

**IN THE COURT OF COMMON PLEAS  
ALLEGHENY COUNTY, PENNSYLVANIA**

**IN RE:** : **SUPREME COURT OF PENNSYLVANIA**  
: **71 W.D. MISC. DKT. 2017**  
**THE FORTY-THIRD STATEWIDE** :  
: **ALLEGHENY COUNTY COURT OF COMMON**  
: **PLEAS CP-02-MD-0005947-2017**  
**INVESTIGATING GRAND JURY** :  
:  
: **NOTICE NO. 42**

**RESPONSE OF THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION TO REPORT 1 OF THE FORTY-THIRD STATEWIDE  
INVESTIGATING GRAND JURY**

The Pennsylvania Department of Environmental Protection (“DEP”), by and through its counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, submits this response to Report 1 of the Forty-Third Statewide Investigating Grand Jury. The report was served upon DEP pursuant to an order by Supervising Judge Norman A. Krumenacker, III. DEP requests that this response be attached as an exhibit to the report prior to public disclosure and/or publication.

**I. INTRODUCTION**

**A. The Boom of Unconventional Gas Well Development in Pennsylvania**

The development of the unconventional gas industry posed a unique challenge for the Department of Environmental Protection. DEP rose to the challenge through the efforts of its dedicated staff of professional geologists, engineers, and biologists who were committed to creating a regulatory program that protected the citizens of Pennsylvania and their environment, while allowing responsible development of the resource. It is important for Pennsylvania’s citizens to know that these DEP employees care about, are engaged in, and have expertise in protecting the environment and public health and safety from the impacts of unconventional gas development. Citizens also need to know that the oversight of this industry now in place is comprehensive, responsive and protective.

In 2008, when the industry began significant development of the Marcellus Shale, an unconventional natural gas formation, DEP had in place a regulatory program for addressing the impacts of the historic conventional oil and gas industry that existed in rural areas of northwestern and southwestern Pennsylvania. That regulatory program, which has never had a federal counterpart, derived largely from the 1984 Oil and Gas Act. DEP quickly identified the need for an updated regulatory program for unconventional gas development.

Although the techniques used to produce natural gas from unconventional formations were not new to Pennsylvania - horizontal drilling had been used for years prior to the Marcellus Shale boom to stimulate coalbed methane wells, and hydraulic fracturing and the chemicals used in that process have been standard operating procedures for virtually every conventional oil and gas well in Pennsylvania for decades – the sheer scale of this new development was unprecedented. From the total acreage of the play across Pennsylvania (the productive area of the geologic formation) to the size of the well sites, the time it took to drill and hydraulically fracture each well, the amount of water used, and the amount of residual waste generated by developing these wells, this was a significantly different industry. The increased scale and rate of unconventional gas development resulted in new field practices which required DEP to develop new approaches to regulating the industry and to update DEP's existing regulatory program for conventional oil and gas development.

DEP's task was to adapt the existing regulatory program as this large and impactful industry grew exponentially, changing its methods and techniques as it grew. At every critical juncture, the environmental professionals at DEP committed themselves to doing the job right and created a regulatory program that ensures the public receives all the protections afforded them by Pennsylvania's strong environmental statutes. The cornerstones of the new regulatory program are the 2012 Oil and Gas Act (an updated 1984 Oil and Gas Act) and Pennsylvania's other

environmental statutes, including the Clean Streams Law, Solid Waste Management Act, Air Pollution Control Act, Dam Safety and Encroachments Act, and Radiation Protection Act, along with the regulations that implement these statutes, many of them amended in new rulemakings to address the potential risks and hazards presented by today's unconventional gas development.

To better administer this new program, DEP made changes within the agency, including restructuring the Oil & Gas Program, creating a new district office to serve northcentral and northeast Pennsylvania, increasing its staff, and training all staff members. DEP also made changes to ensure its regulation of this industry is transparent, participative, and collaborative. The agency enhanced the public's access to accurate factual and scientific information regarding its oversight of the industry, engaged the public's participation in a massive rulemaking process, and collaborated with many stakeholder organizations in developing its new program.

The regulatory program which DEP has developed, continuously improved, and implemented for this complex industry is recognized nationally and internationally for its features, which protect citizens and the environment while allowing responsible development. Over the past several years, representatives and officials from many countries have traveled to Pennsylvania to meet with DEP staff and learn more about its program and practices. As part of the Unconventional Gas Technical Engagement Program, the U. S. Department of State has sent DEP staff to other countries, including Mongolia, Poland, Lithuania, Argentina, and Columbia, to assist these countries in creating effective regulatory programs for this industry. .

Of no small note, DEP accomplished this work at the same time the federal government was reducing its involvement, oversight, and support of state environmental protection programs , the state legislature was focused on limiting DEP's budget and regulatory authority, and critics were shaping public opinion with fear and inaccurate information without respect for facts, law or science. Moreover, DEP has achieved this success as Pennsylvania has become the second largest

producer of natural gas in the U.S., behind only Texas. In 2019, 6.2 trillion cubic feet of natural gas was produced from unconventional wells in Pennsylvania, the largest volume of natural gas on record produced in Pennsylvania in a single year.

For certain, there have been and will continue to be concerns related to the impacts of unconventional gas development on the health and safety of the Commonwealth's citizens and our environment. DEP shares these concerns and is committed to continually improving the regulatory program to better protect and serve the citizens of the Commonwealth.

### **B. The Grand Jury Investigation**

DEP's regulation of the unconventional gas industry recently has come under the scrutiny of a Statewide Investigating grand jury requested by the Pennsylvania Office of Attorney General ("OAG"). The grand jury was convened two years ago with the stated purpose of investigating whether private companies engaged in unconventional well development activities had committed criminal violations of Pennsylvania's environmental laws. In mid-December of 2019, 22 months into the grand jury's 2-year term, the OAG advised DEP, for the first time, that it had prepared a draft report that was critical of how DEP regulated the unconventional gas industry. The OAG agreed to share summaries of excerpts of the draft report applicable to DEP and to give DEP a limited time period to respond in writing and present testimony before the grand jury. Upon reading those excerpts, DEP was surprised by the extent of the factual inaccuracies and confused articulation of the relevant law in the excerpts of the draft report and submitted three written statements on the issues and purported facts in the short summaries. DEP also received a limited opportunity to present testimony by one DEP employee, Kurt Klapkowski, Director of the Bureau of Oil & Gas Planning and Program Management, based solely on the topics and contents of the short summaries provided by the OAG.

In the full report, which DEP obtained only after it sought court intervention, the grand jury made no findings of criminal wrongdoing by DEP. However, it presents an inaccurate and incomplete picture of Pennsylvania's regulatory program and how it is being implemented today. The report relies upon unidentified witness snapshots, in some cases from 10-15 years ago. It is critical of today's DEP regulatory program while demonstrating little knowledge or understanding of it. DEP respects the work of and the mission of the grand jury. However, accuracy is necessary before criticisms can be fairly made. Likely because of the limited information presented to them by OAG during the confidential grand jury investigation, the grand jurors were not able to develop an understanding of the current regulatory program or the related law and, consequently, made recommendations that are ultimately unproductive and/or inappropriately directed to DEP.

This false picture of DEP does a disservice to the citizens of the Commonwealth, generally, and to the dedicated employees of DEP, specifically. It undermines the public's right and ability to understand whether they are receiving the protections afforded them by law and erodes the public's trust in DEP. For this reason, DEP respectfully requests this Honorable Court attach this response as an exhibit to the report prior to public disclosure and/or publication.

DEP's response below consists of two sections. The first section, "Creation of a Modern Natural Gas Regulatory Program" describes DEP's regulatory program. It examines distinctions between the statutes, regulations, and policies; describes requirements of DEP's regulatory program; provides a timeline of critical events in the development of that program; describes organizational changes made in the Oil & Gas Program; and reviews the Program's successes. The second section, "DEP's Responses to the grand jury's Conclusions and Recommendations" identifies factual and legal inaccuracies in the report and presents DEP's responses to the individually articulated recommendations of the grand jury.

## **II. CREATION OF A MODERN NATURAL GAS REGULATORY PROGRAM**

### **A. Governmental Authority to Regulate**

The report starts by quoting the “Environmental Rights Amendment” of the Pennsylvania Constitution, which enshrines the peoples’ rights to a clean environment and creates a constitutional “trust” in Pennsylvania’s public natural resources. The Pennsylvania Constitution is the starting point for understanding Pennsylvania’s structure of government and the basic relationships between citizens and business and government. It is important to recognize however, that the Constitution also limits the power of the government by making clear that governmental “police power” must be spelled out in laws written by the Legislature. Unfortunately, the report stops at the Constitution and does not do the hard and complicated work of examining Pennsylvania’s laws that define governmental authority to regulate industry. It is easy to point to the Pennsylvania Constitution’s unique and powerful Environmental Rights Amendment, and then simply say the government and specifically, DEP, should have done more. This oversimplified approach is misleading and ultimately unhelpful.

If the objective of this report – which does not find any unlawful behavior by DEP – is to produce improvements to governmental policing of the industry, OAG should have first explained the rules, starting with the identification of the laws that give an agency specific “police powers” to regulate how industries operate. In addition to the laws, examination of policy statements and approval mechanisms are also relevant to understand whether the agency is doing its job. Once rules are explained, then the investigation should gather facts related to the agency’s performance under all of these requirements. No such effort is reflected in this report.

Despite the seriousness of the allegations in the report, there is no discussion of the environmental laws that establish – and in important ways limit – the scope of governmental oversight of the industry. There is no acknowledgment of the fundamental “checks and balances”

principle of government that the Legislature writes the laws, and the Governor and his agencies implement those laws. It is important to understand that the Environmental Rights Amendment cited at the beginning of the report does not give the Governor or the agencies the power to expand their authority beyond the laws passed by the Legislature.

Also absent from the report is any discussion of the regulations developed under the laws written by the Legislature. In fact, since the start of the unconventional gas boom in Pennsylvania, DEP and the Environmental Quality Board (also within the executive branch) have shepherded seven different regulatory packages through the Pennsylvania “regulatory rulemaking” process. This achievement is significant because the process agencies must follow, which was established by the Legislature in the Regulatory Review Act, the Commonwealth Documents Law, the Commonwealth Attorneys Act, and the Administrative Code is detailed and prescriptive, in order to ensure that the agencies do what the Legislature intended. DEP’s regulatory development process typically takes at least two years and includes public hearings, consultation with numerous advisory committees, public notice, public comment, DEP’s response to public comments, review by the Independent Regulatory Review Commission, review by the Legislative Committees, and review and approval by the Attorney General. At each step in the process, proposed regulations are scrutinized for consistency with the laws they are intended to implement, and regulatory rulemakings that are found to go “too far” and to exceed the statutory authority are not approved. Once a regulation makes it through the entire process, it does have the “force of law” – which means that it can be enforced like a statute passed by the Legislature, and agencies have the power to issue orders or take “enforcement action” when someone violates the regulation.

