

November 14, 2012

The Honorable Tom Corbett  
225 Main Capitol Building  
Harrisburg, PA 17120

**Re: DEP Procedures on Reporting of Water Test Results and Notices of Violations Related to Shale Gas Operations**

Dear Governor Corbett:

On behalf of the undersigned organizations, we are writing with regard to current Pennsylvania Department of Environmental Protection (“DEP”) policies and procedures. Specifically, this regards water quality testing protocols for samples taken due to suspected impacts from oil and gas development, and notices of water contamination related to Marcellus Shale gas operations.

In sum, we have grave concerns that these procedures lack transparency; result in the withholding of vital data from affected households and the public; force residents to potentially undergo prolonged exposure to contaminants that can impact health; and delay action necessary to correct pollution of drinking water supplies.

With these concerns in mind, we have three requests for your immediate consideration. These requests are based on issues that came to light through recent depositions in the legal case of Kiskadden vs. PADEP and that were detailed in a letter submitted to you by Earthjustice and several other organizations on October 23, 2012 (“the Earthjustice letter”).

**First, the DEP must, without delay, take action to correct its procedures for analyses of water samples from private water supplies.** As revealed in the Kiskadden vs. PADEP deposition of Taru Upadhyay, technical director of DEP’s Bureau of Laboratories—and as subsequently widely reported in the media—DEP routinely omits data on 16 of the 24 heavy metals for which it conducts water analyses (per EPA Method 200.7) from the final reports provided to households where the sampling occurred. These samples are often collected in response to complaints of changes in water quality and suspicion of water contamination from oil and gas operations. It is scientifically well-established that many of these heavy metals pose human health hazards and some are carcinogenic; some have been found in flowback and produced water from drilling operations.

The current procedure represents a significant lack of transparency that flies in the face of the responsibilities of a public agency. Most concerning is the blatant disregard for the potentially serious impacts on the people whose water supplies may have been affected by oil and gas operations. There is simply no justification for withholding the full results of water sampling from the people whose water supplies have been tested. Residents have the right to receive all available information pertaining to both their water supplies and health, and it is not DEP’s role to limit that access.

Furthermore, this reporting procedure reflects an anachronistic approach to water testing that is gravely insufficient in light of the new and specific impacts of high-volume drilling and hydraulic fracturing in deep shale formations. In particular, this includes the use of a much larger number of chemicals by operators and the mobilization of heavy metals and other dangerous substances that naturally occur in the formations that are drilled—both of which pose significant risks to drinking water supplies and

should therefore be reflected in water testing protocols related to oil and gas development. The testing protocol should be revised to include testing for all these potential contaminants.

Assertions by DEP that reporting of heavy metals detected in water analyses isn't necessary because levels are "low" also represents an outdated approach given emerging evidence of the health and environmental impacts of gas development, as well as prevailing gaps in both science and testing standards. In particular, Maximum Contaminant Levels (MCLs) for drinking water don't even exist for many chemicals and substances of concern, including several metals (such as aluminum, nickel, molybdenum, and manganese)—making it impossible for DEP to judge whether particular levels are "safe" or not. Information on the impacts of exposure to multiple contaminants simultaneously, even at low levels, and exposure to chemical compounds that are synergistically created in the extraction process is also very limited.

**Second, we request that the DEP rescind its recently revised policy on notices of water contamination related to Marcellus Shale gas operations,** which requires administrators in Harrisburg to approve any positive notices before they are issued to affected members of the public. Similar to the water analysis procedure discussed above, this policy reflects a significant lack of transparency that compromises the public's right to information on matters that impact their health and the environment.

In its letter, Earthjustice and 13 other organizations requested that the notices approval policy be reversed in order to protect the people whose water test results could be underreported or delayed, and emphasized that DEP's internal decision to revise its procedures lacked the opportunity for citizen participation. The Earthjustice letter concluded that ending the policy is necessary "...to ensure that contamination of Commonwealth waters is fully and promptly disclosed to affected citizens" (emphasis added).

