

Natural Gas Drilling: Public Health and Environmental Impacts

Testimony of
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Chairman Reed and Members of the Committee, thank you for the opportunity to provide testimony on behalf of the Department of Environmental Protection.

The potential of the Marcellus Shale play has captured the world's attention. Indeed, not since Edwin Drake drilled North America's first commercial oil well in 1859 have so many focused their attention on Pennsylvania as an opportunity for oil and gas development. Increased well drilling has also brought with it unfounded skepticism about Pennsylvania's ability to properly oversee the oil and gas industry.

I say unfounded because just last year the head of EPA's Drinking Water Program said publically that "I have no information that states aren't doing a good job already [regulating fracking]." That is certainly the case for Pennsylvania. Also, our regulatory program was recently evaluated by the independent, multi-stakeholder State Review of Oil and Natural Gas Environmental Regulations organization (STRONGER) and received positive marks. According to STRONGER, "the Pennsylvania program is, over all, well-managed, professional and meeting its program objectives." I would go beyond that and say that Pennsylvania has done an exceptional job managing the new challenges that shale gas development presents while allowing our citizens to enjoy the enormous benefits created by this industry.

Our ability to unlock the huge energy source contained in unconventional shale formations will transform Pennsylvania into an energy exporter and transform our nation into energy independence. In addition, we are looking at an economic transformation. We have already seen tens of thousands of new jobs here in Pennsylvania from the industry itself but also from new industries spawned to support it. These are good paying career jobs in many fields. And that is just the start. There will be hundreds of thousands of good paying skilled and unskilled labor new jobs in all sectors. While interest in the economic possibilities of the Marcellus is high, Pennsylvania will see that its environment and the health and safety of its citizens is protected.

Pennsylvania regulates oil and gas well operations under several statutes including the Oil and Gas Act, the Clean Streams Law, the Dam Safety and Encroachments Act and the Solid Waste Management Act. As described in more detail below, this network of laws and their associated regulations provides the Department of Environmental Protection (DEP) with the tools it needs to comprehensively regulate everything associated with oil

and gas development - from locating the well site, site preparation, drilling the well, fresh water withdrawals and water storage, wastewater management, and site restoration.

Simply put, because of our long history of oil and gas development and comprehensive regulatory structure, Pennsylvania does not need federal intervention to ensure an appropriate balance between resource development and environmental protection is struck.

Well Site Location

The Oil and Gas Act (58 P.S. §§ 601.101 *et. seq*) is the primary law governing well drilling in Pennsylvania. With the exception of wells drilled through workable coal seams, there are no spacing requirements for Marcellus Shale wells. Although spacing restrictions do not generally apply, the Oil and Gas Act, the Dam Safety and Encroachments Act (32 P.S. §§ 693.1 *et. seq*) and the Clean Streams Law (35 P.S. §§ 691.1 *et seq*) regulate where well sites may be located and how the site should be constructed.

Section 601.205 of the Oil and Gas Act prohibits operators from developing a well site within 100 feet of any stream, spring or body of water that is identified on a topo map (small intermittent or head water streams are not always identified). In addition, the site may not be located within 200 feet of buildings or water wells. The department may waive these restrictions if additional protective measures are included as conditions to the well permit. Typical conditions include additional erosion and sediment control measures and measures to deal with the additional fresh water that will be encountered while drilling.

25 Pa. Code Chapter 105 (the Dam Safety and Encroachment regulations) requires well operators to obtain an encroachment permit if a well site or other support facility (such as an access road or water withdrawal pad) is located within a FEMA designated floodway. If FEMA has not designated a floodway (as can be the case for small streams), the operator must obtain a permit if the facility will be within 50 feet of a stream. For Chapter 105 purposes, a stream is anything that has a defined bed and bank – this is much more inclusive than the Oil and Gas Act provisions.

Finally, locating well sites within a floodplain may be regulated by municipalities through the Flood Plain Management Act. Certain ordinances promulgated through this statute are not preempted by the Oil and Gas Act. 58 P.S. § 601.602.

Site Development

Developing a well site outside the location restrictions of the Oil and Gas Act and the Dam Safety and Encroachments Act is regulated under the Clean Streams Law through the Department's erosion and sediment control program.

