

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: IN RE: PROPOSED CHAPTER 78
ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS
AT OIL AND GAS WELL SITES

* * * * *

BEFORE: WILLIAM FINK, CHAIR, PA EQB
SCOTT PERRY, ESQUIRE, Member, PA DEP
HAYLEY BOOK, Member, PA DEP
LAURA EDINGER, Member, PA DEP
ELIZABETH NOLAN, Member, PA DEP

HEARING: Monday, January 13, 2014
6:00 p.m.

LOCATION: Pennsylvania College of Technology
Klump Academic Center
1 College Avenue
Williamsport, PA 17701

WITNESSES: Mark Szybist, Esquire; John Augustine;
Scott Miller; Martha Donahue; Laurie Barr;
Jim Erb; Ralph Kisberg; Naudia Steinzor;

Reporter: Lindsey Powell
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WITNESSES: Gary Hovis; Glenn Weaver; Mark Cline;
Jack Miller; Al Sever; Deb Nardone;
John Trallo; Barbara Jarmoska; Wendy Lynne
Lee; Sue Laidacker; Teresa McCurdy;
Dan Alters; Commissioner Doug McLinko;
Bryan Hammerstrom; Michael Ochs;
Senator Scott Hutchinson; Alison Rupert

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P R O C E E D I N G S

CHAIR:

Good evening. Can you hear me fine?

AUDIENCE MEMBER:

Yes.

CHAIR:

All right. Thank you. Welcome to the Environmental Quality Board, the public hearing on the Environmental Protection Performance Standards at Oil and Gas Well Sites proposed rulemaking. My name is Bill Fink, I'm a representative of the Pennsylvania Environmental Quality Board. Joining me tonight are Scott Perry with the DEP's Office of Oil and Gas Management, Hayley Book and Laura Edinger for the DEP ---. And Dan Spadoni. Where's Dan --- he's in the back of the room --- community relations coordinator for the Northcentral Region Office.

I officially called this hearing to order at 6:00 p.m. In the event of an emergency, the exits are located in the four corners. And once you get out in the hallway there are signs everywhere. So hopefully we won't need to use them. The purpose of this hearing is to formally accept testimony on the proposed regulations, Environmental Protection

1 Performance Standards at Oil and Gas Well Sites.

2 In addition to this hearing, the EQB
3 will hold five additional hearings on the proposed
4 regulations: January 15th in Meadville; January 16th,
5 Mechanicsburg; January 22nd in Washington; January
6 23rd in Indiana and January 27th in Tunkhannock.

7 Information about the specific locations
8 for these hearings is available on the DEP's website.
9 That website is www.dep.state.pa.us. There are also
10 copies of A Citizen's Guide to DEP Regulations
11 available. Inside this document you'll find
12 descriptions of the environmental regulatory process
13 in Pennsylvania, the Environmental Quality Board's
14 role and how to submit comments and tips for
15 submitting effective comments.

16 The proposed rulemaking, which was
17 adopted by the DEP on August 23rd, 2013, will amend 25
18 PA Code Chapter 78 to update the regulations related
19 to surface activities associated with the development
20 of oil and gas wells. EQB adopted the process,
21 proposed rulemaking with the recommendations for 60
22 day public comment period and at least six public
23 hearings to be held across the State. This represents
24 a heightened level of public participation, as there
25 is usually only 30 day public commenting periods of a

1 typical department rulemakings. Additionally public
2 hearings are held on the basis of public interest for
3 some regulations, and a lot of regulations are not
4 held at all, so this is pretty important.

5 Due to increased public interest in the
6 rulemaking, the EQB has decided to hold seven public
7 hearings to allow ample opportunity for the public to
8 express comments on each proposed rulemaking. The
9 proposed regulatory amendments would address recent
10 statutory changes in Act 13 of 2012 and codify
11 existing practices. This rulemaking will allow the
12 implementation of key provisions in Act 13, including
13 further consideration of impacts to public resources
14 such as parks, wildlife areas, prevention of spills,
15 the management of waste and the restoration of well
16 sites after drilling. The proposed rulemaking also
17 includes standards affecting the construction of
18 gathering lines, temporary pipe lines and include
19 provisions for identifying and monitoring abandoned
20 wells close to well sites.

21 In order to give everyone an equal
22 opportunity to comment on the proposal, the following
23 ground rules will be established. I will first call
24 upon the witnesses who have preregistered to testify
25 at this hearing. After hearing from these witnesses,

1 I will provide other interested parties with the
2 opportunity to testify, as time allows. Testimony
3 will be limited to five minutes for each witness.

4 Organizations are requested to designate
5 one witness to present testimony on its behalf. Each
6 witness is asked to submit three written copies of his
7 or her testimony. If you could put two copies in the
8 box and one beside the box is what we'd like you to do
9 with your written testimony. Please state your name
10 prior to presenting your testimony for the record and
11 your affiliation. The EQB would also appreciate you
12 spelling your names. And terms that are difficult or
13 specific, we'd appreciate if you could spell those
14 terms out, especially names. That would be real
15 helpful, especially last names a lot of times.

16 Because of the proposed --- we receive
17 comments on the proposal, DEP and the DEP staff cannot
18 answer questions about the rulemaking during the
19 duration of the hearing, but may address questions
20 about the commenting process at the end of the
21 hearing. In addition to our ---. In addition or in
22 place of verbal testimony presented today, hearing
23 witnesses, interested persons may also submit written
24 comments on a proposal. Written/verbal comments hold
25 the same weight and are considered to final

1 rulemaking.

2 All the comments provided become part of
3 the official public record. All the comments must be
4 received by the DEP on or before February 12 of 2014.
5 Comments should addressed to the Environmental Quality
6 Board, P.O. Box 8477, Harrisburg, PA, 17105-8477.
7 Comments may also be e-mailed to regcomments@pa.gov or
8 submitted through EQB's regulatory comment system,
9 accessible from the DEP website.

10 All comments received at this hearing
11 will be --- as well as written comments received by
12 February 12th, will be entered as part of the formal
13 record to be considered by the EPA --- EQB and be
14 included in the comment response docket, which will be
15 prepared by the Department and reviewed by the EQB
16 prior to the Board taking final action on the
17 regulation. Anyone interested in receiving a copy of
18 today's transcripts, hearings may contact EQB at
19 (717) 787-4526 for further information.

20 Now, with that said, I'd like to call
21 the first commenter and --- Mark Szybist.

22 ATTORNEY SZYBIST:

23 Thank you. For the record, the name is
24 pronounced Szybist (corrects pronunciation).

25 CHAIR:

1 Szybist (changes pronunciation)?

2 ATTORNEY SZYBIST:

3 Yeah, Mark Szybist is the name. I'm a
4 staff attorney for Citizens of Pennsylvania's Future,
5 PennFuture. I work out of the Wilkes-Barre Office.
6 I'm also on the board of directors of Responsible
7 Drilling Alliance, or RDA, which is based here in
8 Williamsport. I'm speaking tonight on behalf of
9 PennFuture.

10 First, I'd like to thank you all for the
11 opportunity to comment and for all the hard work that
12 obviously went into this rulemaking. The rulemaking
13 runs to 74 pages, so five minutes is not a lot of time
14 to comment, and for that reason PennFuture will be
15 submitting detailed comments on the particular
16 provisions and regulations. Tonight in the four
17 minutes or so that are remaining to me, I'd like to do
18 two things.

19 First, because I'm the first person
20 speaking, I'd like to kind of place this rulemaking in
21 a larger legal context, as much for the benefit as the
22 rest of the people here as for the Board. And then
23 I'd like to offer a couple particular comments.

24 First, I weighed context. As most
25 people in the audience know tonight, on the federal

1 level, oil and gas operators are exempt from important
2 sections of many important federal laws, hydraulic
3 fracturing stemming from the Underground Injection
4 Control Program under the Safe Drinking Water Act.
5 Oil and gas stormwater discharges are exempted from
6 NPDES permit requirements under the Clean Water Act.
7 Most oil and gas wastes are exempt from regulations
8 under the Resource Conservation and Recovery Act. As
9 a result, the DEP has to rely largely on state law to
10 regulate oil and gas drilling operations. And the
11 remaining state law, of course, is Act 13, as has been
12 pointed out.

13 Now as many folks here know tonight, Act
14 13's problematic in many respects. In December, the
15 Pennsylvania Supreme Court struck down important
16 sections of the law as unconstitutional. But there
17 are other laws, too, the DEP uses to regulate oil and
18 gas operations, including the Pennsylvania Clean
19 Streams Law as well as the Waste Management Act. And
20 together these and other laws give the DEP significant
21 power to protect public health and the environment and
22 to make some of the bad features of Act 13 less bad.

23 One example is bonding. Act 13 sets
24 particular requirements for bonds for oil and gas well
25 operators. The DEP, EQB cannot provide regulation

1 increasing the amounts of those bonds, but the DEP can
2 establish processes to make sure that well sites are
3 not released from bonds until they are adequately
4 restored.

5 Now, in many respects the DEP is to be
6 commended for the proposed regulations in this ruling.
7 For example, PennFuture supports proposed water
8 quality requirements in Section 78.51 concerning the
9 replacement of water supplies affected by gas
10 drilling. We also support the DEP's decision to
11 promulgate regulations, for the first time, for
12 above-ground pipelines carrying gas or wastewater, for
13 fresh water components, for horizontal directional
14 drilling for oil and gas pipelines and for water
15 rights. However, there are many particular problems
16 with the regulations.

