



Testimony of
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Citizens for Pennsylvania's Future
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My name is George Jugovic, and I am Chief Counsel for PennFuture. I work out of our Pittsburgh office. PennFuture will be submitting detailed, written comments on these proposed regulations before the deadline. Thank you for the opportunity to supplement those comments with this brief, oral testimony.

I have spent more than 25 years practicing energy and environmental law. For seven of those years, I prosecuted environmental criminal cases in the OAG's environmental crimes section. I also worked for a time as the Regional Director for DEP's SWRO.

As an initial matter, I want to thank the EQB and Secretary Abruzzo for extending the comment period on these regulations for 30 days to March 14th. This will only improve the end-product of this process.

Let me also recognize that there are significant portions of this regulatory package that PennFuture supports. For example, we support the requirement that if anything other than clean water is transported through temporary pipelines, that those lines be located above ground and not underground (78.68b(b)); the prohibition on using open top structures to store brine and other produced fluids (78.57(a)); the need for increased security to prevent vandalism and unlawful discharges from storage tanks pads (78.56(a) and 78.57(g)); and we support the ban on disposal of residual waste generated during the fracking of unconventional gas wells (Section 78.62(a)(1)).

That said, there are concepts that need to be discarded and measures that need to be improved. I will focus on two. Perhaps foremost on that list is the Department's continued sanctioning of on-site waste disposal at well sites (78.61 and 78.62).

The draft regulations would allow well operators to continue disposing of drill cuttings and residual waste in pits on well sites as long as they comply with certain minimal environmental protection standards. And while the Department has tightened and increased some regulations around this on-site disposal practice, the agency has provided no testimony or evidence to demonstrate that these regulations will adequately protect the environment.

There is no public notice of where these sites are located, no transparency about what is disposed in these sites, the sites are allowed to be located 20 inches above fresh drinking water, and there is no long term monitoring to ensure that the sites are not leaking. These protections are inadequate.

It is true that the Department establishes limits for the concentration of various pollutants that can be in this waste. For example, the waste cannot contain pollutants in concentrations that exceed 50% of what would make the waste hazardous for toxicity. But these limits miss the mark. First, the limits are only as good as the testing protocols, and these regulations contain no requirements that the test be representative and performed according to accepted protocols. Second, there is no oversight requirement associated with the testing. The operators are free to ignore the regulations, and the burden would be on the agency to dig up these sites after the fact, sample them, and prove that the operator engaged in unlawful activity to enforce the standards. In other words, the requirements look nice, but as a practical matter the Department is not capable of enforcing the requirement.

No other person, and few other industries are offered this convenience. Even the power industry must dispose of its flyash in double-lined landfills with long-term monitoring and closure plans. I have seen the state prosecute individuals for dumping or burying household trash, or construction and demolition debris, and yet it officially sanctions this industry disposing of its residual waste at its construction site. This would be similar to the agency enacting a regulation allowing steel mills or dry cleaners to dig holes and bury their residual waste on their back forty.

What is worse, the DEP knows that many well-site disposal pits have leaked in recent years, contaminating surface and groundwater across Pennsylvania. When events in West Virginia recently reminded us of the importance and value of our clean water supplies, why would we promote this risky behavior. It is time that the Department cease allowing this method of waste disposal to continue. They would not allow you to do it. They would not allow mom-and-pop businesses to do it. They should not allow it at oil and gas well sites.

At the very least, the DEP should (1) require DEP, and landowner and the public be notified where these sites will be located; (2) require that sampling of the waste be representative and results submitted to the agency before disposal occurs; and (3) require long-term groundwater monitoring.

Thank you for the opportunity to present this testimony.