The report does discuss policies, but mistakenly implies that policies are interchangeable with statutes or regulations. On pages 52-53, the report suggests that DEP could have regulated the industry more quickly *by policy*, because agencies can write these themselves and no approval

is needed. The report cites the testimony of former Environmental Hearing Board Chief Judge and former DEP Secretary, Michael Krancer, as supporting this idea. In fact, the testimony quoted on page 52 of the report appears to have been taken out of context and should not be interpreted to support the conclusion that DEP on its own could have “created a comprehensive fracking policy” to regulate the industry. Pennsylvania law is clear that policies do not function like laws that can be enforced. An agency may not create binding rules to limit activities of individuals or industry without having been given the power to do so by the Legislature through statutes, and without having gone through the regulatory rulemaking process. In fact, it is unlawful for DEP to apply a policy to an industry as though it were a statute or promulgated regulation. Rather, policies, or “technical guidance documents” as they are often referred to by DEP, can only be used to explain an agency’s interpretation of the statutes and regulations and to make recommendations for how a party can demonstrate compliance with the laws.

Because the report does not provide a description of the statutory and regulatory framework, this section of DEP’s Response provides an overview of the current legal framework of DEP’s regulatory program, provides a timeline of the transformation of that program, and discusses some of the program’s successes, including the Pennsylvania courts’ conclusion that DEP’s regulation of the unconventional gas industry satisfies its constitutional duties under the Environmental Rights Amendment.

**B. Pennsylvania’s Current Regulatory Program is Comprehensive**

Under several Pennsylvania environmental statutes, DEP is empowered with permitting and inspecting unconventional gas development. The current program framework comprehensively anticipates a broad spectrum of potential environmental impacts and ensures protection of public health, safety and the environment. Specifically, the statutes and regulations that DEP administers address the potential impacts to land, water, air and natural resources during



each phase of the unconventional gas development: 1) planning and construction; 2) well drilling and hydraulic fracturing; 3) operation; and 4) plugging and restoration. (See **Exhibit A** for a complete list of laws, regulations, policies, and permitting forms relied on by DEP to oversee the unconventional gas industry). Key elements of the regulatory program, based in the statutory provisions and regulations, are briefly identified below.

## **1. Planning and Construction**

Unconventional gas well operators must obtain several different permits or approvals from DEP before they can conduct any construction associated with unconventional gas well development. These applications require planning and investigation by the applicants and must include information related to geology, groundwater, surface waters, nearby structures and natural resources, soil information, stormwater runoff patterns and features in the area, as well as information regarding species that are protected under state and federal laws and past land uses. The applications must be prepared by licensed professionals. DEP reviews the applications, coordinates with other resource agencies as necessary, coordinates internally regarding other associated permit applications, considers comments from the public and local governments, and issues authorizations only if the applications satisfy all the requirements, and DEP is satisfied that the project will not cause unreasonable diminution, depletion or degradation of Pennsylvania's public natural resources. The permits or authorizations needed before commencement of unconventional well development activity are:

### **i. Well Permits**

Under the 2012 Oil and Gas Act and the Chapter 78a regulations, to drill a new unconventional gas well, the operator must obtain a well permit from DEP and post a bond. The permit application must identify the well location and its proximity to buildings, water supplies, workable coal seams, gas storage reservoirs and landfills. An operator must comply with all

applicable laws, including requirements for site construction, drilling, water use, wastewater management, notification, spill reporting, and spill remediation.

**ii. Water Withdrawals**

Large volumes of water are required for drilling and hydraulic fracturing of an unconventional gas well. An operator withdrawing water for use in drilling or hydraulic fracturing must obtain approval of a Water Management Plan from DEP in accordance with the 2012 Oil and Gas Act, the Clean Streams Law, the Chapter 78a regulations, and approvals from the Susquehanna or Delaware River Basin Commissions if applicable.

**iii. Earth Disturbance and Stream Crossings**

Unconventional gas well development involves extensive earth disturbance, including roads, well sites and gathering, transmission and distribution pipelines, that can result in accelerated erosion and sedimentation. Under the Clean Streams Law and Chapter 102 regulations, an Erosion and Sediment Control General Permit authorization is required before construction. To obtain coverage under this general permit, the applicant must submit an application and detailed site-specific plans for review and approval.

Additionally, unconventional gas construction activities that are in or along wetlands and streams, also require a “water obstruction or encroachment” permit or approval from DEP before the operator may commence construction under the Clean Streams Law, the Dam Safety and Encroachments Act, and Chapter 105 regulations.

**2. Drilling and Hydraulic Fracturing**

After construction of the well site, drilling and hydraulic fracturing of unconventional gas wells must comply with permit conditions and regulatory requirements including those described below.

**i. Well Casing and Cementing**

Properly constructed and operated wells are critical to protecting water supplies and public safety. Under the 2012 Oil and Gas Act and the Chapter 78a regulations, operators must meet specific casing and cementing requirements tailored to unconventional well construction to protect groundwater from the fluids and natural gas that will be contained inside the well and to keep water from the surface and other geologic strata from mixing with and contaminating groundwater.

**ii. Air Quality**

In Pennsylvania, air emissions from unconventional gas development are regulated under the Pennsylvania Air Pollution Control Act, the 2012 Oil and Gas Act, the federal Clean Air Act, and the related air quality regulations. Prior to commencing construction of the air contamination sources, approval must be secured under either General Permit-5 or General Permit-5a, an individual permit, or undertaken in accordance with specific regulatory requirements.

**iii. Wastewater**

Large volumes of wastewater are generated during the drilling and hydraulic fracturing phases and during operation of unconventional wells. This wastewater is classified as a residual waste in Pennsylvania and is regulated by the 2012 Oil and Gas Act, the Solid Waste Management Act, the Clean Streams Law, and the Chapters 78a, 95, and 287 regulations. An unconventional gas well operator must identify in its Water Management Plan where wastewater will be stored, treated, and disposed. Wastewater must be recycled and treated at an authorized wastewater treatment facility or disposed at an authorized waste disposal facility. Operators must also provide monthly reports to DEP documenting wastewater generation, management and/or disposal.

**iv. Disclosure to DEP of Chemicals Used**

Under the 2012 Oil and Gas Act and the Chapter 78a regulations, unconventional gas well operators must submit to DEP all chemical information, including any designated trade secrets or

confidential proprietary information after the well is hydraulically fractured. Unconventional operators must also complete a chemical disclosure registry and post it on the publicly available website FracFocus.

**v. Water Supply Restoration or Replacement**

Disruption of water quality or flow in nearby water wells from drilling activities can occur. The 2012 Oil and Gas Act and the Chapter 78a regulations require operators to replace or restore affected water supplies. DEP investigates all complaints and issues orders as necessary to replace or restore impacted water supplies. Unconventional gas well operators are presumed responsible for any water supply impacts that occur within 2,500 feet of the vertical wellbore within a year of completion, drilling, stimulation, or alteration of the well. The presumption of liability may be rebutted by pre-drill survey or samples proving the operator's drilling did not cause the water supply impacts, or by the landowner's refusal to allow a pre-drill survey to be performed.

**vi. Prevention of Spills and Releases and Remediation**

Under the 2012 Oil and Gas Act, the Clean Streams Law, and the Chapter 78a regulations, before bringing chemicals to or generating waste at a well site, an operator must prepare and implement a Preparedness, Prevention and Contingency Plan, and must plan for the control and disposal of the waste generated and managed at the well site. Unconventional gas well sites must be completely lined so that wastes or fuels are always managed within competent secondary containment and operators must develop a containment plan for chemicals and fluids including fuels, drilling muds and additives and flowback. Among other reporting requirements, a person responsible for a spill or release causing or threatening pollution of waters of the Commonwealth must immediately notify DEP. When DEP concludes that a private water supply owner may be impacted by a spill, the agency provides notice to the owner and may gather additional information, including sampling water supplies potentially impacted by a spill, and may take enforcement

action. DEP oversees remediation of an area affected by a spill or release at a well site based on scientific criteria that are applicable to all contaminated sites in Pennsylvania.

#### **vii. Air Monitoring**

All unconventional gas operators must report air emission data annually to DEP, consistent with the 2012 Oil and Gas Act and the Chapter 135 regulations. DEP's air monitoring activities include operation of the Commonwealth of Pennsylvania Air Monitoring System to continuously monitor pollutant levels statewide. DEP continues to establish new monitoring sites in unconventional gas producing counties across the Commonwealth.

#### **3. Operation and Well Integrity**

After construction of the well and hydraulic fracturing, mechanical integrity testing is required quarterly, including the collection and submission of information on wellhead pressures, annular pressures and flows, leaks and severe corrosion in accordance with the 2012 Oil and Gas Act and the Chapter 78a regulations. Operators must take corrective actions to repair or replace defective equipment or casing or mitigate the excess pressure on casings.

#### **4. Plugging and Restoration**

Once a well is no longer producing gas, the operator must plug the well as prescribed by the 2012 Oil and Gas Act and the Chapter 78a regulations to stop vertical flow of fluids or gas within the well bore and must restore the well site within nine months of plugging the well.

#### **5. DEP Monitoring and Inspections**

DEP inspects unconventional gas well sites from construction to restoration after plugging to ensure that the site has proper erosion controls in place, the operator sites and drills the wells according to permit requirements and applicable laws, and any waste generated in drilling and completing the well is properly managed and disposed. Unconventional gas well operators are required to submit to DEP a variety of notices and reports regarding well drilling, completion,

production, waste disposal, and well plugging. DEP staff investigate complaints from the public that an unconventional gas activity may be causing environmental or public safety concerns. If necessary, DEP employs aggressive enforcement against operators to ensure that facilities are brought into compliance.

### **C. Timeline of Unconventional Gas Regulation in Pennsylvania**

Much of the inaccuracy in the report stems from a failure to anchor events in time. The report does not differentiate between DEP's oversight of the industry as unconventional gas exploration started in 2004 subject to rules created in 1984 for a different industry versus the current oversight more than fifteen years later. In fact, since the beginning of unconventional gas well development in the Commonwealth, DEP has transformed the regulatory program, prioritizing updates around four categories: 1) safety concerns such as emergency planning, well construction and staffing; 2) health concerns, for example from wastewater and air emissions; 3) environmental impacts like those from increased erosion and water withdrawals; and finally 4) overall administration of the program including improvements to transparency and reporting associated with permitting and enforcement. To fully understand that transformation, DEP provides the following timeline which summarizes critical developments in the oversight of unconventional gas development in Pennsylvania:

#### Jan. 2003 – 2010 Governor Ed Rendell

- |           |   |
|-----------|---|
| 2004-2007 | Unconventional gas well industry conducts exploratory drilling in PA subject to DEP's 1984 regulatory requirements for the conventional oil and gas industry. |
| 2008      | Unconventional gas well development boom begins.  |

- 2008 DEP creates PA Clean Streams Law-based General Permit, “ESCGP-1,” continuing the requirement that PA gas developers obtain erosion and sediment control permits after Congress passes exemptions at federal level.
- 2009 DEP opens Williamsport Oil & Gas Program Office.
- 2009 EQB promulgates final regulations to increase permit application fees to hire additional technical staff to handle increased workload.
- 2009-2011 DEP hires approximately 137 new staff for the Oil & Gas Program.
- 2009 DEP initiates a new regulatory package to modernize well construction standards.
- 2010 EQB promulgates final regulations to codify requirement for erosion and sediment control permit in wake of federal exemptions, amending 25 Pa. Code Ch. 102.
- 2010 EQB promulgates final regulations to address Total Dissolved Solids pollution from natural gas well wastewater, amending 25 Pa. Code Ch. 95.
- 2010 DEP initiates a new rulemaking package addressing surface activities associated with both conventional and unconventional gas development (Surface Activities Rulemaking), proposing to amend 25 Pa. Code Ch. 78.
- 2010 Gov. Rendell issues Pa. Exec. Order No. 2010-05, placing a moratorium on additional leasing for gas development on lands owned and managed by the DCNR.