17 I mentioned bonding and that's a
18 problem. Subchapter G of the proposed regulations
19 does not ensure that well sites will be adequately
20 restored before they're released from the bond. As
21 far as we can tell, the release is determined on
22 providing a certificate of plugging only. Release
23 from liability should also be conditioned on a
24 demonstration that the well site, or impounded site,
25 is adequately restored or the last well has been

1 plugged.

2 I'll speak on the more particular needs
3 of restoration. Act 13 requires two stages of
4 restoration of well sites ---. By the way, would
5 somebody let me know when my time is almost going to
6 be done?

7 CHAIR:

8 We'll let you know when there's a minute
9 left.

10 ATTORNEY SZYBIST:

11 Okay. Thank you. Act 13 requires two
12 stages of restoration for well sites. On one hand,
13 Section 3216(c) requires partial restoration at the
14 conclusion of drilling fracturing operations. Section
15 3216(d) requires final restoration after the last well
16 on the site has been plugged. The DEP is proposing to
17 implement these sections in proposed regulation 78.65,
18 which requires that a well site can be considered
19 restored if it's returned to its approximate original
20 contours, including preconstruction contours, and can
21 support the original land uses to the extent
22 practical. Similar language appears in the DEP's
23 proposed regulations ---

24 CHAIR:

25 One minute.

1 ATTORNEY SZYBIST:

2 --- thank you --- freshwater
3 impoundments and centralized wastewater impoundments,
4 which also contain restoration requirements. A return
5 to original conditions, contours and use is a
6 commendable goal for the restoration of well sites,
7 both post-drilling and post-plugging and impoundment
8 sites.

9 However, the DEP's general restoration
10 standards are now practically unenforceable because
11 they fail to require environmental baseline site
12 assessments. They fail to require site-specific
13 standards and criteria for restoration. They fail to
14 require environmental professionals to sign off on
15 state restorations. And they establish no process by
16 the DEP defining approved or disapproved restoration.
17 The DEP should require site-specific baseline
18 assessments and restoration plans for all well and
19 impoundment sites, should require professional
20 certification that restoration goals have been met and
21 should require DEP approval before a well site can be
22 considered restored.

23 One final thing, PennFuture was among
24 several groups that requested that the EQB extend the
25 commentary for these regulations and include hearings

1 in places like Bradford County and Butler County,
2 which have a large development but currently have no
3 hearings. We repeat that comment here. Thank you
4 very much.

5 CHAIR:

6 Thank you. Did you leave your comments
7 there?

8 ATTORNEY SZYBIST:

9 I just have the notes. We're going to
10 be submitting detailed written comments, ---

11 CHAIR:

12 Thank you.

13 ATTORNEY SZYBIST:

14 --- so we can provide something in
15 writing.

16 CHAIR:

17 Thank you. John Augustine.

18 MR. AUGUSTINE:

19 Good evening. I'm John Augustine. I'm
20 the Community Outreach Manager in Northeastern
21 Pennsylvania for the Marcellus Shale Coalition. We're
22 an association working with regional partners since
23 2008 and currently comprised of nearly 300
24 exploration, production, midstream and supply-chain
25 companies committed to developing clean-burning

1 natural gas resources. In 2012, our members were
2 responsible for 96 percent of the natural gas produced
3 here in Pennsylvania.

4 Responsible shale development has been
5 among the most transformative turning points in our
6 Commonwealth's history. And, indeed, natural gas
7 development can serve to enhance and improve our
8 natural resources.

9 Significant investments have been made
10 across the Commonwealth by our industry to provide
11 needed habitat and restore lands and watersheds.
12 Partnerships with conservation groups are examples of
13 our industry's willingness and commitment to
14 voluntarily protect and preserve our natural
15 resources. And our industry has raised the bar for
16 shale development for the practices designed
17 specifically to lessen the impact on surface
18 disturbance and provide strategies to improve habitat
19 and landscapes.

20 The benefits do not end there. Take,
21 for example, the fact that the Commonwealth accounted
22 for 18 percent of the nation's natural gas production
23 in recent months according to the EIA. This has led
24 to more revenue. The natural gas industry has paid
25 over \$1.8 billion in taxes since 2008 and \$406 million

1 over two years to communities, counties and the state
2 in impact fees. Through jobs. Over 200,000 new hires
3 in Pennsylvania are supported by industries associated
4 with shale development. Less costly heating fuel.
5 According to the Associated Press, about two-thirds of
6 Pennsylvanians who heat their homes this winter will
7 pay the lowest prices in decades. And cleaner air.
8 The U.S. EPA confirmed in October 2013 that carbon
9 emissions are at their lowest since 1994, thanks to
10 increased use of natural gas.

11 These benefits, unfortunately, are at
12 risk. Pennsylvania has a complex regulatory
13 environment and an uncertain fiscal climate, which has
14 resulted in the Commonwealth falling behind. And
15 there's even less certainty in the wake of a decision
16 of the Pennsylvania Supreme Court to reject portions
17 of Act 13 of 2012 that established a statewide
18 standard for oil and gas development. Moreover, a
19 plurality of the Court ruled to roll back many of the
20 environmental protections under Act 13, including more
21 stringent well setbacks. Nevertheless our industry,
22 at the Governor's request, will voluntarily comply
23 with these setbacks.

24 Other regulatory provisions spurred by
25 Act 13, and the Chapter 78 revisions that follow,

1 added to the Commonwealth's strong regulatory
2 framework, which the State Review of Oil & Natural Gas
3 Environmental Regulations, or STRONGER, a national
4 nonprofit organization dedicated to assessing states'
5 regulations, referred to last fall as well-managed,
6 professional and meeting its program objectives. And
7 for that we applaud both the General Assembly and the
8 Pennsylvania DEP.

9 At the same time, many of DEP's proposed
10 regulatory changes to Chapter 78 stretched beyond
11 legislative intent and will undercut the
12 Commonwealth's ability to compete for capital while
13 providing little or no additional benefit with regard
14 to safe and secure oil and gas development. These
15 include: Establishment of special concern species,
16 which raises questions about how any such list is
17 generated, what criteria is used to determine whether
18 there's an impact to these species and how DEP
19 proposes to mitigate impacts. Treatment of abandoned
20 wells, which would lead to open-ended obligations for
21 identifying these wells, and the better than standard,
22 which requires the oil and gas industry to upgrade
23 private water supplies, at industry expense, beyond
24 that which existed pre-drilling despite the Technical
25 Advisory Board's recommendations otherwise.

1 The Marcellus Shale Coalition will
2 provide detailed written comments on the Department's
3 proposed regulations in the weeks to come. Our
4 overarching message, though, is straightforward,
5 instead of undermining our strong, consistent and
6 predictable regulatory framework, we should work
7 cooperatively to revise these proposals to maintain a
8 balance between strong environmental protection and a
9 competitive economic climate. It does not need to be
10 a false choice between the two and we urge the DEP
11 to ---

12 CHAIR:

13 One minute.

14 MR. AUGUSTINE:

15 --- continue working with our industry
16 and stakeholders across the Commonwealth on a
17 reasonable, competitive path forward. Thank you for
18 the opportunity to provide this testimony.

19 CHAIR:

20 Thank you. Scott Miller.

21 MR. MILLER:

22 Good evening. My name is Scott Miller.
23 I'm a Senior Community Relations Representative for
24 WPX Energy in the Marcellus Basin. Our offices in the
25 local area are in Nicholson, Pennsylvania in Wyoming

1 County. WPX Energy is one of the largest producers in
2 the United States and is active in many of the
3 nation's basins. We've been in the Marcellus basin
4 since 2009 and to date have drilled 100 wells in the
5 Commonwealth. Individually and in concert with trade
6 associations, we have engaged with the DEP, DCNR, TAB
7 and all of the environmental working groups involved
8 in this labor-intensive process. Thank you for
9 allowing WPX to comment on items WPX believes are
10 important.

11 Regarding the Chapter 78, Section 15
12 regulations. Section 3215(e) of Act 13 requires the
13 Department to develop regulatory criteria that protect
14 public resources while ensuring optimal oil and gas
15 resource development and respecting oil and gas owner
16 property rights. However, the proposed regulations in
17 Chapter 78, Section 15 do not adequately implement or
18 address these requirements. The regulatory criteria
19 for conditioning a permit has not been provided and
20 the draft regulations only frame the Department's
21 authority to implement the conditions. If industry is
22 required to avoid or mitigate potential impacts to
23 these resources, the criteria used to assess impacts
24 must be established and provided.

25 Regarding the issue of water

1 replacement. The main concern that we have is that
2 DEP is proposing the industry replace a water supply
3 to Safe Drinking Water Act standards or better, even
4 when the results of pre-drill testing of water supply
5 showed the water did not meet these standards in the
6 first place. There are many challenges in the
7 Commonwealth with regards to private water wells,
8 especially the lack of construction standards. Our
9 experience with pre-drill testing, and several studies
10 independent of natural gas development, demonstrate
11 that a large number of private wells are poorly
12 constructed and may contain iron, manganese, coliform
13 and methane, and many do not meet the criteria of the
14 Safe Drinking Water Act.

