

Environmental Quality Board
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February 3, 2022



RE: Proposed Rulemaking: Exclusion for Identification and Listing Hazardous Waste at Max Environmental Technologies, Inc. Bulger and Yukon Facilities

Environmental Quality Board,

Max Environmental Services (Max) is asking Pennsylvania to reverse a decision made in 2011 by the United States Environmental Protection Agency (EPA), who determined that filter cake waste generated at Max's Bulger facility should be classified as a listed hazardous waste (F039) given the type of waste disposed on site.

Bulger residents living near the facility are highly concerned that the state is considering allowing Max to proceed with a proposal that would allow Max to reclassify its sludge filter cake waste from hazardous to NON-HAZARDOUS. This action would remove protective oversight by the Pennsylvania Department of Environmental Protection (DEP). We object to this delisting petition.

If Max is permitted to delist leachate from the waste of yesteryear, what about the shale gas waste that is being added to the old piles? We are concerned that waste leachate generated from shale gas waste placement will not be correctly handled, tested for radioactivity, or monitored, if Max's sludge filter cake is allowed to be delisted.

Declassifying Max's waste from hazardous to non-hazardous could mischaracterize the leachate created from a cocktail of residual wastes of many industries, including TENORM waste from the Marcellus shale gas industry.

In Max's own words of their petition, "MAX's operations for the treatment of these wastewaters have not substantially changed over the years"

Yet, over the years, the majority of Max's waste has changed. It comes from shale gas exploration and development. The plant has fashioned itself over the years to primarily be a Marcellus shale gas waste landfill. There is mounting evidence that the waste stream created by the oil and gas industry is radioactive in nature and poses a threat to human health.^{1,2}

In fact, in a DEP report on TENORM in 2016, the Department's own words identifies exactly what residents fear..." [filter cake from facilities treating O&G wastes are a potential radiological environmental impact if spilled, and there is also a potential long-term disposal issue. TENORM disposal protocols should be reviewed to ensure the safety of longterm disposal of waste containing TENORM.](#)³

Residents living near Max's long-term disposal site in Bulger have real concerns especially if DEP allows Max to delist a waste stream that has the potential to harm the health and environment of the host communities. We feel that radiological contaminants must be monitored and removed properly from the landfill.

Has Max's operations modified their disposal facility to incorporate necessary TENORM disposal protocols to include thorough testing of waste for radiological contaminants such as radium 226 and 228? If not, why?

The EPA identifies oil and gas waste contaminated with TENORM as not being properly recognized in the past which may have created "environmental contamination in and around production and disposal facilities. **Surface disposal of radioactive sludge... (as practiced in the past) may lead to ground and surface water contamination.**"⁴

Given the mounting evidence that shale gas waste is radioactive and poses a health risk to humans, why would the Environmental Quality Board (EQB) consider setting precedent by allowing a Marcellus shale gas waste landfill to delist any part of its waste stream?

Six months ago, the Wolf administration announced new requirements at all landfills including Max Environmental Services sites to quarterly test leachate for radiological contaminants.

We request that EQB table this delisting decision until at least a year long report of data for radium 226 and 228 from Max landfills is collected meeting the new requirements to test leachate at landfills.

Bulger residents encourage DEP to have a more reliable mechanism to characterize Max's waste and keep track of how much oil and gas waste is going into the landfill.

Regulatory Analysis Form completed by Max Environmental Services

Item #10 – provide proof of "public interest that justifies" requested regulation change

We feel that Max does not make a plausible rationale nor a compelling argument for why their requested change should be granted.

The reason for Max's request to delist the waste is obvious. It is an economic decision. It would be cheaper for Max to dispose of waste which they generate by placing it on site, mixed in with shale gas waste among the other residual wastes.

Roughly 10 households near Max Bulger are still on well water even after receiving a letter in the 1990's from Max (formerly Mill Service) promising public water. Residents are concerned that their drinking water over time could be contaminated by Max's leachate waste. Their well water should be tested for radiological contaminants.

We are concerned that Little Raccoon Run which traverses through Max's property may be contaminated over time as well. The stream should also be monitored for radiological contaminants given the Marcellus shale gas waste that is placed at the landfill.

There would be no benefit to humans or the environment if Max's petition is granted.

Max Environmental Services would be the sole beneficiary of delisting its waste, with the public risking their health, safety and wellness as well as the potential of contaminated well water and a nearby stream.

The cost which Max could save if allowed to delist waste and not have to transport out their hazardous filter cakes equals the cost they pay annually in violations of permits and this is all at a cost to public health.

MAX'S COST SAVED BY DELISTING = MAX'S COST PAID FOR VIOLATIONS = COST TO PUBLIC HEALTH

Item #14 - requests "communication with and solicitation of input from the public, any advisory council/group", etc.

We feel that Max misrepresents their effort to communicate or solicitate input from the public and any advisory council or group including the Solid Waste Advisory Committee (SWAC).

Max's Bulger facility straddles two rural townships in Washington County. The entrance to the landfill is in the host community of Bulger, Smith Township. Little Raccoon Run crosses through the site dividing Smith Township from Robinson Township.

Yet, Max Environmental Services did not inform Smith and Robinson Townships of its petition until residents requested that their township Supervisors contact Max Environmental.

Max states in the Regulatory Analysis Form that on September 10, 2020 SWAC was informed of the petition. SWAC held a meeting.