Jan. 2011 – 2014 Governor Tom Corbett

- 2011 DEP begins to receive electronic reporting of data from well operators.
- 2011 DEP establishes a new deputate, the Office of Oil & Gas Management, with direct oversight of both central office and district office operations.

- 2011 EQB promulgates final regulations to update well construction standards to address, inter alia, gas migration risks, amending 25 Pa. Code Ch. 78.
- 2012 General Assembly enacts Act 13 of 2012, (2012 Oil & Gas Act), updating DEP's oversight authority of oil and gas well development and preempting municipal authority to zone unconventional gas development activities.
- 2012 General Assembly enacts Act 9 of 2012 directing DEP and PA Emergency Management Agency (PEMA) to adopt emergency regulations requiring unconventional gas operators to plan and prepare for emergency response.
- 2012 DEP finalizes ESCGP-2, updating the permit for erosion and sediment control of earth disturbances associated with oil and gas activities.
- 2013 EQB promulgates final regulations authorized by Act 9 of 2012, related to emergency planning and response, amending 25 Pa. Code Ch. 78.
- 2013 DEP publishes Technical Guidance "Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads," Document No. 800-5000-001.
- 2013 DEP announces new online oil and gas mapping tool to provide access to statewide data related to well location, status and permitting information.
- 2013 EQB proposes new oil and gas rulemaking package for conventional and unconventional gas well development ("Surface Activities Rulemaking"), which included a 90-day public comment period; 9 public hearings in all regions of the state with testimony from approximately 300 individuals; and 23,213 written comments.



- 2013 PA Supreme Court finds portions of Act 13 of 2012 unconstitutional, including the provision preempting municipal zoning of unconventional gas development.
- 2013 DEP finalizes amendments to the Air Quality General Permit (GP-5) for natural gas compression and processing facilities establishing emission limitations, and including leak detection and repair, emission control, recordkeeping and reporting requirements.
- 2014 EQB promulgates final regulations to increase permit application fees for gas wells, for DEP to hire additional staff in light of declining revenues and increasing workloads.
- 2014-2015 DEP hires approximately 24 new staff to Oil & Gas Program.
- 2014 Gov. Corbett issues Pa. Exec. Order No. 2014-03, allowing additional leasing for oil and gas development on DCNR lands – rescinding Pa. Exec. Order No. 2010-5.
- 2014 General Assembly enacts Act 126 requiring regulations under the 2012 Oil & Gas Act to differentiate between conventional and unconventional wells. DEP bifurcates proposed Surface Activities Rulemaking into two chapters: Ch. 78 (conventional wells) and 78a (unconventional wells).
- 2014 DEP launches e-Well permit to streamline oil and gas permitting process and allow the information to be accessed on DEP's webpage.
- 2014 General Assembly enacts Act 173 of 2014, the Unconventional Well Report Act, requiring operators to report production on a monthly basis.

Jan 2015 – Present Governor Tom Wolf

- 2015 Gov. Wolf issues Pa. Exec. Order No. 2015-03, reinstating the moratorium on additional gas leasing on DCNR lands – rescinding Pa. Exec Order No. 2014-03.
- 2015 DEP updates Technical Guidance: “Standards and Guidelines for Identifying, Tracking and Resolving Oil and Gas Violations,” Document No. 820-4000-001.
- 2015 DEP publishes the TENORM report, analyzing the naturally occurring levels of radioactivity associated with unconventional gas development, leading to radioactive material action plan requirements to be included in the Surface Activities Rulemaking.
- 2015 EQB publishes the draft final Surface Activities Rulemaking for a second time, providing an additional 45-day public comment period; 3 additional public hearings, in the three oil and gas district office territories with testimony from 129 individuals; and 4947 additional written comments.
- 2015 DEP and DCNR fund expansion of a state seismic station network to record seismicity, in association with the Pennsylvania State University (PSU), in response to public concerns regarding induced seismicity from hydraulic fracturing and underground injection of oil and gas wastes. DEP’s and DCNR’s construction of the network expansion is completed in August 2016. PSU monitors network and maintains associated website.
- 2016 Gov. Wolf announces Methane Reduction Strategy, which includes new requirements for oil and gas operators to reduce air emissions.

- 2016 Independent Regulatory Review Commission approves Ch. 78 and 78a rulemaking after full day hearing; House and Senate standing committees issue resolutions disapproving the rulemaking; General Assembly's Joint Committee on Documents holds hearing on the propriety of the regulatory process.
- 2016 General Assembly enacts Act 52 abrogating the Surface Activities Rulemaking - Ch. 78 (conventional wells); OAG directs DEP to strike Ch. 78 amendments.
- 2016 DEP releases eSubmission system for electronic submission of forms required from unconventional operators. eSubmission data is publicly available and searchable.
- 2016 DEP publishes interim final Technical Guidance "Guidelines for Implementing Area of Review Regulatory Requirement for Unconventional Wells," Document No. 800-0810-001, to address the potential risks of hydraulic fracturing in proximity to other wells.
- 2016 DEP publishes interim final Technical Guidance "Policy for the Replacement or Restoration of Private Water Supplies Impacted by Unconventional Operations," Document No. 800-0810-002, to inform DEP staff, industry and the public how to comply with the water supply restoration and replacement requirements in the 2012 Oil and Gas Act, The Clean Streams Law, and 25 Pa. Code Chapter 78a.
- 2016 EQB promulgates as final regulations the Ch. 78a Surface Activities Rulemaking for unconventional well development, modernizing and strengthening environmental protection for these activities.
- 2016 One week after EQB promulgates final Ch. 78a Surface Activities regulations, the Marcellus Shale Coalition files a lawsuit to enjoin portions of the new regulations.

- 2016 PA Commonwealth Court temporarily enjoins DEP's enforcement of portions of the Surface Activities regulations in response to the Marcellus Shale Coalition's lawsuit.
- 2016 Gov. Wolf and the Governors of New York and Delaware pass a Delaware River Basin Commission proposed resolution to permanently ban hydraulic fracturing for oil and gas in the Delaware River Basin.
- 2017 DEP publishes interim final Technical Guidance "Guidelines for Chain Pillar Development and Longwall Mining Adjacent to Unconventional Wells," Document No. 800-0810-004, to facilitate appropriate unconventional well inactivation and re-entry procedures before and after longwall panel removal.
- 2017 DEP establishes "The Pipeline Portal" on DEP webpage providing public access to pipeline permit application and enforcement information.
- 2018 DEP finalizes ESCGP-3, updating the permit for erosion and sediment control of earth disturbances associated with oil and gas activities.
- 2018 DEP establishes the Office of Regional Permit Coordination as the lead office related to pipeline environmental permitting and enforcement.
- 2018 PA Supreme Court lifts portions of 2016 preliminary injunction of Ch. 78a Surface Activities Rulemaking, allowing DEP to implement most of the new regulations.
- 2018 DEP updates the Air Pollution Control Act General Permit GP-5 and finalizes a new General Permit GP-5a regulating emissions from unconventional gas well site operations and remote pigging operations.

- 2018 DEP releases Mechanical Integrity Assessment dataset (thousands of well assessments dating back to 2014) and an accompanying report.
- 2019 EQB approves proposed regulations to control and reduce Volatile Organic Compound emissions (and thereby reduce methane emissions) from oil and gas development activities, amending 25 Pa. Code Ch. 127.
- 2020 EQB approves final regulation to increase permit application fees for unconventional wells to fund retention of DEP staff complement in light of decreasing revenues and increasing workloads.

This timeline details DEP's persistent efforts from 2008 to the present to create a more robust and modern regulatory scheme to address and minimize new and different impacts from unconventional gas development and to make information available and accessible to the public. It counters the report's allegations that DEP did very little to make needed changes in the Oil and Gas Program until recently.

#### **D. DEP Made Internal Changes to Support Its Modern Regulatory Program**

While an updated regulatory framework was critical to DEP's regulating the unconventional gas industry more effectively and better protecting the public, DEP could not have accomplished its goals without also making organizational changes to expand and restructure the Oil & Gas Program, in terms of physical capital and human resources, and to enhance the transparency of the activities of both the agency and the industry.

Prior to 2008, the Oil & Gas Program had three offices, a small central office in Harrisburg and two regional offices in northwestern and southwestern Pennsylvania. There was no DEP Oil & Gas Program presence in northcentral or northeastern Pennsylvania, the location of the heaviest unconventional gas development. In 2008, DEP created a third regional Oil & Gas office in

Williamsport, which allowed inspectors and technical staff to more effectively inspect and address problems at well sites in that region and gave the people most affected by that well activity greater access to DEP.

DEP's next priority was to increase staff dedicated to the Oil & Gas Program and to train them. The dramatic increase in the number of wells drilled required correspondingly greater numbers of permit reviewers and inspectors to handle oversight activities. Using funds generated by increasing the application fees for unconventional well permits, DEP enlarged the Oil & Gas Program staff from 64 to 202 employees. The new employees were allocated among the four Oil & Gas Offices. Approximately 80 percent of the new employees became inspectors or were assigned to engineering or scientific-related work for permitting; the remaining 20 percent were assigned to clerical, administrative, or legal work to support the program.

All inspectors and permitting staff received on-the-job training by shadowing experienced employees and participated in formal in-house training on unconventional industry practices and identifying and addressing the environmental and health and safety impacts of gas development. Between 2009 and 2012, over 34 training classes were held. Class instructors included representatives of DEP's Oil & Gas and Water Programs, U.S. E.P.A., and PA Department of Conservation and Natural Resources. In later years, DEP expanded staff training by accessing the educational opportunities presented by the many stakeholder and professional organizations with which the Oil & Gas Program collaborated, including the PA Groundwater Association, American Association of Petroleum Geologists, NELAC Institute, North American Coalbed Methane Forum, Interstate Oil and Gas Compact Commission, TOPCORP, and the Shale Network. Between 2014 and 2019, Oil & Gas Program staff attended 73 different educational trainings.

