



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SECRETARY

July 30, 2012

Kate Sinding, Esquire
Natural Resources Defense Council
40 West 20th Street
New York, NY 10011

Dear Ms. Sinding:

Thank you for your letter to me of July 3, 2012.

As you should know, we have in Pennsylvania taken many steps to enhance environmental protections associated with hydraulic fracturing. Such steps include, but are not limited to, passage of Act 13 which Governor Corbett signed on February 14, 2012 and our administration's April 2011 call to the industry to cease delivering flowback water from deep shale hydraulic fracturing to treatment facilities which had been exempt from the Commonwealth's 2010 regulations limiting discharges of total dissolved solids. It is ironic that you should quip that the latter action was done "belatedly." It was Governor Corbett and I, as Secretary of the Department of Environmental Protection, who found the grandfathering situation left on our table by the previous administration and we acted immediately to correct it.

It is a fact that Pennsylvania does not allow disposal of wastewater from shale operations by road spreading. I do appreciate your thoughts that this prohibition should be further memorialized. We will consider your suggestions in that regard. As can be seen by, among other things, our April 2011 call and the passage of Act 13, we are not a static Commonwealth with respect to memorializing evolving best practices for all aspects of oil and gas exploration and extraction and associated activities and we are always open to discussion with stakeholders about our rules and regulations whether initiated by us or any stakeholder.

Your letter seems to assert that media reports are compelling evidence that certain actions need be taken. Alan Barth and the *Washington Post* have said that media reports are "only the first rough draft of history—or pretend they are." We do not govern or set policy by the morning papers. Our decisions are based on facts and sound science. I would also wonder why you would suggest such reliance on newspapers, given that one of the "reporters" you mention has been censured twice by his own publication for questionable reporting practices.

Let me also address the results of our investigation of the residents who are featured in the media report you mention. The media article you reference does not discuss that. The Voyles, Kiskadden and Haney households each separately alleged contamination of their water supplies by oil and gas activities conducted by Range Resources at the Yeager well site and impoundment located in Amwell Township, Washington County, Pennsylvania. In all of these cases, DEP investigated and found no evidence of such contamination. DEP informed Mrs. Voyles that "there is no evidence to substantiate [her] complaint" in writing on October 19, 2011. DEP's September 9, 2011 response to Mr. Kiskadden's complaint informed him that our investigation did not allow the department to determine that any of the problems with Mr. Kiskadden's well were the result of natural gas-related activity. Finally, DEP informed Mrs. Haney on June 22, 2012 that, based upon DEP's investigation in response to her complaint, DEP was "unable to determine that Range's oil and gas activities at the Yeager well pad and impoundment have

affected [her] water supply." I will tell you that the Voyles and Kiskaddens have sought judicial review of our findings, and as you know, the appellants will have the burden to prove that DEP was in error. The fact remains that this agency which has the longstanding expertise in these matters performed investigations and the results of those investigations showed no connection.

As for the underground injection well disposal program, you are correct to point out we disagree. This would be a topic on which I think we could both benefit from further discussion with each other.

On wastewater tracking, our existing wastewater tracking and reporting regulations provide us with the ability to monitor the transportation of wastewater. Our residual waste and oil and gas regulations require comprehensive cradle to grave wastewater recordkeeping requirements. Well operators must keep records of the amount of wastewater generated by well, the name and address of the entity that transported the waste, where the wastewater was taken to and the method of disposal or beneficial use. Wastewater transporters must keep detailed records of the waste being hauled including the generator, the amount, and where the waste is being taken. These records must be kept for 5 years and made available to DEP upon request. In addition, DEP works with the Pennsylvania State Police to ensure the vehicles transporting the waste are in compliance with safety and environmental regulations. And, through biannual reporting to DEP, Marcellus shale operators must account for every gallon of wastewater produced from each well, regardless of whether the fluid is treated for reuse, recycled without treatment or disposed of via underground injection control wells.

Hydraulic fracturing is hydraulic fracturing—it does not include all those other aspects of gas exploration and extraction that you mention. Your discussion here is along the lines of what Abraham Lincoln said about an argument that Senator Douglass had made—"a specious and fantastic arrangement of words, by which a man can prove a horse chestnut to be a chestnut horse." As defined by the independent federal Energy Information Administration, hydraulic fracturing is "a well completion technique designed to improve oil and gas production" and thus only a component of the entire natural gas development process. In fact the process lasts only a short period of time. Similar definitions are used by credible third-party academic and public policy organizations and have been for decades.

In any event, rest assured that DEP regulates all aspects of oil and gas exploration and production. That includes site preparation, drilling, extraction, fresh water withdrawals waste disposal and ultimately well plugging and site restoration.

Pennsylvania regulates these oil and gas well operations under several statutes, including the Oil and Gas Act of 2012, the Clean Streams Law, the Air Pollution Control Act, the Dam Safety and Encroachments Act and the Solid Waste Management Act. This network of laws and their associated regulations provides the department with the tools needed to comprehensively regulate everything associated with oil and gas development.

Pennsylvania's casing and cementing regulations have served as a model to other states and other countries who are eager to learn how the department is doing it right. In February 2011, the state's regulations were amended to require more stringent well construction standards for new wells drilled. The amendments to Chapter 78 also require regular pressure testing of the well's casing and cementing and more detail in the well completion reports, a report filed that details the engineering of each well and the fracturing fluid.

In addition to the enhanced environmental protection requirements of the Oil and Gas Act of 2012, the Dam Safety and Encroachments Act and the Clean Streams Law provide restrictions regarding where well sites may be located and how the site –and any impoundments at the site--should be constructed. DEP has developed a comprehensive stormwater management program which requires oil and gas operators to manage runoff. 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. 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. Under DEP’s dam safety regulations, small freshwater impoundments 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 strict DEP standards. These standards include 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.

Pennsylvania’s regulations are very clear when it comes to contamination of water supplies. If a well operator impacts a water supply (by pollution or diminution), the operator *must* restore or replace it and pay for any increased costs of maintaining or operating the replacement supply. DEP responds promptly and investigates any complaints of alleged water contamination by oil and gas activities.

As for your “modest suggestion on process,” your own organization of which you are Senior Counsel wrote the Report, you yourself provided guidance and expertise in developing the Report, and you wrote a blog about the very Report from which you ran away from discussing. The Report specifically thanks you for your input stating, “[t]he authors would like to thank Amy Mall, Kate Sinding, Jon Devine, John Wood, Briana Mordick, and Matt McFeeley for their guidance and expertise in developing the report.” Further, you authored an 821-word May 9 blog entry on the Report which concludes by saying “Pennsylvania, in the meantime, has much more work to do to bring its own rules into line with the report’s recommendations if it is going to adequately protect the public and environment.” Also, your reference to “common courtesy” of pre-publication notice is apparently a “do as I say, not as I do.” This “common courtesy” was not practiced by NRDC with respect to this Report.

Thank you for the opportunity to continue the discussion with you and with NRDC on these matters.

Sincerely,



Michael L. Krancer
Secretary