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Delaware Riverkeeper Network Wins Pennsylvania Open Records Challenge ***Organization prevails in appeal of PADEP's refusal to disclose radiation study files***

Harrisburg, PA – Delaware Riverkeeper Network challenged Pennsylvania Department of Environmental Protection's (PADEP) denial of a Right to Know Law request filed by the organization for access to PADEP's study of technologically enhanced radioactive material (TENORM) produced by oil and gas extraction.

PADEP refused to provide several documents, claiming exemption as internal, predecisional deliberations and noncriminal investigative records under the Right to Know Law. Delaware Riverkeeper Network appealed the denial to the Office of Open Records, arguing that the records are purely factual not deliberative, and not part of an inquiry or official probe, simply part of an agency study.

The Department had provided Delaware Riverkeeper Network with 294 pages of records generally describing the study and an earlier NORM study (1994), as requested by the organization. In response to Delaware Riverkeeper Network's appeal, PADEP produced an exemption log containing 57,308 pages of information and further claimed public disclosure of the shielded records posed a threat to public safety and public security of infrastructure and a threat to personal safety.

Claiming that the data was unvalidated and preliminary and would eventually be validated in a final report issued to the public, PADEP argued that the premature release of the data would

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lead to "...erroneous and/or misleading characterizations of the levels and effects of NORM and/or TENORM associated with [Oil and Gas] exploration and production..." PADEP went on to assert that the release of the information would "likely result in a substantial and demonstrable risk of physical harm" resulting from the public knowing the location and quantity of the radioactive materials.

"The public's right to know is founded on the important principle that citizens need access to information about their government's activities to ensure openness, prohibit secrets, and promote opportunity for critical review and accountability of public officials for their actions. DEP's attempts to hide facts about their study of radiation caused by gas development sounds disingenuous and like they are trying to hide something. Delaware Riverkeeper Network fought for this information so the sun can shine on what DEP is doing regarding this critical study and the impacts of shale gas drilling and fracking, the public has a right to know," said Maya van Rossum, the Delaware Riverkeeper.

The Office of Open Records determination stated:

"It is important to note that the TENORM study is the gathering of information on radioactive material that already exists from the oil and gas exploration and production activities. The Department contends that a reasonable likelihood of harm exists by releasing the information because of the risks associated with exposure to radioactive materials. In essence, the Department's argument attempts to equate the risk of radioactive material itself to the *release of information* about radioactive material. The risks associated with exposure to radioactive material is not the same as any risk associated with releasing information about radioactive material". Decision at 10.

The Office also ruled that the responsive records are "factual in character consisting of sample data collected and sample location" and not part of a deliberative process that will express legal opinions or policies. Decision at 12. The Office also decided that the information being sought is not part of a searching inquiry or official probe but rather a study, stating, among other reasons, "The very name identifies it as a study". Decision at 7. This makes the files ineligible to be concealed as a "noncriminal investigative record". Decision at 5. The Office points out that records are "presumed public unless exempt" and exemption is only granted "...by a preponderance of evidence", citing 65 P.S. Section 67.708(a). Decision at 5.

"The public has a great capacity for understanding facts and information, deep concern about the levels of radioactivity associated with shale gas development in the state since people

are being exposed every day, and huge interest in what DEP is finding. For DEP to assert that the public can't handle this information intelligently is an insult and is no excuse for withholding information the public has a right to," said Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network.

PADEP was ordered to provide all responsive records requested by DRN within 30 days. Under the law, the Order can be appealed by DEP to Commonwealth Court.

The Final Determination is available at <http://bit.ly/1nJdKMh>

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