Stormwater runoff is the leading cause of stream impairment in Pennsylvania. To address this problem, DEP has developed a comprehensive stormwater management program. Pursuant to 25 Pa. Code Chapter 102, all earth disturbance activities must employ "best management practices" like silt fences and road side culverts to control

erosion and manage stormwater. Relative to building sites in floodplains, pits and impoundments used to store waste material may not be used if the bottom of the pit will be within 20 inches of the ground water table. 25 Pa. Code § 78.56. In floodplains, the ground water table will be close to the surface and therefore, drilling wastes would need to be contained in tanks if a pit could not be used.

If well site construction will disturb more than 5,000 square feet or has the potential to discharge sediment to High Quality or Exceptional Value waters (so classified pursuant to 25 Pa. Code Chapter 93), the operator must develop and implement an erosion and sediment control plan. This E&S plan must be kept on site for review by DEP. If development of the well site, access roads and other related facilities will disturb 5 or more acres, the operator must obtain an erosion and sediment control permit before the site can be developed.

Well Drilling

Drilling any well – even a water well – has the potential to impact fresh groundwater. While this potential may exist, such an impact is not acceptable. Protecting groundwater supplies is of utmost importance and the Oil and Gas Act is particularly strict in this regard. If a well operator impacts a water supply (by pollution or diminution), they *must* restore or replace it and pay for any increased costs of maintaining or operating the replacement supply. 58 P.S. § 601.208.

In fact, if an oil or gas well is drilled within 1,000 feet of a water supply and the water supply becomes polluted within 6 months of drilling, the operator is *presumed* to have caused the pollution unless they took a water sample that demonstrates the pollution was present before the oil or gas well was drilled. 58 P.S. § 601.208(c). Needless to say, taking a pre-drilling water sample from all supplies within 1000 feet of a gas well should be a standard business practice.

Of course, the goal is to avoid groundwater impacts in the first place. To that end, DEP recently promulgated new regulations that significantly strengthen our well construction standards. These new regulations accomplish five things.

First, the regulations will establish more stringent well construction standards for all new wells drilled in Pennsylvania. Second, the regulations impose new requirements on operators to inspect existing wells and report their findings to the Department. Third, the regulations codify existing caselaw on water supply replacement requirements and clearly describe an operator's responsibilities if they contaminate or diminish a water supply. Fourth, the regulations impose a duty on operators to investigate complaints of gas migration and to mitigate any hazards found in the course of the investigation. Finally, the regulations require reporting of chemicals used to hydraulically fracture wells.

Below is a brief description of the significant new requirements in 25 Pa. Code Chapter 78.

I. New Well Drilling

Properly cementing and casing a well is critical to preventing gas migration. Prior to drilling a well, operators will now be required to develop a casing and cementing plan that shows how the well will be drilled and completed. Use of centralizers (which keep the casing centered in the well bore) must be used at prescribed locations to insure that cement is evenly distributed between the casing and the well bore. Cement meeting ASTM criteria for oil and gas wells must be used. Documentation of the cement quality and cementing practices used at the well must be available for Department inspection.

When cementing a well, if cement is not returned to the surface the operator must install a second string of casing for an added layer of protection. If cement is returned to the surface and the operator intends to only use surface casing (Marcellus operators typically use surface, intermediate and production casing), the operator must demonstrate that any gas, oil and produced fluids cannot leave the well bore.

Used or welded casing must be pressure tested. Casing strings attached to heavy duty blow-out preventers (such as Marcellus intermediate casing) must also be pressure tested.

II. Existing Wells

Operators must inspect all of their wells quarterly and report the findings of the inspections to the Department annually. If defective casing, evidence of leaks, or if excessive pressure within the well bore is discovered, the operator must immediately notify the Department and take corrective action.

III. Water Supply Replacement

The Oil and Gas Act requires any operator who contaminates or diminishes a water supply to restore or replace the supply with one that is adequate in quantity and quality for the purposes served. Case law on these requirements has defined when an operator must provide compensation for increased operation and maintenance costs (when costs are more than a de minimus amount) and for what duration (in perpetuity). The regulations codify these and other relevant holdings to clearly describe the operator's responsibility.

IV. Gas Migration Response

The new regulations impose a duty on operators to immediately investigate a gas migration complaint and to notify the Department if they receive such a complaint. If natural gas is found at elevated levels (10% of the lower explosive limit) the operator must immediately notify emergency responders and initiate mitigation measures (including advisories and controlling access to the area).

