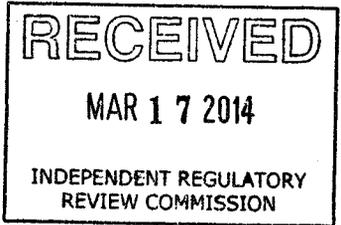


3042



Comments by Damascus Citizens for Sustainability Inc.

**Submitted to the
Pennsylvania Department of Environmental Protection
Environmental Quality Board on Proposed Revisions to
25 Pa. Code Chapter 78 (Oil and Gas Wells)**

March 14, 2014

Damascus Citizens for Sustainability, Inc. (DCS) is a non-profit grassroots environmental organization that focuses on elimination and mitigation of the adverse impacts on people, communities and the environment from shale gas development involving hydraulic fracturing. We also are concerned about impacts from all oil & gas development. DCS is part of a coalition of environmental and public health organizations that have signed on to and adopted the extensive comments submitted by Earthjustice on the proposed revisions to Chapter 78.

The purpose of these additional comments by DCS is to raise issues and suggest modifications to the proposed Chapter 78 regulations on the subject of wastes stored and buried in pits and impoundments on oil and gas well sites and production facilities prior to the effective date of the new Chapter 78 regulations. In the comments by Earthjustice, we take the position that pits and impoundments should not be allowed at any future well site or production facility and that existing pits and impoundments that are still open should be phased out with all wastes removed and sent, with a manifest system to track each shipment, to a licensed waste handling, treatment and disposal facility approved to handle such waste. For future well sites and production facilities, all materials that previously had been managed in pits or impoundments would now be required to be managed in close-loop above ground systems using tanks or other containment structures. DCS fully joins in and supports the comments by Earthjustice on these issues.

However, even if the new regulations preclude the use of pits or impoundments to manage chemicals and other waste materials, there are thousands of sites across the Commonwealth that were permitted before the new Chapter 78 rules will take effect that used pits or impoundments to manage well construction and development and production waste. At the vast majority of these sites, the Pennsylvania Department of Environmental Protection (PADEP) allowed the owner/operator to bury the residual materials and wastes in the pits or impoundments by pushing in the sides and covering the top with soil to complete the burial.

The Earthjustice comments explain our concerns about the environmental contamination incidents related to waste management in pits and impoundments and the potential for wastes buried in these pits and impoundments to leach into adjacent soil, groundwater, or surface waters. This contamination potential does not go away once the wastes are buried. Instead, each of these burial sites becomes an environmental legacy that may cause considerable damage from release and migration of contaminants in the future.

To mitigate the environmental risks from these burial sites, we propose that a program be added to the proposed Chapter 78 regulations to specifically address these risks. This program would have

several components, including: 1) identifying the location of each waste burial site; 2) determining the type and volume of waste in each burial site; 3) determining the waste site design and burial method used; 4) testing the waste to determine whether any constituent exceeds applicable or relevant and appropriate federal, state or local environmental quality criteria; 5) testing soils, groundwater and surface waters in the vicinity of the burial site to determine whether waste constituents have already migrated from the burial site; 6) removal of all waste materials from the burial site, all soils contaminated from contaminant migration, and remediation of impacted groundwater and surface waters; 7) transportation with a manifest system for tracking shipments of wastes and contaminated soil to waste handling, treatment and disposal facilities licensed to accept such wastes; 8) establishing a record keeping and reporting system for the owner/operator to provide PADEP with the information identified above; 9) making all of this information available to the public on a real time basis (i.e. as soon as it is submitted) through the PADEP website using a system such as eFACTS or a prominently identified portion of the PADEP website; and 10) payment by permit applicants of a fee to establish a fund to address orphan burial sites. Outlined below are some preliminary aspects of each of these components.