DEP Secretary Michael Krancer responded by letter on October 26 by defending DEP's reporting process, stating that "Your statements regarding transparency are a red herring" and "We are driven by the facts, and the results of our investigations inform our determinations." However, we must question such assertions considering what has been revealed through the *Kiskadden vs. PADEP* deposition, which underscores that DEP is, in fact, quite willing to withhold data from those directly affected and the public.

In addition, in his response to the Earthjustice letter, Mr. Krancer uses flawed reasoning to explain his agency's determinations regarding potential or actual water contamination by gas operations, as key data integral to making those determinations is, quite simply, missing. With incomplete data as its basis, the current notices approval process subsequently fails.

The question now must be asked, "Are determination letters issued by DEP under this policy valid or should those determinations be revisited based on the full data?" **With this in mind, and to begin to address this issue, our third request is that DEP now provide full testing results to any well owner who received test results under Codes that were incomplete.**

Both the withholding of information from those who are dependent on a full and accurate analysis of their water supply and limited determinations of violations reflect an agency that is losing its credibility. Residents of the Commonwealth must be able to trust the DEP to oversee and regulate industry in a manner that protects public health and the environment. Yet current policies and procedures violate

that trust—and provide evidence of DEP’s failure to serve the interests of the state’s residents before those of the oil and gas industry it is charged with overseeing.

A positive response and swift action with regard to our three requests outlined above would signal that your office is committed to ensuring that the DEP carry out its mandated responsibilities in a manner that serves the public interest and rigorously protects Pennsylvania’s residents and environment.

Thank you for your time and consideration.

Sincerely,

*In alphabetical order:*

Berks Gas Truth, Karen Feridun, Founder  
Center for Coalfield Justice, Patrick Greuter, Executive Director  
Clean Air Council, Joe Minott, Executive Director  
Clean Water Action, Steve Hvozdoovich, Marcellus Shale Policy Associate  
Cross County Citizens Clean Air Coalition, Rebecca Roter, Coordinator  
Delaware Riverkeeper Network, Tracy Carluccio, Deputy Director  
Earthjustice, Patti Goldman, Vice President for Litigation  
Earthworks’ OGAP, Nadia Steinzor, Eastern Program Coordinator  
Food & Water Watch, Sam Bernhardt, Pennsylvania Organizer  
Gas Truth of Central Pennsylvania, Susan Norris  
Greenpeace, Phil Radford, Executive Director  
Lehigh Valley Gas Truth, Julie Edgar, Organizer  
Lower Susquehanna RIVERKEEPER®, Guy Alsentzer, Director of Operations  
Marcellus Outreach Butler, Diane Sipe, Planning Committee  
Marcellus Protest, c/o Thomas Merton Center, Gloria Forouzan  
Mountain Watershed Association, Beverly Braverman, Executive Director  
PennEnvironment, Erika Staaf, Clean Water Advocate  
Pennsylvania Alliance for Clean Water and Air, Jenny Lisak, Co-director  
Physicians for Social Responsibility – Philadelphia, Cherie Eichholz, Executive Director  
Protecting our Waters, Iris Marie Bloom, Director  
Responsible Drilling Alliance  
Sierra Club Pennsylvania Chapter, Thomas Au, Conservation Chair  
the Delaware Riverkeeper, Maya van Rossum  
Three Rivers Waterkeeper, John Stephen, Executive Director  
Tour de Frack, Jason Bell, co-founder  
Youghiogheny Riverkeeper, Krissy Kasserman

Cc:

Michael Krancer, Secretary, Department of Environmental Protection  
Scott Perry, Deputy Secretary, Office of Oil & Gas Management, DEP  
Michael Wolf, Acting Secretary, Department of Health  
S.I. Shahied, Director, Bureau of Laboratories  
Robert F. Powelson, Chairman Pennsylvania Public Utility Commission  
Eugene DePasquale, Auditor General Elect  
Shawn Garvin, Director, EPA Region 3  
Kathleen Kane, Attorney General Elect

Sam Smith, Speaker of the House  
Frank Dermody, Pennsylvania House Minority Leader  
Jay Costa, Pennsylvania Senate Minority Leader  
Dominic Pileggi, Pennsylvania Senate Majority Leader  
DEP Citizen Advisory Council