V. Reporting Requirements

The practice of hydraulic fracturing has drawn considerable attention recently. One of the primary concerns involves the chemicals used during the process. DEP's new regulations require operators to disclose the chemical additives and the hazardous constituents of those additives on a well by well basis. While DEP has never observed any evidence that hydraulic fracturing has directly contaminated fresh groundwater despite tens of thousands of wells being "fraced" over the past several decades,

mandating public disclosure of the chemicals used in the process should end much of the controversy surrounding the subject.

Water Withdrawal

While the volume of water to frac a Marcellus well is greater than the amount required to frac traditional wells in Pennsylvania, the Marcellus industry's use of water is miniscule in comparison with other energy sources and other sources in general. Marcellus fracing is the smallest major user in Pennsylvania using only 0.2% of the daily water withdrawn which ranks it ninth of the top nine water users in the state. Marcellus drilling uses only 1.9 million gallons per day (MGD). This is in stark contrast to power plants which use 6.43 *billion* gallons per day (BGD). Other major uses include public water suppliers (1.42 BGD); industrial users (770 MGD); aquaculture (524 MGD); private water wells (152 MGD); mining (95.7 MGD); livestock (61.8 MGD); and irrigation (24.3 MGD). Thus, shale gas drilling is a fabulously efficient energy production source measured as a function of water usage.

Still, withdrawing more than 5 million gallons per well from the headwaters of the Commonwealth's most pristine streams has the potential to impair water quality through diminished stream flows. To prevent impacts from occurring, Marcellus operators can only withdraw water pursuant to an approved water management plan.

There are three entities charged with protecting water quality by managing water withdrawals in Pennsylvania - DEP, the Susquehanna River Basin Commission and the Delaware River Basin Commission. The two River Basin Commissions were formed by a compact between the federal government, Pennsylvania and neighboring states within the respective watersheds. If a Marcellus well is drilled within the Susquehanna or Delaware River watershed, DEP and Commission approval of the operator's water management plan must be obtained before construction of the well site can begin. If the well is located outside those two river basins, only DEP approval is necessary.

The water management plan is based on low flow conditions and describes where water will be withdrawn how much water will be needed and the amount of water that will be taken at any one time. Evaluation of the plan involves looking both upstream and downstream to assess cumulative impacts, taking into account all other withdrawals and discharges and their impact on the resource, particularly during low flow periods.

Generally speaking, if the water withdrawal is less than 10 percent of the natural or continuously augmented 7-day, 10-year low flow (Q7-10) of the stream or river, a passby (a restriction on the ability to take water during low flow conditions) will not be required. Q7-10 is the lowest average, consecutive 7-day flow that would occur with a frequency or recurrence interval of one in ten years. A 10-year low flow event has a 10

percent chance of occurring in any one year. Accepted hydrologic practices must be used to determine the Q7-10 flow.¹

Once approved, the plan is valid for each location for five years. Although the Commonwealth has ample water resources, operators will need to cooperate to make sure that access to water is available as more and more plans are submitted for headwater streams.

Water and Wastewater Storage

Once an operator gets the water needed to frac a well, the question becomes where to put it? Even more important, where to put the wastewater that is returned to the surface (called flowback)? A new development with Marcellus wells is the advent of centralized impoundments. Unlike pits located immediately adjacent to the well, centralized impoundments use dam like structures to hold enough water to service multiple wells over an extended period of time. These impoundments can store freshwater, and more increasingly, flowback from a frac job.

Under DEP's dam safety regulations, small freshwater impoundments – similar to a farmer's pond - do not need a permit. However, Marcellus impoundments can hold over 15 million gallons and if they store wastewater, must be permitted and constructed according to DEP standards. Key standards include a two impervious 40 mil liners with a leak detection zone and groundwater monitoring wells around the impoundment. Impoundments located where a breach could threaten public safety must undergo a much more stringent engineering review.

Wastewater Management

The most significant issue facing Marcellus operators today is wastewater treatment and disposal. Operators report that approximately 15% of the water used frac a well is returned to the surface during the initial flowback period. The Department has seen an increase in reuse of this wastewater – industry wide approximately 80% of the flowback is used on another frac job. Thus, the total volume of wastewater that must be disposed is a small fraction of the volume needed to frac the well.