15 Until such time as the Pennsylvania
16 legislature passes legislation to require property
17 owners to properly construct private water wells, and
18 ensure they meet the Safe Drinking Water Act, it is
19 unreasonable for the DEP to require the industry to
20 restore a private water supply to better standards
21 than what originally existed. We're requesting that
22 if the operator impacts a water supply, the DEP
23 requires replacing the water supply to the pre-drill
24 test results.

25 Regarding wastewater management at a

1 well site. The natural gas industry has been
2 recycling and reusing water and minimizing fresh water
3 use for quite some time now. Unfortunately, the new
4 regulations would force operators to rethink this
5 option. In order to increase the amount of water
6 being reused and recycled in the Commonwealth, the
7 regulations need to provide an avenue for the
8 operator, either through permits or DEP approvals, to
9 document, move and reuse water from one site to
10 another. In addition, the Oil and Gas Division must
11 have its own regulations concerning water management
12 and not be conflicted and confused with those of the
13 Waste Management Division.

14 Regarding orphaned and abandoned wells.
15 Identifying active, inactive, plugged, abandoned and
16 orphaned wells prior to the hydraulic fracturing may
17 be something that the industry can work with the DEP,
18 but not to the level of the proposed regulations ---
19 as previously stated by Mr. Augustine --- as that may
20 lead to non-ending obligations on behalf of the
21 industry for wells that are not ours.

22 It's well-known that the State Review of
23 Oil & Natural Gas Environmental Regulations, also
24 known as STRONGER, a national nonprofit organization
25 charged with assessing states' oil and gas

1 regulations, reviewed Pennsylvania's oil and gas
2 regulatory programming in May 2013 at DEP's request.

3 CHAIR:

4 One minute.

5 MR. MILLER:

6 STRONGER released its report in September
7 2013 and found that Pennsylvania's program is overall
8 well-managed, professional and meeting its program
9 objectives. STRONGER lauded DEP on many of its
10 initiatives and regulations. WPX asked this Board to
11 recognize STRONGER's assessment and credits the DEP
12 for employing STRONGER to review our environmental
13 regulations in light of the natural gas industry's
14 operations and economic growth for all.

15 WPX appreciates and respects the
16 communities in which we operate and we're dedicated to
17 protecting Pennsylvania's environment. We thank you
18 for your efforts and desire to continue to seek better
19 and more efficient ways to regulate our industry and
20 safeguard Pennsylvania's environment.

21 CHAIR:

22 Thank you. Martha Donahue.

23 MS. DONAHUE:

24 Thank you. I am Martha Donahue,
25 speaking for the League of Women Voters of

1 Pennsylvania. The League thanks you for this
2 opportunity to comment and our testimony tonight will
3 focus on the Environmental Protection Performance
4 Standards in the proposed regulations.

5 Under our Constitution, we have a right
6 to clean air, pure water and the preservation of
7 natural resources. The Commonwealth serves as a
8 trustee to conserve and maintain these assets for
9 generations yet to come. Based on our statewide
10 study, consensus and resulting position, the League
11 supports the maximum protection of public health and
12 the environment in all aspects of Marcellus Shale
13 natural gas operations by requiring use of best
14 practice and adopting strong, comprehensive regulation
15 with adequate staffing to assure enforcement.

16 The control and storage of production
17 fluids is vital, given the toxicity and unknown nature
18 of production fluids. The prohibition against the use
19 of open-top structures to store brine and other
20 produced fluids during and after the operation of the
21 well is of utmost importance. The League strongly
22 advocates that open-top structures be prohibited for
23 the containment of all produced fluids, flowback,
24 volatile organics and other wastes. This should be
25 without exception. No pit should be allowed, even

1 under the Clean Streams Law, except for a very limited
2 time, no more than 30 days, during an emergency. All
3 liners and waste products must be disposed using best
4 practice at off site locations certified for hazardous
5 materials. In addition to the secondary containment
6 and additional safeguards around tanks to prevent
7 unauthorized access, all tanks must be installed above
8 ground for easy access and monitoring. Supplemental
9 precautions must be added to avoid consequences, like
10 those from the January 2014 chemical tank leak in West
11 Virginia.

12 Online processing is ---. I'm sorry.
13 Onsite processing is unacceptable. Processes, such as
14 aerating fluids, should not be done at all in an
15 open-storage unit, pit or other unenclosed structure
16 since it has the potential of adverse health impact on
17 humans, animals and possibly crops growing nearby.
18 Methods of processing drill cuttings here and
19 elsewhere in the document must address impacts on air,
20 land and water and mandate best practice techniques.
21 Because of federal loopholes that categorize oil and
22 gas wastes as nonhazardous, the Solid Waste Management
23 Act fails to provide adequate protection.

24 Further, the Department cannot assess
25 the risks involved due to the unknown results of

1 combining injected solutions with heavy metals,
2 radioactive materials and other substances from deep
3 below the earth. The League supports full disclosure
4 of pollution data.

5 CHAIR:

6 One minute.

7 MS. DONAHUE:

8 Given expanding number of wells, the
9 magnitude of unknown products and the numerous
10 processing techniques, more staff must be given to
11 monitor and enforce all the proposed rules.

12 Freshwater impoundments must not be used
13 for the storage of mine-influenced waste. If used,
14 this mine drainage, or mine-polluting water, must be
15 stored in closed tanks. Operators should be required
16 to pretest these hazardous fluids to determine their
17 composition and radioactivity. Tracers should be
18 added so that liability can be assigned when
19 contamination occurs.

20 In addition to pollution hazards,
21 impoundments result in significant compaction of the
22 soil due to the weight of stored liquids. The
23 embankments, as specified, are problematic in the
24 draining of streams to downstream locations.

25 CHAIR:

1 Time, ma'am.

2 MS. DONAHUE:

3 Thank you.

4 CHAIR:

5 Thank you. Laura Barr. Laurie Barr.

6 MS. BARR:

7 Hi, my name is Laurie Barr and I'm here
8 on behalf of Save Our Streams PA. And I'm here
9 tonight to talk about a family who lives in Duke
10 Center, McKean County, Pennsylvania. The Thomases,
11 when they look out their windows, they see abandoned
12 wells, oil tanks. A large number of these wells are
13 leaking oil and natural gas. There are puddles of
14 oil, acres of contaminated soil, pump-jacks and
15 abandoned wells, brine pits, plastic and metal
16 pipelines, et cetera.

17 The Thomases recently discovered another
18 abandoned well on their property, bringing the number
19 of found wells up to 32. Some of the wells have had
20 their wellheads removed and their entire related
21 infrastructure removed. In areas where the vegetation
22 is heavy, locating the wells has been very difficult.
23 Sometimes there's a light sheen of oil going
24 downstream. In times of rain and flood events, the
25 sheen gets heavier.

1 The situation recently took a turn for
2 the worse when a large oil storage tank filled with
3 oil failed, sending its contents downstream. Another
4 well, one of the 32 that had not leaked in the past,
5 started to drip oil the other day. Thirteen (13) of
6 the wells don't have API numbers. None of the 32
7 wells are identified on DEP's online map, even after
8 many reports to the DEP officials.

9 In addition to the DEP, Representative
10 Martin Causer, many individuals and officials from
11 local on up to the Governor's office, organizations
12 including the McKean County Conservation District, the
13 Fish and Boat Commission, the National Response
14 Center, the EPA and many others have been contacted
15 about this.

16 An administrative order was issued
17 several months ago by the DEP to the administrator of
18 the deceased operator's estate. It doesn't seem worth
19 the paper it's printed on.

20 None of the 19 wells that are identified
21 in the order has made it to the DEP's online map
22 either.

23 Despite e-mails, phone calls and many
24 pleas for help, oil from these wells continue to enter
25 the watershed many Pennsylvanians and New York

1 citizens rely upon.

2 Currently, operators are required to
3 post bonds equal to only small fractions of the actual
4 cost of plugging. This increases the likelihood of
5 improper well abandonment.

6 Regulations which require operators to
7 post bonds equal to the approximate cost of plugging
8 their wells would immediately reduce these risk
9 associated with improper well abandonment.

10 Some operators have accrued large
11 numbers of inactive wells. In some cases, these
12 represent a great percentage of their well
13 inventories.

14 Limiting the number of inactive wells
15 and also the percentage of inactive wells operators
16 are permitted to accrue in their inventories by
17 setting regulatory limits will minimize the risk of
18 inheritance these wells represent to surface owners,
19 stakeholders and, more importantly, the Commonwealth.

20 Requiring operators through regulations
21 to plug orphaned, abandoned and inactive wells in
22 their inventories before authorizing new permits to
23 drill and operate wells will encourage operators to
24 plug their depleted wells and would also provide much
25 needed protection for the environment, surface owners

1 and other stakeholders.

2 Allowing operators who have accrued
3 large numbers of depleted, inactive wells, that may
4 never be commercially viable to apply for Act 13
5 impact funds to be used to plug depleted wells would
6 go a long way to addressing the risk while providing
7 employment opportunities. Allowing surface owners to
8 apply for Act 13 impact funds to be used to plug
9 legacy wells on their property would enable ---

10 CHAIR:

11 One minute.

12 MS. BARR:

13 --- would enable citizens to take a
14 proactive role in reducing contamination and the
15 Commonwealth's greenhouse gas emissions.

16 Conservation districts and other
17 organizations that have refused to assist or have
18 chosen not to respond to oil and gas related
19 contamination incidents, should not be eligible to
20 receive Act 13 impact funds. This would encourage
21 conservation districts and other organizations to take
22 a proactive role in remediating oil and gas related
23 impacts on the Commonwealth's natural resources.