The physical growth of the Oil & Gas Program magnified the need for a restructuring. Before 2011, the Oil & Gas Program was split between two DEP management units whose Deputy

Secretaries reported to the DEP Secretary. Oil & Gas Program planning had been part of the Mineral Resources deputation, but the three regional Oil & Gas offices were part of the Field Operations deputation. In 2011, DEP created a new management unit, the Office of Oil & Gas Management, to unify the planning and program management staff with the permitting, inspection and enforcement staff under one Deputy Secretary. The Office of Oil & Gas Management now consists of two bureaus: the Bureau of Oil & Gas Planning and Program Management, which is responsible for administrative, policy and regulatory development functions, and the Bureau of District Oil & Gas Operations, which consists of the three district offices and performs all permitting, inspection and enforcement tasks. The 2011 restructuring gave the Oil & Gas Program a more substantial DEP Central Office presence, centralized management of O&G personnel, and streamlined collaboration between the two Bureaus. The reorganization also advanced development of a core group of technical staff with industry-specific expertise.

To accomplish its goal of creating a program that balanced the need for resource development by private industry with the need to protect citizens and the environment, it was important for DEP to be as transparent as possible about how the regulatory program worked and whether the industry was complying with the law. The citizens needed to know that their interests mattered and were being protected. Locating Oil & Gas district offices in each of the three regions of unconventional gas development and expanding DEP's field staff was the first step.

Next, DEP responded by making information about its regulation of the industry as accessible to the public as possible. In addition to the permit file information available for review at the three district offices and information DEP provides in response to requests under the Pennsylvania Right to Know Law, DEP recognized that the public needed even greater accessibility to information regarding this industry and created a webpage that includes the numbers and locations of issued well permits, dates when wells are drilled, dates when wells are

completed, the identity of chemicals used to hydraulically fracture each well, the volume of gas produced at each well, the volume of waste produced, quarterly reports on well integrity, data on air emissions, emergency response plans for well sites, inspection reports, results of water supply impact investigations, water samples collected and analyzed by DEP, Notices of Violations, and enforcement actions taken by DEP. In 2013, DEP's Oil & Gas Program migrated to an electronic well permitting platform to increase efficiency, improve data integrity, and improve DEP's ability to quickly locate records and provide timely responses to information requests.

Over the last twelve years, the webpage has been expanded and improved and now includes more information regarding oversight of this industry than has ever been publicly available, such as links to other DEP data management systems that provide compliance information (eFACTS), as well as a report generator for inspections and violations; a notice service (eNotice) to receive emails of each permit application submitted to DEP; and eMapPA, which shows where wells are located using detailed and specific Geographic Information System tools. As part of the 2016 Surface Activities rulemaking, DEP developed an eSubmission system for electronic submission of most required forms, which system is also publicly available and searchable. In addition to links to all the applicable laws, forms, policies and Technical Guidance Documents, also posted are the Office of Oil & Gas Management's Annual Reports which analyze much of this information. In 2017, DEP added the "Pipeline Portal" to its website, which contains detailed information on the status of major gas pipeline permit application reviews, compliance and enforcement matters. And, in 2018, DEP released a new mobile inspection application and a new inspection view report tool, which enables the agency to publish its inspection reports on line in real time. All these developments have enhanced the transparency of this regulatory program and help the public to better understand how they are being protected.



## **E. DEP Has Successfully Implemented Its Modern Regulatory Program**

By repeatedly adapting its strategies to meet the new challenges this industry presents and strengthening its organizational capacity, DEP has successfully implemented a modern regulatory program. Important progress has been made in permitting and enforcement activities and DEP has shaped the overall program to be transparent, participative and collaborative.

### **1. The Oil and Gas Permitting Program Satisfies the Environmental Rights Amendment**

DEP's protective permitting procedures for unconventional wells have been validated by Pennsylvania's courts. In the case of *Brockway Borough Municipal Authority v. DEP*, 2015 EHB 221, the Pennsylvania Environmental Hearing Board ("EHB") not only dismissed an administrative challenge to DEP's issuance of a drilling permit located near a water well of a public water supply but expressly found that DEP had satisfied its trustee obligations under the Environmental Rights Amendment in its review of the permit application. The EHB noted that it was appropriate for DEP to first determine whether the application satisfied all applicable regulations pertaining to the drilling of unconventional gas wells because the regulations were specifically designed to minimize the risks associated with the drilling. The EHB further approved of DEP's imposing special permit conditions relating to drilling techniques and the casing and cementing plan because they gave additional protection to the water well and of requiring supplemental monitoring because it ensured that any problem that did arise could be quickly identified and corrected. On appeal, the Pennsylvania Commonwealth Court affirmed the EHB's ruling. *Brockway Borough Municipal Authority v. DEP*, 131 A.3d 578 (Pa. Cmwlth. 2016).

### **2. The Oil and Gas Enforcement Program is Driving Compliance**

DEP has been vigorously enforcing the law. By increasing staff, providing them with appropriate training, and creating clear enforcement protocols, such as the Technical Guidance Document "Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas

Violations,” Document No. 820-4000-001, DEP has conducted more monitoring activities and pursued significant and impactful enforcement. The metrics alone tell a positive story. Over the past two years, DEP has conducted record numbers of inspections, responses to complaints, and water samplings, as set forth below. All these investigations give DEP important information about the industry’s compliance with the law and whether enforcement action is needed.

2018 and 2019 Inspection Numbers:

- In 2018, DEP’s Office of Oil & Gas Management conducted 36,907 inspections;
- In 2019, DEP’s Office of Oil & Gas Management conducted 35,371 inspections;
- In 2018, DEP’s Office of Oil & Gas Management received and responded to 879 complaints;
- In 2019, DEP’s Office of Oil & Gas Management received and responded to 815 complaints;
- In 2018, DEP’s Office of Oil & Gas Management collected and analyzed 1,372 water samples; and
- In 2019, DEP’s Office of Oil & Gas Management collected and analyzed 1,686 water samples.

DEP has continued to successfully use Notices of Violation and civil penalty assessments to address many of the more straightforward violations which DEP identifies, as reflected in the chart below.

2018 and 2019 Notices of Violation (“NOV”) and Civil Penalties

- In 2018, DEP’s Office of Oil & Gas Management issued 575 NOVs;
- In 2019, DEP’s Office of Oil & Gas Management issued 407 NOVs;

- In 2018, DEP's Office of Oil & Gas Management collected \$4,140,382 in fines and penalties related to non-compliance at oil and gas sites; and
- In 2019, DEP's Office of Oil & Gas Management collected \$4,097,545 in fines and penalties related to non-compliance at oil and gas sites.

Complementing the metrics are the complex enforcement actions which DEP takes to address more egregious conduct. Two cases from the last several years stand out. In 2014, EQT Production Company allowed an impoundment full of production and flowback fluids to leak into and degrade the groundwater, a wetland, and a stream. Fortunately, the incident was identified by careful inspection/surveillance by the field staff in DEP's Williamsport Office, and DEP filed a complaint for civil penalties under the Clean Streams Law against EQT. EQT challenged DEP's claim for civil penalties, and the litigation that ensued was contentious and resource-intensive. It included a ten-day evidentiary hearing, at which seven expert witnesses testified about the hydrogeologic aspects of the site, the impact of the pollutorial discharge on surface and groundwaters, and the impact of the degraded surface and groundwater on aquatic communities. In 2018, DEP prevailed and the EHB assessed, and the Commonwealth Court affirmed, a civil penalty in the amount of \$1,137,295.76 against EQT. *DEP v. EQT Production Company*, 2017 EHB 439; *EQT Production Company v. DEP*, 181 A.3d 1128 (Pa. Cmwlth. 2018) Of note, while this litigation was pending, DEP banned the practice of these onsite impoundments, in the Surface Activities Rulemaking.

More recently, DEP took an unprecedented civil enforcement action against Energy Transfer Corporation ("ETC"), one of the largest oil and gas companies in the world which is building an extensive gas transportation pipeline through Pennsylvania. ETC provided inaccurate information in its permit application concerning the slide-prone nature of the soils at a portion of

the pipeline site. The permit was issued and once the pipeline was installed it became compromised and exploded. DEP imposed a civil penalty of \$31 million against the company for this violation, one of the largest civil penalties in state history. But, more importantly, DEP imposed a permit bar statewide on ETC and all its subsidiaries for one year, preventing them from receiving any permits from DEP during that time period. For an extractive industry which is dependent upon receiving a steady stream of permits, such as the unconventional gas and associated pipeline industries, a bar on the receipt of permits has a far greater deterrent effect on future behavior than any single penalty ever could.

All of DEP's enforcement actions together drive compliance with the law, which is the primary objective of the enforcement program. DEP is now seeing the raw numbers of violations and "violations per inspection" decrease over time even as the regulations have become more stringent and more requirements have been placed on the unconventional operators. This fact speaks more to the success of DEP's enforcement program than any other consideration. These activities collectively describe an agency that is actively and aggressively enforcing the law.

### **3. The Oil & Gas Program is Transparent, Participative and Collaborative**

Although there is a strong tendency to measure a regulatory program which is very data oriented, such as the Oil & Gas Program, exclusively by metrics, there is another measure of success that is equally important. That is the ability of the Program to embrace the values of transparency, participation, and collaboration. Those values focus on the relationships which the agency has with its stakeholders and can greatly affect the agency's ability to be trusted, to be deemed credible, and to grow and improve, all of which impact the agency's effectiveness. The stakeholders of the Oil & Gas Program include the industry, residential communities located near well sites, environmental consultants, municipal governments, environmental groups, academia and other research institutions, other Pennsylvania state agencies, and other state oil and gas

regulatory agencies. The Oil & Gas Program has made significant strides in building professional relationships with its stakeholders from which it can learn and teach and explore solutions to the difficult issues it must address.

DEP's commitment to making its regulation of the unconventional gas industry transparent is discussed above. All stakeholders benefit from the agency's transparency, but particularly those who experience the impacts of the industry directly. In its annual plan for 2020, the Oil & Gas Program has committed to continued improvements related to data collection and transparency including: 1) adding functionality to the mobile GIS applications that staff use while conducting field investigations; 2) continued enhancements to the eSubmission system; and 3) continued improvement to electronic data collaboration tools related to gas storage fields and underground mines. DEP's insistence on continual improvements in data collection, management and access speaks to the integrity and openness of the agency. The credibility and value of DEP's electronic data systems was recently acknowledged in a Memorandum Opinion by the U.S. District Court for the Eastern District of Pennsylvania. In the case of *Delaware Riverkeeper Network, et al. v. Sunoco Pipeline, L.P.*, Civ. No. 18-447, Judge Diamond, in ruling on a motion for summary judgment concerning the environmental permitting needed by Sunoco to construct its Mariner East II Pipeline, relied upon DEP's Pipeline Portal to support important facts concerning Sunoco's compliance with DEP's regulations for pipeline construction. (Slip Opinion of 4/16/2020 at p.13).