Still, flowback from Marcellus frac jobs contain pollutants of concern – particularly high levels of dissolved salts. Indeed, flowback water is several times saltier than sea water. Thus, Total Dissolved Solids (TDS) represent a growing concern for the Commonwealth's waterways and the Department has developed a proactive strategy to address this concern before widespread impacts are felt.

The best solution for disposing of high TDS wastewater is deep well injection. Unfortunately, the best geology in Pennsylvania for this method of waste disposal is

¹ Policy No. 2003-01 Guidelines For Using and Determining Passby Flows and Conservation Releases For Surface-Water and Ground-Water Withdrawal Approvals, November 8, 2002.

being used for gas storage. Exploration for new injection sites is ongoing but not commercially available yet.

Therefore, the current preference for flowback water disposal is through existing DEP approved wastewater treatment plants. These plants typically do not have the technology necessary to remove TDS from the effluent and instead rely on dilution. The DEP's recently promulgated Chapter 95 regulations completely address the cumulative impacts of oil and gas wastewater discharges.

This new rule is the first of its kind in the country and limits the discharge of TDS from new or expanded facilities that take oil and gas wastewater to drinking water standards. This means that new discharges cannot exceed 250 mg/l for chlorides and that drinking water supplies will never be impaired because of oil and gas drilling. The process of eliminating the TDS will also remove radium – which has been the subject of recent articles. Thus, in addition to reducing the contaminants discharged to our streams, the new Chapter 95 rule will increase the use of recycled water, promote the development of alternative forms of disposal and perhaps promote the use of alternative sources of fracturing fluid.

Drinking Water Protection.

Acting-Secretary Krancer recently outlined in his April 6, 2011 letter to EPA Region III Administrator Garvin, over the past three years the Commonwealth has been very proactive in protecting potential sources of drinking water. In addition to the Chapter 95 TDS regulations discussed above there are other measures being implemented. DEP recently announced the results of our in-stream water quality monitoring for radioactive material in seven of the Commonwealth's rivers. All samples showed levels at or below the normal naturally occurring background levels of gross alpha and gross beta radiation. Those tests were conducted in November and December of 2010 at stations downstream of wastewater treatment plants that accept flowback and production water from Marcellus Shale drilling. These sampling stations were installed last fall specifically for the purpose of monitoring stream quality for potential impacts from unconventional gas drilling operations. The raw water river samples were collected above public water suppliers' intakes where the water receives further treatment.

The seven river testing stations are located at the Monongahela at Charleroi in Washington County; South Fork Ten Mile Creek in Greene County; Conemaugh in Indiana County; Allegheny at Kennerdell in Venango County; Beaver in Beaver County; Tioga in Tioga County; and the West Branch of the Susquehanna in Lycoming County. These stations were chosen because of their proximity to public water supply intakes and at the time, were located downstream of facilities permitted to or proposing to discharge oil and gas wastewater. Future monitoring will include monthly sampling at the Monongahela; South Fork Ten Mile; Allegheny; and Beaver sites and every other month at the remaining three sites. Moreover, gross alpha and gross beta testing was added to a second water quality network station on the Monongahela, in March 2011. This site is further downstream in Allegheny County. All of the results will be frequently evaluated and available to the public via EPA's Modernized STORET database.

There is more. Pennsylvania DEP has taken measures to have additional monitoring of finished water at 14 public water supplies with surface water intakes downstream from wastewater treatment facilities that accept Marcellus wastewater. On March 11, 2011, under Pennsylvania regulation *25 Pa Code* §109.302, we directed a letter to public water suppliers that have surface water intakes located downstream of one or more facilities that are accepting Marcellus wastewater to immediately conduct testing of radionuclides (i.e., radioactivity) and other parameters including TDS, pH, alkalinity, chloride, sulfate and bromide.

In addition, Pennsylvania DEP, on March 18, 2011, under Pennsylvania regulation *25 Pa Code* §92a.61(g), letters were sent to 25 Publicly Owned Treatment Works and Centralized Waste Treatment facilities that currently accept this wastewater calling for immediate twice monthly effluent monitoring for radionuclides and other parameters including TDS, pH, alkalinity, chloride, sulfate, bromide, gross alpha, radium 226 & 228, and uranium.

Conclusion

The Marcellus Shale play along with other domestic unconventional resources can transform world energy markets. This potential will only be realized by avoiding the mistakes of the past. I believe that Pennsylvania will prove that the balance between environmental protection and the development of this world class resource is possible.