24 This was one of the intended uses of Act
25 13. The organizations that would use Act 13 funds for

1 pet projects while turning their backs on the needed
2 remediation is an insult to the spirit of Act 13.
3 Thank you for the opportunity.

4 CHAIR:

5 Thank you. Jim Erb.

6 MR. ERB:

7 Good evening, my name is James Erb. I'm
8 speaking on behalf of the Associated Petroleum
9 Industries of Pennsylvania, API-PA. API-PA is a
10 division of the American Petroleum Institute, or API,
11 a national trade association that represents all
12 segments of America's oil and natural gas industry.
13 Its more than 580 members provide most of the nation's
14 energy. API is also a standard-setting organization.
15 For 89 years API has led the development of petroleum
16 and petrochemical equipment and operating standards.
17 These standards represent the industry's collective
18 wisdom on everything from drill bits to environmental
19 protection. API maintains more than 650 standards and
20 recommended practices. Many of these are incorporated
21 into state and federal requirements.

22 API-PA strongly supports environmental
23 safeguards and stewardship and commends DEP on their
24 regulatory oversight program. However, we do have
25 concerns with several provisions contained in the

1 proposed rulemaking that we plan to outline in detail
2 in our formal written comments. In the interest of
3 time, I will highlight some general comments we have
4 and provide comments that address temporary supporting
5 impoundments, freshwater impoundments and centralized
6 waste storage impoundments.

7 General comments. We suggested language
8 be added to clarify the effective date of the new
9 requirements and that wells constructed prior to that
10 be grandfathered in. There are a number of
11 definitions and sections of text that refer the reader
12 to other statutes or regulations. This causes the
13 reader to search elsewhere to find other statutes or
14 regulations and review it before being able to
15 understand Chapter 78. This is not user-friendly and
16 does not facilitate regulatory understanding or
17 compliance. It would be better to state, as defined
18 in Pa. Code whatever section and repeat the definition
19 or the requirement.

20 Also, a number of sections are very
21 detailed and descriptive. We suggest these sections
22 be given some flexibility to allow for the use of
23 alternative methods, as approved by the Department.

24 Temporary storage impoundments, Section
25 78.56(a)(1) should have language that state, or

1 impoundments which are used or anticipated to be
2 produced.

3 78.62(a)(2) should have language added
4 to clarify the designed approval process for modular,
5 aboveground containment structures so that once they
6 have been approved by DEP subsequent assembly of the
7 approved structure at another site does not require an
8 approval.

9 Section 78.56 (a)(9)(iv) should have
10 language added to allow for visual inspection of a
11 liner as a means to satisfy the liner integrity
12 requirement.

13 Section 78.56 (a)(14) should have
14 language added to allow for the reuse of storage
15 liquids if the liner's compromised, instead of
16 requiring the contents of the pit, tank or structure
17 to be managed and disposed as a residual waste.

18 Freshwater impoundments. Section
19 78.59b(g)(1)(i) includes the requirement to
20 demonstrate that the impoundment will prevent air
21 pollution. It is suggested that since air pollution
22 control falls within the jurisdiction of another
23 program that this reference to air pollution be
24 deleted.

25 Centralized impoundments.

1 CHAIR:

2 One minute.

3 MR. ERB:

4 Section 78.59c(e)(2)(iv) requires an
5 authorized representative of the liner manufacturer to
6 supervise installation of the liner and then requires
7 a Department-approved quality assurance and quality
8 control plan to be implemented during construction.
9 This is overkill. It would be more reasonable to
10 require either the manufacturer supervision or a
11 Department-approved plan, but not both.

12 The same comment applies to
13 78.59c(h)(4)(vi).

14 78.59c(h)(6)(iv) requires monitoring
15 wells to be filter-packed with chemically-inert
16 materials. It is recommended that the term
17 filter-packed be defined or more descriptive text
18 should be used.

19 78.59c(h)(4)(i) should be written more
20 clearly. First, it requires monitoring well
21 casings ---.

22 CHAIR:

23 Time.

24 MR. ERB:

25 Thank you.

1 CHAIR:

2 Ralph Kisberg.

3 MR. KISBERG:

4 Thank you for the opportunity to address
5 the Board. My name is Ralph Kisberg of Williamsport.
6 In preparation I attended both days of the Technical
7 Assistance Board meetings in State College back in
8 August. There I listened to and talked with a number
9 of small conventional drillers. They were upset about
10 the costs of some of the proposed amendments. I was
11 empathetic at first, but in studying the Regulatory
12 Analysis Form completed by the DEP, it is clear that
13 the estimated figures are not unfair or uncompetitive
14 expenses, given the volume and value of the
15 hydrocarbons produced in the Commonwealth currently
16 and for the foreseeable future. I respectfully
17 suggest you study that well-crafted form thoroughly.

18 Yes, some small conventional well
19 operators will go out of business. But if they cannot
20 afford to comply with the very limited number of
21 proposed regulations DEP has deemed applicable to
22 them, the harsh reality is that their resource
23 production in the current era is insignificant,
24 whereas their industry's history and legacy of
25 environmental degradation, unfortunately, is not. As

1 the DEP phrased it, the cost of reasonable
2 environmental protective measures are relatively small
3 compared to the costs associated with cleaning up a
4 release of pollutional substance into the environment
5 and restoring the impacted area.

6 As far as the unconventional operators
7 go, you've heard from three representatives how they
8 feel about these regulations and you're going to hear
9 a lot more.

10 Let's take Mr. Augustine's testimony.
11 He talked about 200,000 new jobs created by his
12 industry. This figure is such a manipulation of
13 statistics that it is nothing but an outright lie.
14 And I urge you to look at the work of Dr. Timothy
15 Kelsey, Penn State workforce development, tells if we
16 put the payday budget and the policy center and get a
17 realistic figure of just how many direct jobs the
18 industry creates, it's about 22,000, I believe. And
19 that includes the unconventional well --- the
20 conventional well industry also.

21 This lie came about from an industry
22 page on a study that was called the emerging giant
23 that was done by two Penn State professors back in the
24 very beginning of this. And it has been a very
25 damaging document, not just in the Commonwealth but

1 nationwide and even around the world. We have to get
2 this lie wiped out. These people --- I mean, it is
3 unbelievable.

4 You heard today ---. Let's talk about
5 Section 78.51(2) regarding the restoration and
6 replacement of contaminated water supplies. Now that
7 is a proposed standard all Pennsylvanians can be proud
8 of and support. And those that are paying attention
9 appreciate the DEP. I'll quote it, the quality of a
10 restored or replaced water supply will be deemed
11 adequate if it means the standard established under
12 the Pennsylvania Safe Drinking Water Act or as
13 comparable to the quality of the water supply before
14 it was affected by the operator, if that water supply
15 exceeded those standards. We hope you can hold firm
16 to those standards in the onslaught that you're going
17 get from the industry against it.

18 Laurie Barr did a good job talking about
19 Section 78.52a, abandoned/orphaned well
20 identification. That's an example of a very good
21 start on rules to address a problem that we've seen in
22 this area twice actually. In Forks Township in
23 Sullivan County, a 7,000 foot abandoned well from the
24 1950s had to be plugged in 2012 after DEP detected
25 combustible gas at the surface of the ground above the

1 BJ Broschart well and in a number of homes and a
2 stream in the vicinity. I won't go into ---. Its
3 details are in my testimony.

4 In Section 78.59c(g)(2) ---

5 CHAIR:

6 One minute.

7 MR. KISBERG:

8 --- the draft regulations appear to
9 require one monitoring well hydraulically upgradient
10 from a centralized impoundment and a minimum of three
11 monitoring wells downgradient. The catastrophic
12 failure of the impoundment liner, on the Phoenix
13 Resources property on the landfill in Duncan Township
14 in Tioga County, provides a fine example of why ---
15 let's just say for me --- liners is ridiculous.
16 Monitoring wells are necessary and can provide alerts
17 to toxic infiltration of groundwater from underneath
18 liners. These liners do leak and the 75 to 100 holes
19 discovered upon draining of the liner on the Phoenix
20 Pad S impoundment also shows that, due to the
21 allowable definition of freshwater to contain
22 pollutonal substances, these ponds built to lesser
23 construction standards, should, too, require the
24 minimum monitoring wells described for the higher
25 standard of construction centralized impoundments.

1 Thank you.

2 CHAIR:

3 Time. Thank you. Naudia Steinzor.

4 MS. STEINZOR:

5 Good evening. Thank you very much for
6 having me. I'm the Eastern Program Coordinator of
7 Earthworks, which is a national nonprofit founded in
8 1988 to protect communities and the environment from
9 the negative impacts of mineral development. I
10 commend the EQB and the DEP for this process.

11 We have been part of the growing group
12 of organizations who asked them to call for an
13 extended comment period and look forward to the
14 response of the DEP on that.

15 Five years into Pennsylvania's shale gas
16 boom, it is high time for a full overall Chapter 78.
17 Both field experience and emerging science made it
18 clear that gas development poses hazards to health and
19 air and water quality by virtue of the products used,
20 substances produced and operative practices. These
21 realities are faced every day by communities statewide
22 and nationwide and should persuade the Board and the
23 DEP to adopt the most protective regulations possible.

