

RECEIVED
IRRC

3042

2011 JUN 22 PM 3:49



Testimony of Michael Helbing, Staff Attorney for PennFuture

To

Environmental Quality Board

January 9, 2014

Good evening. My name is Mike Helbing, and I am a staff attorney in PennFuture's Philadelphia office. PennFuture is a statewide environmental organization that works to create a just future in which nature, communities, and the economy thrive.

During my testimony tonight, I will provide a short list of comments regarding proposed changes to Chapter 78 regulations, but please keep in mind that PennFuture plans to submit a more thorough and robust list of written comments for the Board's consideration.

As a preliminary matter, I'd just like to ask you to consider the long-term impacts of the decisions you make as you consider the comments you hear at tonight's meeting and others like it. As a plurality of Pennsylvania Supreme Court justices recognized in their recent decision in *Robinson Township v. Commonwealth of Pennsylvania*, our commonwealth has a history of prioritizing resource extraction over the health of its citizens and the long-term preservation of its environment. By adding the Environmental Rights Amendment to the Pennsylvania Constitution (Article I, Section 27), the people of Pennsylvania determined that their well-being and the well-being of future generations should never again be subordinate to the short-term economic benefits that bring with them short-sighted resource extraction practices like the ones that left us for years with "thousands of devastated treeless acres" and with mine fires that burn to this day.

I would like to thank the Board for the work that it has done in proposing regulations in Chapter 78 to help to improve environmental protection. Among other things, we support requiring aboveground pipelines for transporting wastewater (Section 78.68b(b)), requiring security around storage vessels at well pads (Sections 78.56(a), 78.57(g)), and requiring identification of well operators' parent and subsidiary companies (Section 78.15(c)).

There are some areas, however, that can be improved. I will give two examples.

- The DEP should prohibit the disposal of residual waste at well sites. (Section 78.62)

The draft regulations would allow well operators to dispose of residual waste in pits on well sites as long as they comply with certain minimum requirements. Because waste generated at oil and gas sites is exempt from the hazardous waste regulations, the result is that hazardous waste can be managed as residual waste and disposed at well sites with a single synthetic liner and no long-term groundwater monitoring. These minimal protections are inadequate. Given the high risks posed by these mini-landfills, the DEP should prohibit well site disposal of residual waste entirely. To the extent that the DEP continues to allow this method of waste disposal, it should, at a minimum, require long-term groundwater monitoring and public notice of existing and future disposal sites.

- The prohibition on construction of fluid storage areas within 100 feet of certain water bodies should be extended to all water bodies. (Section 78.59c)

The current draft regulations prohibit well operators from building “centralized impoundments” for wastewater within 100 feet of any “solid blue line stream” identified by the United States Geological Survey. Although we recognize that Act 13 unwisely referred to “solid blue line streams,” which are streams that run continuously, intermittent and ephemeral streams that do not necessarily run at all times of the year need to be protected as well. Some of our most vulnerable waters are intermittent portions of high quality streams. Those waters would not be adequately protected by these regulations. Furthermore, the DEP has an obligation to protect intermittent streams under the Clean Streams Law. Rather than attempt to make that decision on a case by case analysis, the DEP should extend this buffer to all Pennsylvania streams.

Thank you for your time this evening, and thank you for your work to ensure that all Pennsylvanians are able to realize the benefits of “clean air, pure water, and ... the preservation of the natural, scenic, historic and esthetic values of the environment.” PA. CONST. art. I, §27.