Public participation is also an agency priority. DEP's success in encouraging the public's participation was borne out during the 2016 Surface Activities Rulemaking which proposed significant changes to modernize the regulatory program. DEP was able to finalize this rulemaking in part due to the very engaged participation of the general public, which balanced the strong opposition from industry and two separate legislative enactments to thwart DEP's efforts. The public participation process was unprecedented and featured 135 days of public comment, 12

public hearings held across the Commonwealth, at which many individuals presented oral testimony, and the submission of almost 28,000 written comments. The individuals who participated were well-informed, mirroring DEP's extraordinary outreach and the significant volume of information provided by the agency to support and explain the proposed regulation. Many citizens argued for enhanced protection of their safety, their water supplies, their communities, and the public resources. Many of the changes made to the regulations after the two public comment periods were in response to and specifically implemented changes requested by the public, which is explained in the Preamble to the rulemaking. 46 Pa. B. 6431. The written Comment and Response document and other supporting documents for the final rulemaking can be found on the Environmental Quality Board's 2016 webpage.

As to collaboration, the Oil & Gas Program has developed an extensive network of professional relationships with a broad range of technical, scientific, regulatory, and academic organizations. Some of these collaborations are more established, such as the Oil and Gas Technical Advisory Board, which has a specific structure, statutory mandate, and scheduled meetings with the Oil & Gas Program to consult with and advise the Program. Others are less formal and are convened to address a particular problem, such as the Coal-Gas Industry-Agency Stakeholder Committee, which consists of representatives of DEP District Oil and Gas Operations, DEP Division of Subsurface Activities, DEP Bureau of Mine Safety, National Institute of Occupational Safety and Health ("NIOSH"), U.S. Mine Safety and Health Administration ("MSHA"), coal and unconventional gas operators, and West Virginia and Ohio regulatory agencies, which was formed to identify best practices for coordinating the intersection of the coal and natural gas industries. All these collaborative relationships enlarge the expertise of the Oil & Gas Program by bringing in a broader range of knowledge and experiences to inform the Program's decision-making. These collaborative relationships also have served to formally and informally

educate the Oil & Gas Program's scientists and experts, thereby strengthening the Program's capacity to address the difficult science and technology issues that arise on a daily basis. These many relationships have played a significant role in helping the Oil & Gas Program to create a modern, proactive, and protective regulatory program.

### **III. DEP'S RESPONSES TO THE GRAND JURY'S CONCLUSIONS AND RECOMMENDATIONS**

#### **A. The Grand Jury Report Is Not Reliable**

DEP respects the time-consuming work of the grand jury and recognizes the importance of the grand jury investigation. DEP shares the grand jury's goal of ensuring that the oil and gas industry is appropriately regulated. However, in many aspects the grand jury report is both factually and legally inaccurate. If the grand jury had been presented with complete and credible evidence, as well as the applicable law, it likely would never have written the report in its current form. The citizens of Pennsylvania need to know the report is unreliable and does not support the grand jury's recommendations. This section identifies numerous factual and legal errors in the report and discusses DEP's responses to the recommendations.

##### **1. The Report Relies Upon Hearsay and Anecdotes**

The report asserts that its findings are based on evidence meeting the legal standard of "a preponderance of the evidence," and, in some instances, the standard of "clear and convincing evidence." The evidence cited, however, consists of untested anecdotal accounts from a limited group of witnesses. However, even these accounts cannot and do not support the report's broad sweeping statements about legally complex and nuanced scientific issues. There are no dates, places, or times identified, no references to sampling or testing data, no corroborating testimony from medical professionals, no evidence of chemical disclosure requests denied to medical professionals, and no evidence that the complaints recounted to the grand jury were provided to

DEP staff for resolution. The timing of events, which is critical to substantiating any of the claims, is obscured such that events that may have occurred fifteen years ago seem to have occurred yesterday. Some examples that exemplify the unreliability of the information in the report are:

**a. Vibrations**

On pages 3 and 30, the report states that vibrations from hydraulic fracturing were so intense that “worms were forced up out of the ground” or that “worms would crawl out from the ground” into people’s yards and basements. There is no testimony or other evidence verifying this statement – no photos, no dates, times, nor locations. There is no evidentiary support from biologists or engineers addressing whether such incidents are a cause for concern or associated with pollution or indicative of some type of environmental harm. Since 2011, DEP staff have been on more than 250,000 site inspections, including inspections during hydraulic fracturing, and have never witnessed this phenomenon nor heard anything about this sort of occurrence.

**b. Undocumented Health Effects**

The report contains accounts of rashes and other concerning health problems that witnesses believed were connected with living in close proximity to unconventional gas well sites. These stories are distressing and serious, but unsubstantiated by names, dates, times, places, air or water sample results, medical tests, or any testimony of medical professionals. While the report states that the evidence was clear and convincing, there is no documentation of these occurrences nor any evidence to associate these health effects with unconventional gas development. DEP further notes that the report does not include medical testimony regarding the reported health problems. DEP is certainly concerned with the potential health impacts of unconventional drilling, but this report does not contribute to a scientific or medical understanding of whether there was, is, or possibly could be an association between unconventional gas development and observed health problems.



**c. Collaboration Between Department of Health and Department of Environmental Protection**

Another concerning mischaracterization in the report, at pages 77-78, relates to the coordination and collaboration of the PA Department of Health (“DOH”) and DEP regarding public health complaints. The descriptions of DEP and DOH interactions are plainly incorrect. DEP and DOH in fact closely collaborated on how best to gather public health information and agreed upon the associated operational policies put in place in 2018. In particular, the report was critical of Scott Perry, the Deputy Secretary of the Oil and Gas Management Program, for “opposing requests” and refusing to make changes to DEP’s inspection procedures to collect health-related information for DOH. The report does not tell the whole story, and had the OAG asked, DEP would have provided the documentation of the agencies’ informal 2018 agreement, which is attached in **Exhibit B**.

**d. Public Notifications**

On page 60, in the “Failure to notify” section of the report, unidentified representatives of DEP are cited for general and non-specific incidents of failing to notify landowners of pollution incidents that could impact them. No specific instances or details are provided. DEP Deputy Secretary Perry is the only witness identified by name, and is quoted under oath describing DEP’s practice, which is to give notice to landowners who could be affected. It is simply not true that the DEP policy is not to conduct case-specific investigations and notify or to require notification to potentially impacted landowners.

**e. Impoundments**

The discussion of impoundments on pages 50-51 of the report implies that no permit was required for centralized impoundments which held flowback or produced waters. That is incorrect. Permits for centralized impoundments were required starting in 2008 under the authority of the

Dam Safety and Encroachments Act. DEP later decided to eliminate the permit and instead require these facilities to be properly closed or permitted under DEP's residual waste regulations in the Chapter 78a rulemaking, at 25 Pa. Code § 78a.59c. The new Chapter 78a regulations for impoundments provide a higher level of environmental protection than the prior centralized impoundment requirements. These new impoundment rules have been challenged by industry before the Commonwealth Court and DEP continues to defend and protect the new standards against the industry attack.

**f. Photos**

There are numerous photos in the report and none of them have any identifying information, prompting many questions. Who took the photos? Where were the photos taken? When were the photos taken? Have the photos been altered electronically? Are the photos true and accurate representations of what specifically identified witnesses (testifying under oath) observed in Pennsylvania? For the civil investigations that DEP staff routinely undertake, simple protocols are in place and routinely followed regarding photographic evidence documentation, to ensure reliability if used in actions to enforce Pennsylvania's environmental laws. DEP and the public should expect no less from the OAG when undertaking a criminal investigation.

These examples of false or incomplete information in the report are particularly troubling because it would have been easy for the OAG to obtain current information about DEP's regulatory program and about the performances of both DEP and the industry. As discussed above, much of this information is publicly available, consistent with Governor Wolf's overarching goal of full transparency for all state government activities. There is no reference in the report to the voluminous information on DEP's webpage regarding oversight of the industry, including links to applicable law, well development data, DEP's enforcement activities, and the Oil & Gas Program's Annual Reports. It appears that none of the objective and publicly available data and information

was shared with the grand jury. Moreover, the lack of supporting, verified, and contextual information, otherwise required in court proceedings, makes it impossible to respond to the allegations in a meaningful way.

## **2. The Report Is Legally Erroneous, Which Compromises its Conclusions**

Apart from the factual inaccuracies in the report, three important legal errors re-occur throughout the report and prevent readers from reaching a clear understanding of DEP's assigned responsibilities for oversight of unconventional gas development. Two of these issues are discussed above but bear a brief mention here. First, there is the lack of information about what each statute and regulation requires. The absence of that information leaves the readers of the report to guess at the legal framework and to assume that DEP has ignored the law when something unfavorable occurs. The second error is ignoring the constraints on DEP as a regulatory agency to function within the authority given to it by the General Assembly through statute. Several requirements of the regulatory program which the grand jury criticizes, such as setbacks for wells, are established by statute and can be changed only through new legislative action by the General Assembly.

Finally, the report fails to acknowledge the roles of other agencies and commissions in regulating the unconventional gas industry. While DEP has one of the larger roles in regulating the industry, other agencies and commissions also have responsibilities. Unconventional gas development in Pennsylvania is conducted with oversight by numerous Pennsylvania agencies and commissions, including the Department of Conservation and Natural Resources, Department of Health, PA Emergency Management Agency, PA Public Utility Commission, PA Fish and Boat Commission, and PA Game Commission and municipalities. In addition, the Federal Energy Regulatory Commission and other federal agencies regulate the safety of interstate natural gas

pipelines. Each agency, commission, and municipality has a distinct set of responsibilities regarding the unconventional gas well development.

Together, these errors create a confusing picture of exactly what DEP is charged with doing by statute, what it has the authority to do through the rulemaking process, what it has the ability to do through policies and permits, and what it is prohibited from doing because the General Assembly has established the basic boundaries of the law (such as how close a well site can be to a building) or given it to another agency (such as the Public Utility Commission, designated as the authority to regulate the safety of intrastate gas pipelines). These errors set the stage for the grand jury's recommendations.

#### **B. The Grand Jury's Recommendations Miss the Mark As to DEP**

DEP has carefully evaluated the recommendations in the Report. The recommendations are generally directed to the industry, DEP, DOH, and the General Assembly, and it is unclear to which entity each recommendation is specifically directed. DEP is responding to recommendations one, two, three, four, five, seven, and eight, but not recommendation six, which appears to be directed at DOH.

The fact that the grand jury was not provided with clear or accurate information about the regulatory requirements for the unconventional gas industry is evident from the recommendations which DEP reviewed. Several of the recommendations make the case for a change in statutes, many of which DEP might support, but is a task beyond the authority of the agency. Several other recommendations are based on a mischaracterization of existing law, and when the existing law is examined, it is clear that it already provides what the grand jury now recommends. Other recommendations urge policy positions that are unwise.