Identification, location and information about waste burial sites (items 1-3 above): Within 90 days of the effective date of the revised Chapter 78 regulations all oil & gas owners/operators that have previously held a permit to drill an oil or gas well or operate an oil or gas production facility in Pennsylvania shall submit to PADEP a list of all sites where waste materials have been buried. This list shall include a map showing the burial site location, global positioning system (GPS) coordinates for each burial site, the site design and burial method used (including whether a liner was installed and the type used), a description of the type of waste material buried, an estimate of the amount of waste material buried, information about any known leakage or contamination from the burial site, results of any prior monitoring or testing to identify or verify leakage or contamination, information on any removal of waste or remediation that has occurred, the date on which the burial was completed, the name and address of the owner/operator or contractor who generated the waste material, and, if the burial was performed by an entity that did not participate in activities that generated the waste material, the name and address of the entity which performed the burial. If an owner/operator does not submit this information within the 90 day period, any application it submits for a new oil or gas well or production facility shall not be deemed administratively complete and the permit shall not be issued until the owner/operator has provided the information described above. An owner/operator seeking a permit or approval from PADEP must identify all current and former entities which held an oil & gas well or production facility permit or approval from PADEP and in which the current owner/operator held any legal interest, directly or indirectly through any other entity.

Burial site testing (items 4 - 5 above): Within 180 days of receipt of the information described above, PADEP shall conduct testing of the burial site to determine whether any constituent of the buried material exceeds an applicable or relevant and appropriate environmental criteria or parameter established under federal, state, or local laws or regulations, including water quality criteria, maximum contaminate levels (MCL), or MCL goals established under federal, state or local laws or regulations, and the additional parameters identified in the Earthjustice comments. If the waste material in a burial site does exceed any of these criteria or standards, PADEP shall test soils, groundwater and surface waters to determine whether any contamination from the buried material has already occurred. If no contamination is found, PADEP will retest a year later for two years. The cost of such testing shall be reimbursed to PADEP by the owner/operator of the site that includes the burial site. Until such testing is completed no application for a new oil or gas well or production facility permit by the owner/operator of the site may be approved by PADEP.

Waste and Contaminated Soil Removal and Remediation (items 6-9 above): For any burial site where initial or subsequent annual testing has determined that one or more of the environmental criteria described above is exceeded, within 90 days the owner/operator shall excavate and transport offsite, using a manifest system established by PADEP, all waste material and soils exceeding the environmental criteria. If groundwater or surface water contamination is found by the testing, within 30 days the owner/operator shall begin remediation approved by PADEP. The removed material must be transported to a facility authorized to accept such materials. If the owner/operator of the site that includes the burial site does not perform the excavation and offsite transport and disposal of the waste and contaminated soil or initiate PADEP-approved remediation, PADEP will use funds from the orphan sites remediation fund described below to perform the excavation and transport offsite, including the manifesting of these materials, and the remediation of soil, groundwater, and/or surface water contamination. Any owner/operator that does not perform the excavation and offsite transport and/or remediation described above shall not be eligible to apply for or obtain any permit for an oil or gas well or production facility.

Orphan Sites Remediation Fund (item 10 above): As part of any application for an oil or gas well or production facility permit under Chapter 78, the applicant will pay a fee that PADEP shall use to establish a fund to perform waste burial site identification, testing and remediation at sites where no owner/operator is known or where the owner/operator has not performed the identification, testing, removal, remediation and offsite transport obligations described above. PADEP may also use the fund to investigate and respond to burial sites identified by written, email, or telephone notification by the public to PADEP. When PADEP establishes this fund, it shall include information that clearly informs the public of its right to request investigation and response for specific burial sites. For any site where PADEP used monies from the fund to perform the functions described above, the fund shall have a claim against any owner/operator who does not comply with the described requirements and the non-compliant owner/operator shall not be eligible to obtain any permit or other authorization from PADEP.

Establishing and using a system as described above is the only way we can minimize the creation of a legacy of potentially thousands of contaminated sites spread across Pennsylvania. The federal Superfund and the state's Act 2 programs are already being stretched to their limits and do not need the addition of these oil or gas waste burial sites to that burden.

We appreciate this opportunity to provide comments on the proposed revisions to the Chapter 78 regulations. To repeat, DCS fully supports and joins in the comments prepared by Earthjustice. The comments we offer here are in addition to the Earthjustice comments. These comments are being submitted separately because there was not sufficient time to obtain sign on from the broad spectrum of organizations that are part of the group that joined in support of the Earthjustice efforts. Please contact us at your convenience if you have any questions or would like additional information concerning our additional comments.

Respectfully submitted,
/s/ Jeff Zimmerman
jjzimmerman@comcast.net
(240) 912-6685
For Damascus Citizens for Sustainability, Inc.