

January 25, 2013

Secretary Michael L. Krancer
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105

Re: Cancellation of meeting on DEP Water Testing and Notices of Violations Procedures Related to Shale Gas Operations

Dear Secretary Krancer:

The undersigned organizations are extremely disappointed with the cancellation of the meeting scheduled for January 24, 2013 with representatives of the Pennsylvania Department of Environmental Protection (DEP) and the Bureau of Laboratories on important public health issues. This decision was particularly unfortunate because the meeting was arranged at your suggestion and the date set well in advance (via email on December 12, 2012). In fact, we worked with your office for a month to develop a framework for a productive meeting. In preparation for the meeting, we have educated ourselves about DEP's practices and deepened our knowledge on technical aspects of water quality testing and reporting.

In an email on January 22, 2013, Alisa Harris stated that DEP had "decided to reschedule the meeting." We are optimistic that this means that DEP is still interested in engaging with all 12 of the original attendees that DEP agreed to meet with, and that your staff will move to reschedule the meeting as soon as possible.

As you know, the meeting was to focus on DEP's current processes for water sampling and reporting and notices of water contamination related to oil and gas development. In a letter to Governor Corbett dated November 14, 2012, representatives of 26 organizations (including all of the undersigned) expressed strong concerns about these procedures, including that they 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.

These points were based on recent court depositions and media stories indicating that the water test reports provided to homeowners contain results for fewer parameters than DEP's labs actually analyze. Subsequent review of water tests indicate that the parameters tested for are likely insufficient given emerging knowledge on contaminants that can be related to shale gas development. The November 14 letter also called on DEP to take action to correct procedures that yield incomplete or inaccurate water sample data from private water supplies, and to immediately disclose to residents who have had their water wells sampled the full results of the tests. In addition, we requested reversal of the recently adopted DEP policy that requires administrators to approve any notices of violation before they are issued, as this could compromise full and timely reporting of water quality problems to the public.

Following receipt of this letter, you responded with a letter, dated November 21, 2012, offering to have DEP staff meet with representatives of the signatory organizations. You indicated that such a meeting would be an opportunity for “open and substantive discussion” focusing on “information sharing.” This was precisely the spirit in which we accepted the offer to meet, as we have been and remain eager to engage with the DEP in a transparent and professional manner regarding issues of shared concern.

In light of this goal (and as requested by Alisa Harris while arranging the meeting), our organizations developed a list of key questions and document requests for submission to DEP prior to the meeting. The information we seek is necessary to carry out our work to support communities and protect health and water and air quality in the face of gas development. Even more importantly, many Pennsylvania residents eagerly await this information, to which they have a right. They rely on the DEP, as a public agency, to provide a thorough and timely response to their water quality concerns.

The list we prepared for DEP is as follows:

Documents

- The list of parameters tested for under Suite Codes 942, 944, and 946 and any ancillary parameters tested for but not reported to homeowners.
- Manuals used to train field staff and protocols used to take water samples in the field.
- Documentation of the protocols used by the Bureau of Laboratories to ensure Quality Assurance/Quality Control and how these are followed for each sample and generated for resulting reports.
- Any documentation of the criteria considered by DEP to make a determination that contamination was caused by natural gas drilling.
- Information from DEP databases on the number and type of complaints made to DEP by private water supply owners, requests for water sampling due to possible contamination from oil and gas activities, and cases under investigation.
- Information on how DEP has responded to these citizen complaints and testing requests and any final determinations that have been made.

Discussion questions

- What specific parameters are tested for under each suite code? Are these parameters used consistently or is the list of parameters under any suite code ever changed?
- When are the various suite codes applied (i.e., 942, 944, and 946, as well as any others related to oil and gas development)? Does DEP have an established protocol for which code to apply?
- When was suite code 944 developed and used? Why hasn't suite code 944 been used in recent years?
- Who determines which code is applied for a particular sample (i.e., field staff, Bureau of Laboratory technicians, or other DEP representatives)?
- Does DEP conduct any other tests routinely, regardless of the reporting code, and if so, what happens to those data? (For example, EPA method 200.7 should generate data on at least 23 elements not included in the code 942 reports.)
- Why does the list of parameters in suite codes used by DEP differ from DEP's own list of “Recommended Basic Oil & Gas Pre-Drill Parameters” (2010)?

- To what degree does DEP use emerging science about contaminants associated with oil and gas operations to determine its testing parameters? For example, DEP’s list of “Chemicals Used in Hydraulic Fracturing Process in Pennsylvania Prepared by the Department of Environmental Protection Bureau of Oil and Gas Management” includes dozens of contaminants.
- What is the DEP protocol for resampling and/or using third-party test data (such as gas operator sampling results) in investigations prompted by a request for determination of contamination of a private water supply by oil and gas activities?
- What specific training does DEP’s field staff receive on how to properly collect water samples? What credentials and certification are required of DEP lab technicians?
- Do field staff and lab technicians receive any specific training on water impacts or water testing procedures associated with Marcellus Shale drilling operations?
- What criteria in the test results would lead DEP to determine that water contamination was caused by natural gas drilling? Is this set of criteria uniform?
- Why would DEP state in letters to homeowners that “The sample results of samples taken by the Department did not show any evidence that your water was affected by oil and gas drilling activities,” even if results indicate elevated levels of substances such as chloride, barium, strontium, methane, ethane, and propane?
- Are homeowners notified when DEP tests show the presence of a contaminant above the established Maximum Contaminant Level (MCL)?
- Who at DEP makes the final determination and how are appeals to determinations handled by the agency?
- Why are landowners not routinely provided with the quality control/quality assurance measures used by DEP laboratories to process samples and a full report of the raw data and findings from DEP samples?
- What is the cost of processing the samples used by DEP and is cost a factor in deciding which suite codes to apply?

The DEP is entrusted to oversee and regulate the oil and gas industry in a manner that protects public health and the environment; water quality testing and enforcement are clearly a key part of this mission. With this in mind, we respectfully request that DEP thoroughly respond to the questions and document requests outlined above no later than February 8, 2013. We also request that the cancelled meeting be rescheduled and include all 12 of the original attendees; we are ready to meet immediately on these pressing issues.

Please direct all questions and correspondence to Steve Hvozdovich, Clean Water Action, at shvozdovich@cleanwater.org or 412-765-3053, ext. 210.

Thank you for your time and consideration.

Sincerely,

Berks Gas Truth, Karen Feridun, Founder
 Clean Water Action, Steve Hvozdovich, Marcellus Shale Policy Associate
 Cross County Citizens Clean Air Coalition, Rebecca Roter, Coordinator

Delaware Riverkeeper Network, Tracy Carluccio, Deputy Director
Earthjustice, Moneen Nasmith, Associate Attorney
Earthworks' OGAP, Nadia Steinzor, Eastern Program Coordinator
Lehigh Valley Gas Truth, Julie Edgar, Organizer
Mountain Watershed Association, Melissa Troutman, Outreach Coordinator
PennEnvironment, Erika Staaf, Clean Water Advocate
Pennsylvania Alliance for Clean Water and Air, Jenny Lisak, Co-director
Protecting Our Waters, Iris Marie Bloom, Director
Sierra Club Pennsylvania Chapter, Thomas Au, Conservation Chair

Cc:

Governor Tom Corbett
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
Kathleen Kane, Attorney General
Shawn Garvin, Director, U.S. Environmental Protection Agency, Region 3
Marjorie Hughes, Executive Director, DEP Citizen Advisory Council
Sam Smith, Speaker of the House
Frank Dermody, House Minority Leader
Jay Costa, Senate Minority Leader
Dominic Pileggi, Senate Majority Leader