**1. Recommendation One: Expand the No-Drill Zones**  
**DEP's Response: Only the General Assembly Can Expand No-Drill Zones**

Recommendation One addresses the established setbacks, or distances that an operator must maintain between an unconventional well and buildings, private water supplies and public water supplies. These setbacks were established by the General Assembly when it amended the 1984 Oil and Gas Act in 2012 and are set forth in Section 3215 of the statute. The setback provision specifically mandates that: 1) No unconventional well may be drilled within 500 feet of a building or private water well, and 2) No unconventional well may be drilled within 1000 feet of a public water supply well, surface water intake, reservoir or other water supply extraction point used by a water purveyor, without the consent of the building or water well owner. The grand jury proposes enlarging the setbacks because it believes that unconventional well development activities occur too close to where citizens live, attend school, and recreate.

Before examining the merits of the recommendation, it is important to remember that DEP has no authority to enact or modify a statute. Only the General Assembly can modify or eliminate these statutory limitations, and this recommendation should be re-directed exclusively to the General Assembly. To the extent that the report blames DEP for these setbacks, the report is erroneous and misleading.

As to the merits of the recommendation, the grand jury proposes to create a setback of 2,500 feet (from what, is not identified) and a 5,000-foot setback from schools. The proposed setbacks are not supported with any information that establishes that these particular distances afford an appropriate level of protection and appear to have been chosen arbitrarily. Any proposal for new setbacks should include a scientific or technical rationale for the distances chosen.

DEP also notes that local governments have the authority under the Municipalities Planning Code to zone areas within their boundaries where natural gas facilities can and cannot be located and can play a role in the siting of natural gas facilities.

**2. Recommendation Two: Stop the Chemical Cover-up**

**DEP's Response: There is No Chemical Cover-Up; Operators are Required to Provide All Chemical Information to DEP and Maintain That Information Onsite**

Recommendation Two is based on the premise that the law does not require all chemicals used in the development of unconventional wells to be disclosed. This premise is wrong. An unconventional well operator is required by Section 3222 of the 2012 Oil and Gas Act to disclose to DEP all chemicals, and all amounts of those chemicals, used to hydraulically fracture a well. Under Section 3222.1 of the statute, unconventional operators must also complete a chemical disclosure registry of that same information and post it on the publicly available website FracFocus. Separately, an operator is required by both state and federal law to maintain onsite Safety Data Sheets which identify all chemicals and their amounts used and located at the well site. All information regarding fracking fluids used in Pennsylvania is available to the agency.

The one limitation on public disclosure of these chemicals pertains to the operator's ability under both the 2012 Oil and Gas Act and the Pennsylvania Right to Know Law to designate information as a trade secret. If an operator claims that part of the chemical information is a trade secret and requests DEP to treat it as confidential, DEP must treat it as confidential. Any recommendation to eliminate the trade secret provision must be re-directed exclusively to the General Assembly.

Moreover, contrary to the allegations in the report, DEP regulations related to disclosure and use of chemicals are not lax. The report alleges that there are hazardous chemicals used in drilling a well, that water contamination occurs most frequently during drilling when water

supplies are most at risk, and that this activity is largely unregulated. This is all incorrect. The 2011 well-construction rulemaking at 25 Pa. Code Chapter 78a, Subchapter D, was specifically aimed at protecting groundwater and preventing gas migration and set standards of performance for how a well is to be drilled and hydraulically fractured. The regulations prohibit the use of chemicals in well drilling in the shallower depths where the drilling could come into contact with fresh groundwater and prescribe the specifications that must be met related to casing and cementing of wells. DEP's regulations concerning disclosure and use of chemicals are protective of public health and the environment.

### **3. Recommendation Three: Regulate All Pipelines**

#### **DEP's Response: DEP Already Regulates All Pipelines for Environmental Impacts; Only the General Assembly Can Expand the PUC's Oversight of the Safety of Gas Transportation Lines to Include Gathering Lines**

In Recommendation Three, the grand jury suggests that gas pipelines are not adequately regulated and that the safety of gathering lines, in particular, should receive greater oversight. Two facts need to be clarified here. The first fact is that DEP comprehensively regulates the environmental impacts of all pipelines in Pennsylvania, including gathering lines, the smaller pipelines which carry natural gas from a well to a transmission pipeline. Construction of all these pipelines requires an erosion and sediment control permit under the Clean Streams Law and 25 Pa. Code Ch. 102 regulations. In fact, Pennsylvania is at the forefront of state and federal regulation of environmental impacts from all pipelines. A similar permit does not exist in many other states. As discussed above in Part II, this permit requirement was established by DEP in the wake of the federal government's 2005 exemptions for oil and gas activities from the federal Clean Water Act's NPDES permit requirements.

In Pennsylvania, the environmental impacts of construction and operation at all natural gas pipelines including gathering lines are also regulated by permits for hydrostatic testing, wetland

and stream crossings, air emissions, as well as the cleanup of spills and releases, under the Oil and Gas Act, Clean Streams Law, Dam Safety and Encroachments Act, Air Pollution Control Act, Solid Waste Management Act, and the associated regulations. For example, 25 Pa. Code § 78a.68, imposes specific requirements for gathering pipelines.

The second fact is that DEP has no responsibility for regulatory authority regarding the *safety* of gas pipelines. By the decision of the General Assembly, the responsibility to address the safety of Pennsylvania's intrastate natural gas pipelines largely falls to the Pennsylvania Public Utility Commission. Responsibility for the safety of the large interstate natural gas pipelines lies with the Federal Energy Regulatory Commission ("FERC"), the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), or one of the other federal agencies with jurisdiction over the transportation of natural gas.

DEP agrees that the oversight of pipeline safety and the approval process for what can be transported in pipelines and where they may be located could be improved and clarified and that it would be useful for the General Assembly to expand the PUC's oversight authority on safety issues to include gathering lines.

**4. Recommendation Four: Add Up the Air Pollution Sources**

**DEP's Response:** Air Emissions from Sources Which Are Not Under Common Control Cannot Be Aggregated; **DEP's Air Requirements Are Among the Most Stringent in the Nation**

In the Fourth Recommendation, the grand jury expresses concerns with what it perceives as uncontrolled air emissions from the natural gas industry, particularly from small equipment such as pigging stations (devices for cleaning pipes which convey natural gas). Concerned that these small devices may escape regulation under Pennsylvania's Air Pollution Control Act, because of their size, the grand jury recommends that DEP alter its regulatory requirements by not treating those small devices individually, and instead treat a group of them situated in some close proximity



as a single facility and require them to comply with stringent emission limits. While this approach may have some facial appeal, it is unworkable: one party cannot be held responsible for controlling emissions when it has no control over the source of the emissions. Put another way, DEP cannot impose liability or duties on one person because of the emissions of another person, who the first person cannot control. Moreover, the law does not support this approach. Each pigging location is an “air contamination source” as defined in the Air Pollution Control Act. A “facility” is a collection of sources that are “on contiguous or adjacent properties” and are under “common control,” that are regulated as a unit. 25 Pa. Code 121.1. Absent common control, regulating multiple air contamination sources as a single facility would not be lawful.

That being said, it appears that DEP’s goals with regard to the control of emissions from the natural gas industry align with those of the grand jury. Following the early years of unconventional gas development, DEP’s goal has been to comprehensively regulate all air emission sources associated with the industry, and it is working aggressively toward that goal. Since unconventional well development began in Pennsylvania DEP has updated and revised its regulatory and permitting requirements for the industry to reflect its understanding of the air quality impacts of the industry. In 2013, DEP established regulatory requirements for air emission sources at unconventional well sites, including leak detection and repair, emission controls, recordkeeping and reporting requirements for sources that had previously been unconditionally exempt from emission controls under the air quality regulations. In 2018, DEP revised those requirements, in part, to update the leak detection and repair requirements. Also, in 2018, DEP revised one existing General Permit, GP-5, and created a new General Permit, GP-5a, for the unconventional gas industry so that the General Permits address all types of natural gas facilities and require the use of best available technology to control emissions from each source. GP-5 applies to larger facilities such as mid-stream gas processing, and gas transmission facilities,

and any pigging devices and other equipment associated with those facilities that cause emissions. GP-5a, on the other hand, regulates air emissions from well site operations and remote pigging operations, i.e., those not associated with a larger facility. These permits are the first of their kind in the U.S. and are innovative in controlling air emissions which have often escaped control in the past. Large facilities may also be regulated through individual case-by-case permitting, under 25 Pa. Code Chapter 127. Well sites which have emissions below the threshold in GP-5a are still required to comply with the regulatory requirements, which include emission controls, leak detection and repair, recordkeeping and reporting.

Although DEP has made important strides in regulating air emissions it continues to assess the overall effectiveness of the air quality regulatory program to determine how it can improve the program. Further refinements depend in significant part on a better understanding of the impacts of the various controlled emissions from the gas industry on ambient air quality. To this end, DEP is gathering information through a variety of data collection and air monitoring activities. Since 2012, in accordance with the Oil and Gas Act, and 25 Pa. Code Ch. 135, all unconventional well operators must report air emission data on a quarterly basis to DEP. DEP operates the Commonwealth of Pennsylvania Air Monitoring Network, a Pennsylvania statewide ambient air monitoring network. DEP is conducting short-term and long-term studies of a suite of constituents from oil and gas operations, including benzene emissions, as well as a two-phase study of methane emissions assisted by a grant from the U.S. Environmental Protection Agency (“EPA”).

DEP has even used its enforcement authority to obtain additional data about the impact of air emissions from the unconventional industry. In 2018, DEP and EPA entered into a landmark settlement of numerous violations related to pigging emissions at several MarkWest Liberty Midstream & Resources, LLC sites. In the Consent Decree, DEP and EPA waived a portion of their claims for civil penalties in exchange for MarkWest’s undertaking a “Supplemental

Environmental Project” to study air quality in the vicinity of its Harmon Creek Station gas processing plant. Harmon Creek Station is located in Smith Township, Washington County where many different types of natural gas facilities are concentrated, a prime location for evaluating the ambient impacts of natural gas emissions. The design and details of this multi-year study were reviewed by DEP and EPA experts and will employ state of the art monitoring equipment, which will be given to DEP at the end of the study for its continued use. This unique study, in combination with several other ongoing and planned research and data projects will advance DEP’s understanding of the cumulative ambient air impacts of natural gas development in Pennsylvania and facilitate the development of additional measures to address natural gas impacts and protect the citizens of Pennsylvania.

**5. Recommendation Five: Transport the Toxic Waste More Safely  
DEP’s Response: Unconventional Well Wastes Must Be Transported in  
Compliance with the Residual Waste Regulations Which Provide for Safe  
Transportation**

Recommendation Five implies that the transportation of unconventional gas related waste and wastewater, specifically drill cuttings and flowback and produced waters, is not safe because the vehicles are marked as carrying “residual waste” and not as “hazardous” or as “unconventional oil and gas waste.” The discussion contains factual mistakes and misstates the existing law and existing permitting requirements related to management and transportation of wastes generated in unconventional gas drilling. This waste is exempt by definition from the federal hazardous waste requirements under the Resource Conservation and Recovery Act and the corresponding state hazardous waste requirements under the Pennsylvania Solid Waste Management Act. Under Pennsylvania’s regulatory framework, this waste constitutes residual waste. Contrary to what the report suggests, the classification of waste as residual waste does not mean that the waste is handled carelessly or could be disposed of at a municipal waste landfill. In fact, Pennsylvania’s

residual waste regulations are among the most robust and protective non-hazardous waste management regulations in the nation. The residual waste regulations, among other things, require specified transportation signage and include provisions related to the special handling and disposal of radioactive waste. In short, waste transported in compliance with Pennsylvania's residual waste regulations is being transported safely.

