental Program Management through the application of more accurate cost accounting which I alluded to earlier. There has been and will be no reduction in the delivery of environmental oversight and protection delivered by DEP or any reduction in the delivery of the services that Environmental Protection Operations and Environmental Program Management provide.

This budget also reflects DEP's goal to remain complement neutral by temporarily eliminating funding for 51 positions that are currently unfilled.

Sewage Facilities Enforcement and Planning Grants. Sewage Facilities Enforcement Grants reimburse local governments for sewage permitting and enforcement activities—in most cases, for paying local sewage enforcement officers (SEOs). Appropriations for these reimbursements have decreased since 2008. As a result, local governments, who have the ability to raise fees as do local SEOs, have been budgeting for the reduction in reimbursement. In 2009-2010, local agencies received a pro-rated share of 42 percent of the total amount for which they were eligible, for their CY 2008 applications. In 2010-2011, local agencies received a pro-rated share of 41.8 percent of the total amount for which they were eligible, for the CY 2009 applications. Because local governments are reimbursed after having already paid the necessary expenses, this line item being zeroed out will have only minimal impact on their ability to conduct sewage permitting and enforcement.

Sewage Facilities Planning Grants reimburse local governments for sewage planning activities. The appropriations for these reimbursements have, likewise, decreased every year since 2008 and, again, local governments have been budgeting for the reductions. The applications for these grants do not expire at the end of each year like the sewage facilities enforcement grants do. Accordingly, there is currently a backlog of several years through which DEP is working. It is estimated that a request received today would not receive reimbursement until 2015-2016. Because local governments are reimbursed after having already paid the necessary expenses, this line item being zeroed out will have only a minimal impact, if any, on their ability to conduct sewage planning activities. In addition, the impact fee from HB 1950 would provide funding to water and sewer projects through PENNVEST and the H2O PA program.

Delaware River Basin Commission. With respect to the Delaware River Basin Commission some true context is required. Pennsylvania still funds 38% of the Commission's entire budget, far in excess of our assigned share of 25%, and Pennsylvania has paid the amount allocated to it in DRBC's budget since 2008. The same cannot be said for other Commission members:

- Federal Government. Over the years the federal government's combined shortfall has amounted to nearly \$10M through the end of FY 2012. The federal government, by agreement is supposed to pay 20% of the Commission's annual budget. However, the federal government paid nothing from 1998 through 2008. It did contribute some dues in 2009 and 2010. Now, the Obama administration has decided this year to return to zero funding of the DRBC.
- Delaware. You might be surprised to know that Delaware cut its agreed level of funding by a whopping 72%.
- New York. New York cut its funding by 22%.

With that context and in light of the economic situation it is quite reasonable that Pennsylvania this year reduced its contribution to the DRBC by only 4.98% which is in line with the Governor's request to reduce spending by 5%.

HB 1950. No discussion of environmental and fiscal matters could be complete without a mention of recently passed HB 1950. HB 1950 is a balanced multilateral approach to responsible domestic energy development in Pennsylvania. HB 1950 fulfills the following goals and objectives:

Builds upon Pennsylvania's already world-class unconventional drilling environmental and public safety standards by:

- Increasing well setback distance from 100 feet to 300 feet for streams, rivers, ponds and other water bodies
- Increasing well setback distance from private water wells from 200 feet to 500 feet and to 1,000 feet for public drinking water systems
- Expands an operator's "presumed liability" for impairing water quality from 1,000 feet to 2,500 feet from a gas well, and extends the duration from 6 months to 12 months
- Enhancing water quality replacement standards
- Enabling DEP to revoke permits in a more efficient manner to deal with imminent safety or environmental concerns
- Increasing blanket bonds from \$25,000 up to \$600,000
- Providing for strong, uniform and consistent statewide environmental standards – building upon and incorporating best practices utilized by industry leaders

Enhances and protects our natural resources by:

- Enhancing hydraulic fracturing disclosure, including online posting utilizing FracFocus.org
- Requiring approval of water management plans
- Encouraging the use of non-freshwater sources for well development
- Authorizing the EQB to develop criteria for conditioning a well permit based on its impact on public resources like parks, wildlife areas, natural landmarks, special plant and species habitat and other resources
- Ensuring added levels of protection within floodplains

Protects public health and safety by:

- Builds upon recent legislative accomplishments requiring 911 addressing for well sites and establishing standards for pipeline safety
- Assign 911 addresses and GPS coordinates to well sites and facilities
- Provides funding to assist in emergency response planning, training, coordination and grants for specialized equipment to first responders

- Enhances transparency of well reporting, inspections, violations and remediation
- Expands citizen and water supplier notification of permit and drilling activities
- Increases civil penalties for unconventional operators to \$75,000

Achieves fairness and equality for job-creators by:

- Providing increased uniformity and fairness of local regulation that any business needs to succeed
- Recognizing Commonwealth's prerogative to establish environmental standards
- Establishing neutral arbiter (PUC) to resolve disputes between landowners, industry and local governments
- Providing long-term regulatory predictability for job-creators and capital investors

Secures American energy independence by:

- Helping to establish "Green Corridors" in PA for natural gas-fueled vehicles (building upon the Governor's commitment to the multi-state natural gas vehicle MOU)
- Assisting schools, mass transit systems, non-profits and companies convert vehicle fleets to and increase use of natural gas

Mitigates community impacts by:

- Authorizing counties to adopt an impact fee to offset costs associated with unconventional natural gas development
- Encouraging counties to evaluate their current unmet needs
- Developing an equitable formula to distribute revenue
- Providing revenue to state agencies associated with development oversight
- Addressing legacy impacts of abandoned oil and gas wells, mine reclamation and increases access to first class water and sewer treatment systems
- Preserves local government's traditional zoning authority

- Expands municipal notification of permit applications

HB 1950's impact fee will provide significant funding to DEP for operations of our Oil and Gas Program. In addition, the Act will provide funding to environmental areas such as water and sewer projects through PENNVEST and the H2O PA Program, the Commonwealth Financing Authority (CFA) for flood control and sewer projects, counties for recreational and conservation purposes, the Environmental Stewardship Fund (i.e., Growing Greener), the Hazardous Sites Cleanup Fund, acid mine drainage mitigation, and orphaned and abandoned oil and gas well plugging initiatives.

Conclusion and Invitation For Questions. Chairmen and members of the committee, I greatly appreciate your time and consideration today. I would be happy to answer any questions that you may have for me.