24 And we do commend you on your efforts
25 around pre-drill testing and replacement water as well

1 as orphaned and abandoned wells and other aspects. We
2 will be submitting those technical comments. So
3 tonight I'll just focus on some aspects of the waste
4 issues in particular, with which we're very concerned.

5 The challenge that operators face in
6 dealing with growing volumes of solid and liquid waste
7 should not be an excuse to allow dangerous substances
8 to harm health and the environment. It can be very
9 inconvenient and difficult to deal with waste, but
10 that's not the issue at hand.

11 Others have mentioned the federal
12 loopholes, to which the oil and gas industry alone
13 enjoys, including a special exemption to the U.S.
14 Resources Conservation and Recovery Act regulating
15 hazardous materials. Since Pennsylvania's not looking
16 to follow RCRA standards, which it could on its own if
17 it chose to, at the very least you can propose Chapter
18 78 regulations should address risks posed by waste,
19 which the current regulations, as proposed, do not.

20 We advocate strongly for production pits
21 and any open impoundment tanks and modular structures,
22 which should be prohibited if they're at all open, and
23 those who use the temporary containment of regulated
24 substances. Only a covered, closed-lid system should
25 be allowed.

1 Freshwater must be clearly defined ---
2 others alluded to this --- for the purposes of
3 regulation. Otherwise operators, which they're
4 already trying to do and pushing legislation to do so,
5 will improperly use processes using substances, such
6 as effluent mining water and flowback.

7 The requirement that pits and
8 impoundments be only 20 inches above the seasonal high
9 groundwater table gambles with local quality --- water
10 quality in the state and many shallow groundwater
11 sources. If pits are allowed --- which we obviously
12 said they should not be, but if they are to continue
13 to be allowed, the separation distance must be
14 expanded. And I'd like to draw your attention to
15 looking at other states' standards, such as five feet
16 in Louisiana and four feet in Michigan.

17 The burial and land application of drill
18 cuttings should be prohibited. Different regulations
19 have been proposed for cuttings above and below the
20 KCC, but both pipes contain the same chemicals, and as
21 demonstrated by ones continually going off of
22 Pennsylvania landfills, potential radioactivity. The
23 burial production using residual waste in pits and
24 storage tanks should be prohibited. This is an
25 out-of-sight, out-of-mind practice that made it really

1 convenient for operators and made the permitting and
2 oversight process easier for the DEP. But waste
3 burial is nothing more than a toxic legacy, which the
4 public will have to deal with in the future while
5 operators get to literally walk away from it. We
6 strongly urge the DEP to not issue waivers to waste
7 disposal regulations.

8 CHAIR:

9 One minute.

10 MS. STEINZOR:

11 There is no evidence the DEP actually
12 checks whether these alternative waste management
13 practices are equivalent to Chapter 78 regulations or
14 in practice, again, anything that could be used for
15 operators.

16 And in closing, I'll just say that
17 obviously accidents, spills and equipment failures
18 occurred even during routine operations and in
19 properly-permitted facilities, yet the vast majority
20 of active wells continue to go uninspected, operators
21 violating the same rules at different locations year
22 after year. The weight of enforcement actions has
23 actually gone down for violation. It is tragically
24 clear that, at current funding and staffing levels,
25 DEP is not able to keep pace with an expansion of

1 drilling facilities. And that's no slack at the DEP,
2 it's about the resources that fund it.

3 So the Board and the DEP have a lot of
4 work ahead to develop and adopt strong regulations.
5 So we'd hope that in doing so you also look at what it
6 takes to ensure that those regulations are followed.
7 Thank you very much for your time and for this
8 process.

9 CHAIR:

10 Thank you. Gary Hovis.

11 MR. HOVIS:

12 Good evening. My name is Gary Hovis.
13 I'm the president of the PIPP organization, which is
14 an acronym for the Pennsylvania Independent Petroleum
15 Producers. Thank you for this opportunity to present
16 the following remarks from the perspective of the
17 Shale Conventional Oil & Gas Industry in Pennsylvania.
18 We extend that welcome to other industry
19 representatives here this evening, sister oil and gas
20 organizations, local legislators and all those in
21 attendance.

22 Our organization was founded in 1985, 29
23 years ago, in response, at that time, to the state's
24 legislative Act 223. We've been working with the
25 industry during that time. Our current membership is

1 just over 300 members today. at one time it was a lot
2 larger, when we had a lot more people in the field.

3 Beginning several years ago, a new
4 energy formation was discovered deep below the surface
5 in Pennsylvania, extending across the state, from the
6 Northeast to the Southwest. An exploration frenzy
7 began and after several years of development the state
8 legislature realized it needed to develop regulations,
9 new regulations, to cover the exploration, development
10 and production of this new found source of energy from
11 the Marcellus and Utica Shales.

12 This exploration, drilling, stimulation
13 and development was much more involved than that of
14 the conventional vertical stripper wells already
15 existing across Central and Western Pennsylvania.
16 Consequently, new procedures and regulations were
17 generated to cover these new nonconventional wells,
18 and that effort became law, Act 13, in February of
19 2012.

20 Other than the bonding requirements, all
21 the new regulations under Act 13 designed to control
22 this new breed of unconventional wells, essentially
23 wells with horizontal legs, is being considered to
24 also apply to the traditional stripper wells in
25 Pennsylvania. This legacy class of conventional

1 shallow wells is an entirely new animal than the
2 unconventional well this Act 13 set out to regulate.

3 Here are some of the major differences.
4 Shallow wells can be drilled and stimulated in a
5 matter of days; require a fraction of the surface area
6 disturbance; require less than a fraction of a percent
7 of the frack water. Uses minimal truck traffic to the
8 well site of that required by the Marcellus-type well.
9 And really doesn't require stoned and topped access
10 roads due to excessive truck traffic. And well sites
11 can be restored in a matter of days.

12 Let's look now, specifically, to a
13 couple of these points. Item 2, surface area
14 disturbance. A typical well bed, or shallow well, is
15 somewhere in the range of 50 --- 50 feet by 50 feet,
16 maybe the extreme case might be a hundred by a
17 hundred, or somewhere around 2,500 square feet.
18 Typical Marcellus well sites are five acres or about
19 200,000 square feet or can sometimes be even greater.
20 And that doesn't include space required for storing
21 frack water, big difference.

22 Item three, the typical well
23 requirements for fracking a shallow well is around
24 25,000 gallons. The minimum water requirement for
25 a ---

1 CHAIR:

2 One minute.

3 MR. HOVIS:

4 --- Marcellus well is 4,000,000 gallons,
5 more than 160 times that of a shallow well. And the
6 shallow well can be fracked in less than a day, where
7 the nonconventional might take weeks or even months.

8 One of the most onerous threats to the
9 shallow stripper well industry today is the proposed
10 change of Chapter 78 regulations under the new Act 13.
11 These regulations, as we well know, are now out for
12 comment.

13 We recommend separate regulations for
14 the two very different types of wells. The new
15 regulations can apply to the unconventional and the
16 previous Chapter 78 regulations can apply to the
17 conventional oil and gas wells that have been produced
18 for, in some cases, over a hundred years, going back
19 to the first well drilling in Titusville,
20 Pennsylvania. If this doesn't happen, it could sign
21 the death warrant to conventional shale, oil and gas
22 industry.

23 CHAIR:

24 Time.

25 MR. HOVIS:

1 Thank you.

2 CHAIR:

3 Thank you. Glenn Weaver.

4 MR. WEAVER:

5 My name is Glenn Weaver. I'm a fourth
6 generation oil producer. My son, who is in business
7 with me, is a fifth generation. These Chapter 78
8 regulations, if enacted as written, will be the end of
9 the shallow oil and gas industry in Pennsylvania.

10 They were written to regulate the
11 Marcellus and Utica drilling boom that has taken place
12 in PA in the last four-and-a-half years. The cost of
13 an average shallow well in Northwestern Pennsylvania
14 is one percent of the cost of a Marcellus well.

15 The permit application has become a
16 nightmare. The application for a permit has gone from
17 two pages a couple years ago to 17. The notification
18 of all adjoining townships or municipalities bordering
19 the township or municipalities who are applying for a
20 permit is ridiculous for a shallow well.

21 The truck traffic for an unconventional
22 well is terrific. For instance, a frack job on an
23 unconventional well will be hundreds of trucks for
24 water, sand and so on. One frack job ---. On a frack
25 job there'll be 20 pump trucks alone.

1 On our shallow wells, one cement truck
2 once and our frack trucks, possibly three or sometimes
3 two for four and five hours.

4 I understand the need for these
5 adjourning (sic) townships or municipalities to be
6 notified of this kind of traffic on their roads. But
7 we, the shallow operators, certainly don't need held
8 up on our permits with our small amount of traffic.

9 An issue we recently dealt with is
10 silly. A year ago, when we started excavation of our
11 drill sites, which are approximately at least a
12 hundred by a hundred, and the unconventional site is
13 five acres, we were required to post our E & S plan
14 before we moved dirt. Now they want the E & S plan,
15 the drilling permit and the casing permit posted at
16 the first earth moving. In the past, we did not post
17 the last two until we began to drill the well. From
18 location building to drilling can vary from days to
19 months. We just got a fine for not having the cement
20 plan on location when I know it was there in the
21 mailbox. This is ridiculous.

22 The unconventional companies have
23 full-time people to do all the paperwork but we don't.
24 We would like to be legal but all this goes beyond
25 reason. If we don't see changes, there will be no

1 small operators left within two years. Thank you.