Recommendation Five also references "an elaborate shell game" whereby operators move waste fluids from one well to another to reuse the fluids in fracturing a new well. While it is true that operators do move waste fluids from one well to another for reuse, there is no shell game involved. The 2010 TDS rulemaking (mentioned above) requires operators to develop a plan for maximizing the recycling of wastewater to fracture other wells. In fact, recycling wastewater is one of the solutions to disposal issues and recycling minimizes freshwater withdrawals thereby protecting surface water and groundwater sources. Significantly, the 2016 Surface Activities Rulemaking imposes additional and more stringent requirements related to storage, transportation, use, and disposal of waste from unconventional well development, as well as new requirements related to preventing and responding to spills and releases. These regulations fully regulate management of drill cuttings and unconventional gas wastewater. As a result, virtually all unconventional well wastewater is now recycled in the next hydraulic fracturing operation or taken to disposal wells out of state.

DEP notes that portions of this section of the rulemaking are being challenged by the Marcellus Shale Coalition in Commonwealth Court.

**6. Recommendation Seven: End the Revolving Door  
DEP's Response: There Is No Revolving Door; Dedicated DEP Employees  
Developed and Implemented This Comprehensive Regulatory Program**

Recommendation Seven suggests that DEP has not properly managed the employees who have worked in the Oil & Gas Program and recommends a legislative response. Recommendation

Seven suggests there is “a revolving door” whereby DEP employees who are trained to work in the Oil & Gas Program, take advantage of their position to favor the industry in some way, thereby paving their way into lucrative employment with the industry. To address this, the grand jury suggests enactment of legislation prohibiting former employees from working in the industry for a period of time after leaving DEP.

Before examining the merits of the recommendation, it is important to remember that DEP has no authority to enact or modify a statute. Only the General Assembly can legislate. This recommendation must be re-directed exclusively to the General Assembly.

As to the merits, there is no evidence of any such revolving door at DEP, nor is the proposed legislation supported by any information that establishes that it will have the effect that the grand jury is seeking. With regard to all individuals across the agency who have left the Commonwealth’s employment, DEP has responsibly enforced the Pennsylvania Public Official and Employee Ethics Act, including Section 1103(g), which prohibits a former public official or public employee from representing a person, with promised or actual compensation, on any matter before DEP for one year after that official or employee leaves DEP.

What all Pennsylvanians should know about DEP’s employees is that the Oil & Gas Program has been developed and implemented largely by a handful of dedicated individuals, most of whom have worked with the agency since the arrival of the industry in Pennsylvania and are career employees who choose to remain in public service because they believe in the mission of the agency. Together they have fought battle after battle, before the General Assembly, in the regulatory review process, before the courts, and with the industry to craft and implement an effective regulatory program that protects the environment and the public health and safety. Those individuals should be recognized for their work and not indirectly denigrated by this investigation.

**7. Recommendation Eight: Use the Criminal Laws**

**DEP's Response: DEP Has Consistently and Appropriately Referred Criminal Matters to the OAG for Many Years; the Referral Process Is Not Broken and Does Not Need to Be Fixed**

In Recommendation Eight, the grand jury proposes a significant change to a long-standing division of authority between the Governor and the Attorney General. Since 1980, the Commonwealth Attorneys Act has defined the powers and duties of the Governor and the OAG and gives the OAG jurisdiction to prosecute criminal charges referred by a Commonwealth agency as part of its duty to enforce statutes or by a county District Attorney. The grand jury now recommends that the OAG be given *concurrent* jurisdiction to investigate and prosecute matters involving environmental violations without the required referral from a Commonwealth agency or District Attorney. DEP believes that recommendation is unwise, and notes, again, that only the General Assembly can legislate.

The limitation on the OAG's jurisdiction to prosecute a matter involving the responsibilities of a Commonwealth agency reflects the General Assembly's understanding that a Commonwealth agency implementing a regulatory statute is best suited to decide when to seek a criminal prosecution for a violation of that statute. Leaving this decision to the regulatory agency avoids selective enforcement, which could occur when a prosecuting agency lacks sufficient experience with a regulatory program and a complex body of law to make prudent decisions to prosecute. Leaving the decision to the regulatory agency also avoids the risk of inconsistent interpretations of substantive law, which can arise when two agencies have concurrent jurisdiction.

DEP believes that criminal prosecution plays an important role in implementing Pennsylvania's environmental statutes. However, as a government agency, DEP must use, and does use, appropriate discretion and does not misuse the legal system by referring matters for

criminal prosecution where facts and circumstances do not warrant it. To do otherwise would constitute an abuse of power.

Throughout several Gubernatorial administrations and DEP Secretaries, DEP has approached the criminal referral process consistently. Both the evaluation process and the referral procedures have remained the same, and the number of referrals made by DEP has varied little from year to year and from administration to administration. The referrals have involved violations of a broad array of environmental statutes, including the Solid Waste Management Act, Clean Streams Law, Oil and Gas Act, Surface Mining Conservation and Reclamation Act, Bituminous Mine Subsidence and Land Conservation Act, Bituminous Coal Mine Safety Act, Air Pollution Control Act, Radiation Protection Act, Safe Drinking Water Act, Waste Tire Recycling Act, Waste Transportation Safety Act, and Water and Wastewater Systems Operators' Certification Act. Included in these referrals are several matters involving the development/operation of unconventional wells and the construction/operation of natural gas pipelines.

DEP has exercised judgment and discretion in all its referral decisions. DEP regards the decision to refer a matter as an important one for both the public and the subject of the referral. DEP has always made decisions to refer a matter on a case by case basis and with the belief that a criminal prosecution is an extraordinary remedy which should be limited to cases where there is a strong indication of serious misconduct. DEP never refers a matter without conducting its own investigation and determining there is a solid basis in fact and law for a referral. As to Pennsylvania environmental law, DEP is undeniably the expert and is in the best position to decide if the law and the facts will support a prosecution.

The OAG can accept referrals of environmental matters from sixty-seven county District Attorneys' Offices, all Executive branch agencies, the PA Fish and Boat Commission and PA Game Commission, as well as referrals from citizens and environmental groups across the

Commonwealth through referrals from District Attorneys. Of all the parties authorized to refer criminal environmental matters to the OAG, DEP has referred the most environmental matters and likely the most materially significant environmental matters. Because DEP best understands how to use its statutes in different legal contexts, DEP can be most successful in identifying environmental cases for criminal prosecution and the OAG can be most successful in accepting the DEP referrals.

DEP's extensive experience in deciding when to refer a matter to the OAG, coupled with the General Assembly's considered decision to give the OAG jurisdiction to prosecute a matter only upon a referral from an agency should not be changed based on undocumented, unsubstantiated and unchallenged accusations in a grand jury report. This is particularly true where a grand jury report reflects substantial misunderstanding of the underlying law and of what constitutes probative evidence. The criminal referral process has satisfied the legislature, DEP, and the numerous prior gubernatorial administrations and Attorneys General. DEP administers all statutes within its authority evenhandedly, as the public should expect. The referral system is not broken and should not be changed.

## **V. CONCLUSION**

The grand jury report fails as an exposé of a government agency ignoring its statutory duties and constitutional obligations. In this regard, it is important to remember that the OAG did not find any wrongdoing on the part of DEP. The report also fails as a meaningful tool for improving the regulation of the unconventional gas industry, because the report is not at all informed by the applicable law or facts. Had the jurors been provided with accurate information about the existing laws, the scientific and policy underpinnings of the regulations, and the commitment of DEP staff to create and implement a comprehensive and effective regulatory



program that protects the citizens and environmental resources from the impacts of natural gas development in Pennsylvania, the report would likely never have been written the way it was.

Although the grand jury believed it was advancing the public good in preparing and planning to publicize its report, it actually does the public a disservice. The inaccuracies in the report provide Pennsylvania's citizens with a false picture of DEP and encourage them to believe their government is incompetent and/or places the economic well-being of various corporations above their health and well-being and that of the Commonwealth's public natural resources. Perhaps Kurt Klappkowski put it best when he appeared before the grand jury in January 2020, after the grand jury had already drafted its report through the Office of Attorney General. Mr. Klappkowski testified that in 26 years of working for DEP, through six Governors and 9 Secretaries, he has never worked with anyone at the DEP who did not believe in the Department's mission. To carelessly erode the citizens' trust and confidence in their government threatens the foundation of our democratic society and should not be tolerated. Pennsylvania's citizens deserve and have been provided regulation based on sound facts, science and public policy. They are entitled to know this.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK &  
RASPANTI, LLP

By:



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Dated: May 7, 2020

# **EXHIBIT A**

## **STATUTES, REGULATIONS, TECHNICAL GUIDANCE DOCUMENTS, AND PERMITTING PROGRAMS BY WHICH PENNSYLVANIA REGULATES THE UNCONVENTIONAL NATURAL GAS INDUSTRY**

The Department of Environmental Protection regulates unconventional well development activities under the following Pennsylvania oil and gas laws and environmental protection laws and their implementing regulations as well as a framework of technical guidance documents and applicable permitting programs.