I attended this WebEx virtual meeting along with others such as the Mountain Watershed Association (MWA). We followed the instructions on submitting comments and requested to speak publicly during the meeting.⁵ I feel this meeting was out of order, as I was only permitted to comment on the Max petition after the SWAC meeting ended and during the Recycling meeting. It should be noted that members of SWAC needed to recuse their vote on Max's petition, given that those SWAC members also have their company's *petition* to delist before the boards.

On November 5, 2020, I requested that SWAC rescind their vote taken on the Max's hazardous waste delisting petition during the SWAC September 10, 2020 meeting for failure to take public comment before voting and adjourning.⁶

SWAC's response to my request which came on November 13, 2020 indicated that they were not required to have public participation at their meetings.⁷ They did not rescind/re-vote.

I am not aware that our comments, or MWA's comments were given to the EQB for its consideration.

On October 14, 2021, residents commented to the EPA during the open public comment period held for Corrective Action under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.⁸

We encouraged EPA's corrective action and informed them of our concerns of Max's inability to abide by state and federal permits as their non-compliance history and many Consent Orders over the years indicate.

Our concerns remain,

- **Max Environmental has a long history of non-compliance with the DEP for a variety of permit violations. Max may have changed their name and ownership over the years. They may have hired former DEP agents to run the show, but they continue to have difficulty being in compliance with state and federal regulations. DEP's Efacts lists issued violations to both Max's Yukon and Bulger facilities as recently as July 2021.**^{9,10}

This rule change will serve to make it easier for this repeat violator to do business in Pennsylvania, but does not serve to protect public health or the environment.

So, why give Max a pass of any kind?

Little Raccoon Run is adjacent to Max in our small, rural town of Bulger, Washington County. This could be impacted by Max's improper discharges of waste. Several of us still rely on well water as our only source of freshwater. **We have serious concerns for our health and wellbeing should any regulating or monitoring of Max's waste be weakened by a decision from this Board.**

- **Given the alarming findings in the recent AG Grand Jury Report,¹¹ with regard to residential water contamination from the natural gas industry, combined with Max company officials last year, claiming that 75% of their accepted wastes comes from the oil and gas industry,** how can people living near a Max facility, trust that their water wells will not be contaminated?
Will this Board require that water wells near the Bulger facility be tested for radiological contaminants prior to allowing this rule-making change as well as continuously to ensure the health and safety of the residents? Will the Board require continuous testing to know that the slurry remains unchanged over time given the incoming waste is largely from Marcellus shale gas waste?

- **Because there is no requirement in Act 13 for the oil and gas industry to provide the public the names of proprietary chemicals used in the fracking process, how can members of this Board be certain that the leachate data contained within the delisting petition is comprehensive and includes all the chemicals including those from fracking?**
- **Again, given that 75% of Max's client list is in the oil and gas industry, we find it puzzling that the Max delisting petition does not provide any data on radioactivity present in the sludge filter cake.**

It is critical that DEP test for radiological contaminants in Max's leachate.

Max's waste should be regulated under both the RCRA and the Atomic Energy Act as a mixed hazardous waste if radioactivity is found. Max's waste should not be delisted.

EQB should deny Max's delisting request or table the decision until radiological testing has occurred as the Wolf Administration instructed in July 2021.

Lastly,

- **We request that the EQB require Max Environmental Services to honor a promise made by way of a letter ^{12,13} in the 1990's to Bulger residents near their facility. Max (formerly Mill Service) was to bring public water to residents ½ mile from the landfill. This amounts to roughly 10 homes in Smith and Robinson Townships combined.**

Max willingly pays to have homes of Yukon residents power washed, why can't they supply water to Bulger residents?¹⁴

Sincerely, Cathy Lodge

Cathy and Chris Lodge

Brenda and Nolan Vance

Amy Shuler

Tom Pascutic

Pam and Charles Dove

Pamela and Raymond Scruppi

Tracey Kampian

Dave and Jan Thomas

Neal and Linda Matchett

- 1) <https://www.post-gazette.com/local/marcellusshale/2013/08/22/Marcellus-Shale-waste-trips-more-radioactivity-alarms-than-other-products-left-at-landfills/stories/201308220367>
- 2) <https://www.nrdc.org/sites/default/files/fracking-mess-regulation-radioactive-waste-report.pdf>
- 3) [Technologically Enhance Naturally Occurring Radioactive Materials \(TENORM\) Study Report \(updated 5/18/2016\)](#)
- 4) <https://www.epa.gov/radiation/tenorm-oil-and-gas-production-wastes#waste>
- 5) Attached: SWAC Lodge comments 9.10.2020
- 6) Attached: SWAC request to rescind vote
- 7) Attached: Response to request to rescind
- 8) Attached: Lodge USEPA RCRA comments
- 9) Attached: DEP NOV Yukon 2021.07
- 10) Attached: DEP NOV Bulger 2021.07
- 11) <https://www.attorneygeneral.gov/wp-content/uploads/2020/06/FINAL-fracking-report-w.responses-with-page-number-V2.pdf>
- 12) Attached: 1990 Mill Service letter water replacement
- 13) Attached: Smith Twp letter re water
- 14) <https://publicintegrity.org/environment/hot-mess-states-struggle-to-deal-with-radioactive-fracking-waste/>