2 CHAIR:

3 Thank you. Mark Cline.

4 MR. CLINE:

5 Good evening. My name is Mark Cline and
6 I'm a fourth generation oil man. These new Chapter 78
7 regulations, the way they are now written, will
8 destroy the conventional oil and gas industry. The
9 unconventional industry and the conventional industry
10 are very different and should not be regulated the
11 same.

12 The conventional industry drills
13 shallow, vertical wells that produce oil and gas under
14 low pressures. Our well locations average around 100
15 foot long by 50 foot wide. The unconventional
16 locations average five acres. The wells are drilled
17 deep vertically and then horizontally for a long
18 distance. Most unconventional wells have many wells
19 branching off the vertical shaft in many directions.
20 They can cover a square mile underground.

21 The unconventional and conventional
22 wells are environmentally safe. Both industries work
23 very, very hard at this. People that do not believe
24 this statement are not very well informed with the
25 truth or are just completely uninformed.

1 I would like to speak about some of
2 these regulations, such as regulation 78.57, which is
3 called Control, Storage and Disposal of Production
4 Fluids. This regulation says the bottom of the pit
5 must be at least 20 inches above seasonal high ground
6 water. That must be determined by a soil scientist or
7 someone we have paid to have trained.

8 I checked into how they determine
9 seasonal high ground water and it is complicated and
10 expensive. When the new regulation called for a
11 30-mil liner, what chance is there that anything would
12 ever get to the water table? We have been drilling
13 oil wells for 155 years in Pennsylvania without
14 checking for seasonal high ground water or 30-mil pit
15 liners and have not heard one thing. Our drill
16 cuttings and production fluids are very different than
17 the unconventional industry.

18 The next part of the regulation reads
19 as, the pit is structurally sound and the inside
20 slopes of the pit are not steeper than a ratio of two
21 horizontal to one vertical. The conventional operator
22 usually digs a pit that is 30 foot long by 10 foot
23 wide and 8 foot deep. This new regulation will make
24 the area that we have to dig up to be 62 feet long by
25 42 feet wide and 8 foot deep. We make most of our

1 drilling locations only 100 foot long by 50 foot wide
2 so we disturb as little of the environment as
3 possible.

4 With this regulation, we will have to
5 double the size of our locations to accommodate the
6 pit. And that is on flat ground. If the location is
7 on the side of a hill, we might have to disturb three
8 times that much so that we can get the two to one
9 slope you require. This new regulation will never
10 benefit the environment.

11 I would like to say that even though I
12 do not have a college degree, I have something that is
13 much more valuable. I have over one hundred years of
14 experience through my family in the oil and gas
15 business and I can say without a doubt that these
16 regulations will do more environmental harm than good.
17 I would also say without a doubt that it will destroy
18 our conventional oil and gas industry.

19 There are over 7,200 conventional oil
20 and gas operators in Pennsylvania that employ over
21 26,000 people in good paying jobs. We contribute over
22 \$7 billion a year, along with \$200 million going to
23 royalty owners. We are a very valuable industry in
24 this state and we should be receiving help to stay in
25 business instead of being put out of business.

1 We must be excluded from these
2 regulations and go back to the regulations before Act
3 13, also have our own inspectors, as it is too much
4 for them to learn and use regulations from both
5 industries. Thank you.

6 CHAIR:

7 Thank you. Jack Miller.

8 MR. MILLER:

9 My name is Jack Miller. I'm here as
10 just a regular citizen of the state. I will say I'll
11 be here to represent Grant, Ella and Audrey. They're
12 my grandchildren.

13 I would like to begin by reminding
14 everyone that the corporations fracking for natural
15 gas are motivated by profit only. The welfare of our
16 state and its citizens are not their concern. Despite
17 the industry spending millions of dollars to claim
18 otherwise, there is nothing clean about natural gas
19 from the beginning of the extractive process to its
20 combustion. It may be cleaner than coal but it isn't
21 clean.

22 The citizens of this state should not
23 have the quality of their life negatively affected by
24 this industry now or in the future. It is very clear
25 that for many Pennsylvanians this is not the case. It

1 is your responsibility to protect the environment and
2 all our citizens. Your responsibility is not the
3 promotion of this profit-driven industry. Article 1,
4 Section 27 of the state's constitution demands that
5 you protect our citizens and the environment.

6 A pre-drilling test is necessary to
7 determine that water quality has not been affected by
8 drilling. It is very important that DEP establish
9 standards for pre-drilling testing so that the testing
10 includes all relevant contaminants. If a resident's
11 water supply has been affected then the resident
12 should receive safe drinking water. This is the
13 minimum requirement and in no way should be weakened.

14 The storage of wastewater should not
15 occur in open pits or impoundments. Tanks should be
16 used, and there must be a backup system for containing
17 any leaks. West Virginia is proving that right now.
18 Drill cutting wastes must be tested for naturally-
19 occurring radioactive material and in most cases
20 should be disposed of at low-level radioactive
21 disposal sites.

22 Current DEP regulations do not ensure
23 that the spreading of wastewater brine from
24 conventional oil and gas wells will prevent problems.
25 There must be assurance that this brine doesn't

1 contaminate soil, vegetation, groundwater or streams
2 and rivers. This is especially true near drinking
3 water supplies.

4 A paper review of maps and
5 questionnaires is not sufficient to prevent gas
6 migration in old gas and oil fields with old unplugged
7 and abandoned wells. There must be an on-site
8 inspection and assessment to identify any orphaned or
9 abandoned wells prior to drilling.

10 Climate change and attendant climate
11 disruption present a great risk to our country, a
12 conclusion which even the Pentagon has drawn. While
13 carbon dioxide is a primary concern in climate change,
14 methane is a powerful greenhouse gas and a major
15 constituent of natural gas. While natural gas has
16 been promoted because it creates lower levels of
17 carbon dioxide at combustion than some fuels, it still
18 produces carbon dioxide. Any advantage it may have
19 over coal in these regards may be more than offset by
20 fugitive methane leaks at the well site, pumping
21 stations or pipelines.

22 Some studies show that this may be up to
23 8 percent of the produced gas. The industry must
24 control these fugitive emissions. We must reduce our
25 combustion of all fossil fuels if we are to give our

1 grandchildren a climate similar to what we have now.
2 Thank you.

3 CHAIR:

4 Thank you. Al Sever.

5 MR. SEVER:

6 Good evening, my name is Al Sever. I
7 represent Sever Engineering. I have comments on
8 certain sections of the proposed regulations. First
9 one is Section 78.15, application requirements.
10 Subsection (f) is proposed to be added to outline a
11 process for the Department to consider the impacts to
12 public resources when making a determination on a well
13 permit.

14 Subsection (f) also proposes to require
15 well permit applicants to identify when the proposed
16 well site or access road may impact a, quote, listed
17 public resource, quote (sic).

18 I can't find anywhere a list of public
19 resources, but I believe it should be recognized by
20 Pennsylvania DEP that, quote, public resources,
21 include the lands as defined by the term submerged
22 lands of the Commonwealth, which are Commonwealth
23 property under waterways designated by the
24 Pennsylvania state legislature as public highways.

25 The Pennsylvania DEP has issued and

1 continues to issue permits to drill nonvertical wells
2 through such Commonwealth lands and to hydraulically
3 fracture those lands without first determining if the
4 applicant has either obtained a Submerged Lands
5 License Agreement for a drill pipe to develop an
6 unvertical well or determining if the applicant has
7 obtained a valid lease to hydraulically fracture this
8 Commonwealth property.

9 All lands under waterways declared to be
10 public highways are Commonwealth property. In
11 Lycoming County, for example, such waterways include
12 Beaver Run, Cedar Run, Harris Run, Larry's Creek,
13 Little Pine Creek, Loyalsock Creek, Lycoming Creek,
14 Mill Creek, Mill Run, Muncy Creek, Otter Run, Pine
15 Creek, Plunketts Creek, Susquehanna River, Tombs Run,
16 Trout Run, Upper Pine Bottom Run and Wallis Run.

17 These Commonwealth lands might consist
18 of thousands of acres in individual counties. For
19 example, the six waterways in Bradford County,
20 designated as public highways, are very large
21 waterways and the acreage of Commonwealth land in the
22 beds of these waterways is estimated to be greater
23 than 25,000 acres. At the normal lease payment of
24 Commonwealth land of \$4,000 per acre, the land under
25 each waterways alone might produce \$100 million of

1 revenue.

2 My recommendation is that the
3 regulations say that DEP shall not accept any permit
4 application to drill a nonvertical well through or to
5 hydraulic fracture lands under waterways designated as
6 public highways until the applicant leases such lands
7 or obtains a Submerged Lands License Agreement.

8 The next point is on disposal of drill
9 cuttings. Every day sites in Ohio and New York are
10 taking thousands of pounds of drill cuttings from gas
11 wells drilled in Pennsylvania. New York State, for
12 example, considers drill cuttings to be construction
13 waste and they can go to landfills. Instead of having
14 other states collect enormous amounts of money for
15 disposal of drill cuttings, Pennsylvania DEP should
16 make it easier for gas companies working in
17 Pennsylvania to dispose of drill cuttings in our
18 state.