### **Statutes**

2012 Oil and Gas Act, 58 Pa.C.S. §§ 3201-3274  
Air Pollution Control Act, 35 P.S. §§ 4001-4005  
Clean Air Act, 42 U.S.C. § 7401 *et seq.*  
Coal and Gas Resource Coordination Law, 58 P.S. §§ 501-518  
Dam Safety and Encroachments Act, 32 P.S. §§ 693.1-693.27  
Delaware River Basin Compact, 32 P.S. §§ 815.1010815.106  
Environmental Laboratory Accreditation Act, 27 P.S. § 4101  
Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101-6026-901  
Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §§ 3301-3326  
Oil and Gas Conservation Law, 58 P.S. §§ 401-419  
Pennsylvania Grade Crude Development Act, 58 P.S. §§ 1201-1208  
Pennsylvania Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101-1113  
Pennsylvania Safe Drinking Water Act, 35 P.S. §§ 721.1-721.17  
Radiation Protection Act, 35 P.S. §§ 7110.101-7110.703  
Right-to-Know Law, 65 P.S. §§ 67.101-67.3104  
Solid Waste Management Act, 35 P.S. §§ 6018.101-6018.1003  
Susquehanna River Basin Compact, 32 P.S. §§ 820.1-820.8  
The act of February 2, 2012, P.L. 67, No. 9, 35 P.S. § 7321  
The act of July 10, 2014, P.L. 1053, No. 126, 72 P.S. § 1741.1-E  
The act of July 13, 2016, P.L. 664, No. 85, 72 P.S. § 1690-E  
The act of November 7, 2019, P.L. 634, No. 85, 58 P.S. § 34.2  
The Administrative Code of 1929, 71 P.S. §§ 232, 510-20  
The Clean Streams Law, 35 P.S. §§ 692.1-691.1001  
The Commonwealth Attorneys Act, 71 P.S. §§ 732.101-732.506  
Commonwealth Document Law, 45 P.S. §§ 1102-1208  
Water Resources Planning Act, 27 Pa.C.S. 3101-3136  
Unconventional Well Report Act, 58 P.S. §§ 1001-1003

### **Regulations**

25 Pa. Code Chapter 77 (relating to Non-coal Mining)  
25 Pa. Code Chapter 78a (relating to Unconventional Wells)  
25 Pa. Code Chapter 79 (relating to Oil and Gas Conservation)  
25 Pa. Code Chapter 91 (relating to Water Resources-General Provisions)  
25 Pa. Code Chapter 95 (relating to Wastewater Treatment Requirements)  
25 Pa. Code Chapter 102 (relating to Erosion and Sediment Control)  
25 Pa. Code Chapter 105 (relating to Dam Safety and Waterway Management)  
25 Pa. Code Chapter 109 (relating to Safe Drinking Water)

- 25 Pa. Code Chapter 110 (relating to Water Resource Planning)
- 25 Pa. Code Chapter 121 (relating to Air Resources–General Provisions)
- 25 Pa. Code Chapter 127 (relating Air Resources–Construction, Modifications, Reactivation and Operation of Sources)
- 25 Pa. Code Chapter 135 (relating to Air Resources–Reporting of Sources)
- 25 Pa. Code Chapter 129 (relating to Standards for Sources)
- 25 Pa. Code Chapter 250 (relating to Administration of Land Recycling Program)
- 25 Pa. Code Chapter 287 (relating to Residual Waste Management–General Provisions)
- 25 Pa. Code Chapter 299 (relating to Storage and Transportation of Residual Waste)

### **Technical Guidance Documents**

- *Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads*, Document No. 800-5000-001
- *Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations*, Document No. 820-4000-001
- *Stormwater Management at Oil and Gas Well Sites*, Document No. 800-2100-008
- *Guidelines for Implementing Area of Review (AOR) Regulatory Requirement for Unconventional Wells*, Document No. 800-0810-001
- *Policy for the Replacement of Private Water Supplies Impacted by Unconventional Operations*, Document No. 800-0810-002
- *Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee*, Document No. 021-2100-001
- *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation*, Document No. 021-0200-001

### **Permit and Authorization Packages**

- *Affidavit – Request for Unconventional Well Permit Renewal*, Document No. 8000-PM-OOGM0109B
- *Application and Instructions for Transfer of Erosion and Sediment Ctrl GP – ESCGP – Approval*, Document No. 8000-PM-OOGM0012
- *Application for Coal Pillar Permit*, Document No. 8000-PM-OOGM0007
- *Application for a Permit to Drill or Alter an Oil or Gas Well*, Document No. 8000-PM-OOGM0001
- *Application for Transfer of Well Permit or Registration*, Document No., Document No. 5500-PM-OG0010
- *Authorization of Coverage Under the Erosion and Sediment Control General Permit (ESCGP-3)*, Document No. 8000-PM-OOGM0006
- *Co-Permittee Liability Release Form*, Document No. 8000-PM-OOGM0160
- *Conditional Chain Pillar and Well Pillar Plan in Association with Longwall Mine*, Document No. 8000-PM-OOGM0012 & 112A
- *Coordination of a Well Location with Public Resources (Unconventional Operations Only)*, Document No. 8000-PM-OOGM0076U
- *Environmental Good Samaritan Project Proposal for Abandoned Well Plugging*, Document No. 8000-PM-OOGM0111
- *Post-Plugging Well Site Restoration Report (Unconventional Operations Only)*, Document No. 8000-PM-OOGM0075U

- *Proposed Alternative Method of Casing, Plugging, Venting, or Equipping*, Document No. 8000-PM-OOGM0024
- *Request for Approval of Waste Management Practices – Unconventional Operations Only*, Document No. 8000-PM-OOGM0071U
- *Water Management Plan Approval – Renewal Request – Unconventional Operations Only*, Document No. 8000-PM-OOGM0087U
- *Well Location Plat*, Document No. 8000-PM-OOGM0002
- *Well Pillar Plan*, Document No. 8000-PM-OOGM0007A
- *Well Site Restoration Report*, Document No. 8000-PM-OOGM0075
  
- *GP-05 AND GP-05A and Supporting Documents*, Document No. 2700-PM-BAQ0269
- *GP-05, Compliance Certification Forms*, Document No. 2700-PM-BAQ0205
- *GP-05, Natural Gas Compression Stations, Processing Plants, and Transmission Stations*, Document No. 2700-PM-BAQ0267
- *GP-05A, Unconventional Natural Gas Well Site Operations and Remove Pigging Stations*, Document No. 2700-PM-BAQ0268
- *Form U – Request to Process or Dispose of Residual Waste*, Document No. 2540-PM-BWM0395
- *Form 26R – Chemical Analysis of Residual Waste Annual Report by the Generator*, Document No. 2540-PM-BWM0347
- *Processing & Beneficial Use of Gas Well Wastewater from Hydraulic Extraction of Natural Gas*, Document No. 2540-PM-WMGR123
  
- *05 GP-5 Utility Line Stream Crossings*, Document No. 3150-PM-BWEW0505
- *07 GP-7 Minor Road Crossings*, Document No. 3150-PM-BWEW0507
- *08 GP-8 Temporary Road Crossings*, Document No. 3150-PM-BWEW0508
- *11 GP-11 Maintenance, Testing, Repair, Rehabilitation or Replacement of Water Obstructions and Encroachments*, Document No. 3150-PM-BWEW0511

# **EXHIBIT B**

Note: Stephanie Hasanali, Anil Nair, Sharon Watkins and Farhad Ahmed were employees of the Pennsylvania Department of Health in 2018 and were involved in the discussions surrounding notification from DEP to DOH of oil and gas-related health complaints.

**From:** Ryder, John <jryder@pa.gov>

**Sent:** Wednesday, May 2, 2018 1:37 PM

**To:** Lobins, Craig <slobins@pa.gov>; Lichtinger, Joseph <jlichtinge@pa.gov>; Dudzic, Scott <sdudzic@pa.gov>; Neville, Richard <rneville@pa.gov>; Means, Jennifer <jenmeans@pa.gov>; O'Donnell, Michael <miodonnell@pa.gov>; Wharton, Stephanie <swarton@pa.gov>; Counahan, Daniel <dcounahan@pa.gov>; McDermott, David <davmcdermo@pa.gov>; Milcic, Kareen <kmilcic@pa.gov>

**Cc:** Hasanali, Stephanie <c-shasanal@pa.gov>; Nair, Anil <annair@pa.gov>; Watkins, Sharon <shawatkins@pa.gov>; Ahmed, Farhad <fahmed@pa.gov>; Perry, Scott (DEP) <scperry@pa.gov>; Klapkowski, Kurt E <kklapkowski@pa.gov>; Brokenshire, Stephen <sbrokenshi@pa.gov>; Wallace, Todd <twallace@pa.gov>

**Subject:** DEP Oil and Gas Complaint Investigations and Pennsylvania Department of Health Coordination

**Importance:** High

All,

When DEP Oil & Gas staff are investigating a water supply complaint and encounter a complainant with human health concerns, our current practice (in accordance with the C&E Policy, Doc# 820-4000-001 and the Final Interim Water Supply Replacement TGD, Doc# 800-0810-001) is to provide that complainant / citizen with the appropriate Pennsylvania Department of Health (PA DOH) contact information so the complainant may contact that agency at their discretion. Oil & Gas staff have done a great job with this, and I ask that all staff continue this practice.

In addition, at the time that the Oil & Gas staff encounter a complainant with human health concerns, the Oil & Gas staff will now provide the following information about the complainant to both Stephanie Hasanali and Anil Nair with the PA DOH:

- Name
- Phone number
- Email
- Street address and county
- Initial date of complaint to DEP

This is a change from our past practice of first notifying PA DOH when O&G program staff make a positive determination (in accordance with the TGDs mentioned above).

PA DOH has indicated to us that Name, Phone number, and Email are the only fields absolutely needed. If staff encounter complainants without email address contact information, name and phone number will suffice. It is appropriate for Oil & Gas staff to let the complainant know they will be sharing this contact information with the PA DOH.

It is important to note that any time an Oil and Gas employee encounters a complainant with health concerns during the course of a complaint investigation, the employee should forward that individuals contact information to PA DOH, not just when a water supply investigation is being conducted. Only complaints involving human health concerns should be forwarded to PA DOH. All other complaints received and investigated by the Department's Oil & Gas Program should be handled using current Department practices.

It is also important that Oil & Gas staff document that the complainants contact information has been provided to PA DOH. Please provide this information to Stephanie (c-shasanal@pa.gov) and Anil (annair@pa.gov) via e-mail (they are also both copied above) and be sure to CC the appropriate District Oil and Gas Manager as well as supervisor / manager. A copy of the email notification should be uploaded to CTS as part of the investigation documentation.

Please share this important message with the appropriate program field staff.

John

**John Ryder** | Bureau Director  
Department of Environmental Protection  
Bureau of District Oil and Gas Operations  
208 West Third Street Suite 101 | Williamsport PA 17701  
Phone: 570.327.0533 | Fax: 570.327.3420  
[www.dep.pa.gov](http://www.dep.pa.gov)



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within document has been served upon the following by U.S. Mail and email:

Rebecca S. Franz  
Chief Deputy Attorney General  
Office of Attorney General  
Environmental Crime Section  
16th Floor Strawberry Square  
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rfranz@attorneygeneral.gov

Carson B. Morris  
Deputy Attorney General  
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Date: May 7, 2020

By: *Douglas K. Rosenblum /JAS*  
DOUGLAS K. ROSENBLUM, ESQUIRE  
Pa. I.D. No.: 90989

IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE:

THE FORTY-THIRD STATEWIDE  
INVESTIGATING GRAND JURY

Supreme Court of Pennsylvania Docket No.  
Docket No. 71 WD MISC DKT 2017

Allegheny Court of Common Pleas  
Docket No. CP-02-MD-0005947-2017

Notice No. 42

**SEALING ORDER**

AND NOW this \_\_\_\_ day of May, 2020, it is hereby ORDERED that the attached Response of the Pennsylvania Department of Environmental Protection to Report 1 of the Forty-Third Statewide Investigating Grand Jury is hereby filed under seal and is to remain under seal until further Order of this Court.

IT IS SO ORDERED.

BY THE COURT:

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Hon. Norman A. Krumenacker, III  
Supervising Judge  
Forty-Third Statewide Investigating Grand Jury