19 We have thousands of acres of abandoned
20 coal strip mines that could be reclaimed using drill
21 cuttings. I've seen many samples of drill cuttings
22 and I have no idea why people think this stuff is
23 toxic. No agency has indicated that drill cuttings
24 contain any pollutants of concern that would make
25 drill cuttings unsuitable for filling of abandoned

1 mines. The DEP should at least allow the use of drill
2 cuttings, which are mixed with coal ash from coal
3 refuse power plants, to be used to fill abandoned
4 mines.

5 78.65, site restoration. This section
6 refers to post-construction stormwater as part of the
7 restoration on the site. And while that's all well
8 and good, I don't believe that a single landowner in
9 Lycoming County that knows it's going to affect him.
10 Part of the facts ---.

11 CHAIR:

12 One minute.

13 MR. SEVER:

14 Okay. Specifically, 102.8 number five
15 has a permittee or co-permittee shall remain jointly
16 and severally responsible with the landowner for
17 long-term operation and maintenance of the
18 post-construction stormwater BMPs located on the
19 property. That's your ponds and your ditches and
20 whatever. I don't think any landowner knows that and
21 I think DEP should tell them. Thank you.

22 CHAIR:

23 Thank you. Deb Nardone.

24 MS. NARDONE:

25 Good evening. Thank you for the

1 opportunity to submit public comment tonight. I am a
2 native Pennsylvanian. I am a Centre County resident
3 and my family has spent an excessive amount of time in
4 the woods and on the water in Pennsylvania, where we,
5 hunt, hike and fish.

6 Tonight, though, I am here on behalf of
7 the organization I work for, the Sierra Club, where I
8 oversee a national campaign that works on oil and gas
9 drilling issues all across the country. We work to
10 ensure that we're minimizing our reliance on dirty,
11 dangerous fossil fuels, like natural gas, and increase
12 our reliance on clean, renewable energy.

13 So with that I would like to spend some
14 time talking a little bit about what we're going to be
15 putting in the more technical extensive comments that
16 we'll be submitting with our allies, but I'll hit just
17 a few main points now. And, again, we'll be
18 submitting more extensive technical comments.

19 Well first let me start by saying that
20 no fracking can be made entirely safe. We know that
21 well casings will fail over time, more significant
22 over the hundred year time frame. Having grown up in
23 the northeastern part of Pennsylvania, I'm all too
24 familiar with the fossil fuel legacy of dirty coal
25 banks and orange streams. I can only imagine the

1 legacy that I'm leaving for my son as oil casings fail
2 over time, contaminating our well water and other
3 people's drinking water.

4 We also know that there's significant
5 amounts of spills and leaks that have been documented
6 extensively through investigations and newspapers and
7 through DEP reports. Surface disturbance to our wild
8 land is significant, impacting both water quality and
9 our air quality and the diversity of species that
10 reside there.

11 So, again, we need more policies that
12 decrease our reliance on fossil fuels and increase our
13 reliance on clean energy. Having worked with states
14 all over the country and the grass roots, I have seen
15 multiple places where regulations do provide some
16 better protection for public health and the
17 environment than in Pennsylvania. So if Pennsylvania
18 is going to drill, then we need to ensure that we're
19 increasing or maximizing public health protection or
20 environmental protections and pollution impacts that
21 occur because of shale gas development.

22 To run down a list of some of the high
23 points for the technical comments; well permit
24 applications. We would like to see electronic
25 comments, electronic submission of well application

1 permits available to the public in advance of drilling
2 and fracking. These should identify the full range of
3 cumulative impacts that may occur on that site, not
4 only from the well pad but from storage tank area to
5 the ponds to the pipelines and roads that come in.

6 We also need to ensure that homeowners
7 are treated fairly. The presumption of liability
8 should always reside with the industry and should
9 include liability for the pollution and the
10 degradation from all aspects of the production
11 process. All contaminated water should be restored
12 back to Safe Drinking Water Act standards. When a
13 homeowner's water is impacted, baseline monitoring
14 should be required. It should be done prior to
15 drilling. It should be made available to the general
16 public so that we can adequately have our well water
17 tested to ensure that there is no contamination
18 because of the fracking process. So the monitoring
19 should be done in advance. It should be done by
20 certified labs. It should include no trade secrets
21 and it should include no contaminants that we've seen
22 in other people's drinking waters like methane,
23 methane benzenes, a full range, which will be in our
24 technical comments. It should identify existing and
25 working wells in advance prior to drilling and

1 fracking.

2 CHAIR:

3 One minute.

4 MS. NARDONE:

5 Thank you. With a greater distance than
6 more than a thousand feet. We believe that PPC plans
7 should be available to all state agencies, including
8 residents, and made available to the public. The
9 storage of chemicals, wastes and liquids, we should
10 have no open pits. We should have closed-pit
11 recycling. And the use of production fluids and reuse
12 of flowback and produced water should be strictly
13 regulated under RCRA and not be allowed to be used for
14 things like dust suppression on roads.

15 Last, all oil and gas development,
16 whether it's pipelines, pads, et cetera, should have
17 to comply with NPDES so that we don't see our high
18 quality, exceptional-value waters degraded any
19 further. We also would like to see a larger extension
20 of this public comment period so that we can have more
21 people have the opportunity to make comment on these
22 important rules. Thank you.

23 CHAIR:

24 Thank you. John Trallo.

25 MR. TRALLO:

1 Thank you. My name is John Trallo. I'm
2 a resident, homeowner and small business owner in
3 Davidson Township, Sullivan County, PA. I want to
4 thank you for this opportunity to speak. I'm also a
5 teacher, a father and a grandfather. After carefully
6 examining the DEP proposed amendments to the PA Law
7 gas regulations, it is clear that the primary
8 intention of these regulations is to encourage the
9 expansion of the oil and gas industry in Pennsylvania
10 and not really to protect the environment, unique
11 ecology of Pennsylvania, our valuable forests, state
12 lands or the people who live in the communities of the
13 shale regions.

14 I hear the usual code words such as
15 minimizing acceptable practices, lessening the impact,
16 et cetera, but nowhere in the rules and regulations do
17 I see any measure for shutting down what are commonly
18 referred to as bad actors in this industry. The only
19 consequence with any violations caused by either
20 negligence, intent or by accident are scandalous
21 result and inaccurate fines. There is no mention of
22 any measures that the state would impose upon any
23 operator to justly compensate or restore the quality
24 of life of those who have been negatively impacted.
25 On the contrary, the rules are clearly slanted in the

1 industry's favor.

2 On the issue of public health, to date
3 more than 1,600 Pennsylvania residents have already
4 submitted complaints, you know, about when after
5 drilling operations began in their area that they had
6 become available. There have been 161 documented
7 cases filed with DEP that have already been made
8 public. Research from the Colorado School of Public
9 Health indicates that persons who live within one-half
10 mile of drilling operations have increased risk of
11 disease, both cancers and noncancers, due to exposure
12 to toxic chemicals used in the industry.

13 Dr. John Adgate, Colorado School of
14 Public Health, defined health risks near drill areas
15 were high for neurological disease, hematological
16 disease, respiratory effects and developmental
17 effects.

18 A study recently released by Cornell
19 University found a decreased birth weight for babies
20 of mothers who carried some pregnancy near
21 unconventional gas drilling operations. The research
22 on the effect to developing babies is absolutely
23 horrifying. There has been shown to be a 25 percent
24 increase prevalence of low birth weight if a mother
25 lived within one-and-a-half miles of an unconventional

1 gas well.

2 Dr. Currie, Princeton University, looked
3 at the Pennsylvania birth records from 2004 to 2011 of
4 infants born within one mile of unconventional gas
5 drilling sites and found that the weight --- their
6 birth weight increased by more than one half.

7 Research out of Duke University found
8 that water wells within one mile of unconventional gas
9 wells had 17 times the methane as in sites outside of
10 that area.

11 Another Duke study found that methane
12 was six times higher and ethane 23 times higher if a
13 home was within one-quarter of a mile of a gas well.

14 Dr. Warner of Duke University expressed
15 concerns about the natural gas leaks that might allow
16 gases and chemicals from gas wells to put drinking
17 water supplies at risk.

18 Dr. Kevin Sharp of the University of
19 Texas found elevated levels of arsenic and selenium in
20 water closest to extraction sites.

21 Avner Vengosh of Duke University found
22 that brine from the Marcellus Shale contains bromide
23 and radon, in which case is radioactive.

24 CHAIR:

25 One minute.

1 MR. TRALLO:

2 Thank you. Over 40 percent of the
3 chemicals used in unconventional gas drilling have
4 been found to be endocrine disrupters. Regulation by
5 its very definition means the adjusting, organizing or
6 controlling of something, or state of being adjusted,
7 organized or controlled or to regulate the flow.

8 In closing, I must conclude that there
9 is no such thing as regulations that will adequately
10 and sufficiently protect the people or to ensure
11 safety and protect the health of our children, but
12 there are other ways than what regulatory monitoring
13 the DEP and the EQB have been setting. Therefore, all
14 regulations and amendments to current regulations you
15 propose are nothing more than an attempt to adjust the
16 rate of damage that the environment, public health,
17 the safety and security of our communities and of our
18 children.

19 Finally I would like to echo the wise
20 words ---.

21 CHAIR:

22 Time.

23 MR. TRALLO:

24 Thank you.

25 CHAIR:

1 Thank you. Barbara Jarmoska. Sorry, I
2 butchered your name.

3 MRS. JARMOSKA:

4 It's okay. It's Jarmoska (corrects
5 pronunciation). Good evening. And thank you for the
6 opportunity to provide this testimony.

7 My name is Barbara Jarmoska and I will
8 be submitting these comments in writing, so I won't
9 bother to spell my name. I am a member of the board
10 of directors of the Responsible Drilling Alliance,
11 however, I am speaking tonight on my own behalf.

12 I live on 20 acres of rural land in
13 Montgomery County. And within a ten-mile radius of my
14 unused land, my best estimate is that there are
15 between 20 and 30 gas wells, with more to come. It no
16 longer feels like a safe place to live.

17 In reading over the details of these
18 proposed Chapter 78 regulations, I do not feel less
19 vulnerable.

20 I have a Master's degree in Special
21 Education and 30 years of daily study and experience
22 in the field of human health. In both molecular
23 biology and pharmacology, small molecule is a term
24 used for a molecule with a low molecular weight, ten
25 to the minus ninth. At this size, minute beyond what

1 you can imagine, a substance is able to activate a
2 receptor site on a human skeleton brain and in so
3 doing alter gene expression, which can then signal the
4 cell to die, multiply or mutate.

5 Thus the center dogma of receptor
6 pharmacology is that the effect of any substance is
7 directly proportional to the number of receptors
8 occupied, and the smaller the molecule the greater the
9 capacity to occupy and affect receptor sites.

10 On the membranes of your cells, dilution
11 does not count. When it comes to pollutants and
12 toxins, less is truly more. It is my understanding
13 that these principles of orthomolecular biology that
14 cause my trepidation, when reading the proposed
15 Chapter 78 regulations, for there is an inherent flaw
16 that can be found throughout. And because I have only
17 five minutes, I will compress my concerns to a single
18 overarcng alarm, which is the classification for
19 which you are not responsible, and the regulation for
20 which you are, of potentially having toxic material
21 classified as residual waste.

22 The word residual sounds benign. It's
23 that which is left over, not unlike a meatloaf in the
24 refrigerator. It's what remains after the main event.
25 Residual waste is an enormous challenge to the gas

1 industry, and one they will do everything in their
2 power to minimize. The industry would like permission
3 to dispose of this waste in the most inexpensive,
4 unregulated and unobserved way. The exemptions they
5 enjoy make this possible. The proposed regulations
6 outline the conditions under which waste, that when
7 generated by other industries is classified as toxic,
8 can be stored in open pits and left behind at the site
9 for perpetuity as long as operators follow very
10 minimal requirements. I propose that no residual
11 waste should ever be stored in pits or permitted to
12 remain behind when the well site is abandoned.

13 Section 78.65 says that within 60 days
14 after the restoration of a well site, the operator
15 will provide DEP with a description of the method used
16 for disposal or reuse of the waste, including the name
17 of the hauler and disposal facility, if any. We know
18 for a fact that much of this waste is unaccounted for,
19 there being no laws in place to require an accounting.
20 We know, for example, that residual waste was spread
21 on corn fields in Muncy. We know this only because
22 those folks got caught.

23 I have personally witnessed five tank
24 trucks, each labeled residual waste, leaking from the
25 rear valve as they drove down the road, creating a

1 black line in the middle of the lane, in all
2 likelihood spreading those small molecules I referred
3 to, of their toxic contents to nearby lawns, streams
4 and playgrounds.

5 I propose a closely-regulated cradle to
6 grave chain of custody for every gallon of residual
7 waste generated, with no exceptions.

8 CHAIR:

9 One minute.

10 MS. JARMOSKA:

11 Section 78.70 would authorize the road
12 spreading of brine from conventional wells for dust
13 control on dirt and gravel roads. How very convenient
14 for the industry. Not only is there no chain of
15 custody requirement here but the risk of spreading
16 this produced brine on roads so far outweighs the
17 benefits that this permissibility is ludicrous, except
18 of course to the gas industry's bottom line in the
19 disposal cost column. I propose that no brine should
20 be spread on any road ever, with no exceptions.

21 Today the gas industry has been caught
22 violating existing regulations 4,685 times. And the
23 operative word there is caught. I do not believe the
24 current fines levied are by any means an adequate
25 deterrent for beginning to cover the real costs of

1 pain and suffering and ecological damage that these
2 thousands of violations represent.

3 Finally, I would want to add my voice,
4 as well as that of the Responsible Drilling Alliance,
5 to request for an extension beyond the current
6 February 12th ---

7 CHAIR:

8 Time.

9 MS. JARMOSKA:

10 --- deadline for public comment on this
11 regulation.

12 CHAIR:

13 Thank you. Wendy Lee.

14 MS. LEE:

15 My name is Wendy Lynne Lee of the Shale
16 Justice Coalition. As opposed to commenting on each
17 of the stipulated changes proposed for Chapter 78, I'd
18 like to address the very idea that hydraulic
19 fracturing, from well lines to compressors to pipeline
20 to export depot to L & D transport tanker can be
21 regulated sufficiently to guarantee the ecological
22 integrity, species diversity, human health, property
23 value or the Constitutional right to clean air and
24 water.

25 Well, perhaps no regulation can offer

1 guarantee against accidents. Well-documented hazards
2 posed by fracking have clearly been shown to be
3 substantial whether or not accidents occur. Hence it
4 is equally clear that no regulation can be adequate to
5 make this process of industrialized extraction safe.
6 We know that the intent of the industry is not to make
7 friends but to make it as inexpensive, expeditious and
8 profitable as possible.

9 Today a hearing on Senate Bill 411,
10 legislation that would render immune to liability the
11 use of acid mine drainage as frack water; Senate Bill
12 1047, that would guide and codify the process by which
13 species are listed as endangered, or Senate Bill 259,
14 that would allow old leases to be treated as newly
15 negotiated, even if the leaseholder declines the
16 pertinent fracking on her property or didn't know it
17 was an old lease, these made plain that regulation in
18 Pennsylvania is written by and crafted for the oil and
19 gas industry.

20 Because fracking is inherently unsafe,
21 the proposed changes to Chapter 78 are inconsistent;
22 Article 1, Section 27 of the Pennsylvania
23 Constitution. Given moreover the clear legislative
24 pattern, we must assume that the intended changes is
25 consistent with SB 411, 1047 and 259, to facilitate

1 the interest of oil and gas.

2 What the proposed changes really
3 encapsulate, therefore, are the negotiated terms of
4 our surrender to these industries. We at Shale
5 Justice have no interest in acceding to this
6 forfeiture of our economy as citizens or our recently
7 reaffirmed right to clean air and water.

8 We'd like to thank Chief Justice
9 Castille for his role in overturning important parts
10 of Act 13. To accede to any of these proposed changes
11 was directly contrary to that 4 to 2 Supreme Court
12 Decision. Here's why. To wrestle over the details of
13 changes to Chapter 78 presumes the fracking will
14 continue. Many are resigned to this grim possibility,
15 otherwise we'd not be haggling over who's responsible
16 for pre-drill water testing, the use of open pits for
17 frack waste, the definition of fresh water, the
18 disposal of brine or the status of orphaned wells.

19 Make no mistake, the industry will cry
20 foul, this much regulatory change will cost them too
21 much money; that they are somehow the injured parties.
22 But the facts are that those proposed changes are
23 nothing but crumbs offered to appease us to convince
24 us that the agencies charged with protecting our air
25 and water actually act to do so. The language here

1 follows the pattern of 411 that aims to convert acid
2 mine drainage into beneficial use, even though its
3 primary effect is to relieve the industry from
4 reliability for contaminated water. It follows 1047's
5 absurd argument that the danger is best determined via
6 economic matrices. It follows 259, that empowers the
7 industry to access more land for drilling under the
8 guise of making royalties more transparent.

9 We cannot afford to accede one more inch
10 to oil and gas drilling in Pennsylvania. Can you
11 imagine what our countryside, forests, rivers and
12 trout runs will look like if the proposed Dominion
13 export depot at Cove Point, Maryland is completed.
14 7,000 wells will become 100,000. And with it we will
15 become a fossil fuel extraction colony owned and
16 operated ---

17 CHAIR:

18 One minute.

19 MS. LEE:

20 --- by international corporations. I
21 urge you to say no to more regulation. Why on earth
22 should we surrender our economy, our communities and
23 our health to a rate of harm. Just as there's no such
24 thing as a little pregnant, there's no such thing as a
25 little cancer, a little asthma, a little brain damage.

1 Many things are negotiable, some are not.

2 Just as there could be no compromise on
3 apartheid or slavery, there could be none when the
4 stakes are climate change. Whether we like it or not,
5 our responsibilities are local, hence there is also no
6 such thing as a special place, unless what we mean is
7 the planet. My yard is a special place, so is yours.
8 Thank you.

9 CHAIR:

10 Thank you. Sue Laidacker.

11 MS. LAIDACKER:

12 Good evening. My name's Sue Laidacker
13 and I'm on the executive board of Shale Justice but
14 today I'm here as a private citizen. And I just want
15 to take this opportunity to point out some of the
16 glaring flaws that I found in the proposed provisions
17 in gas regulations. After combing through these
18 provisions and Chapter 78 several times, there are
19 these areas that I think I need to address.

20 On the area of public resources: I
21 agree that the areas of tourism, fishing, hunting and
22 recreations are major economic contributors to
23 Pennsylvania's coffers but the DEP must surely know
24 that any gas development in the beautiful areas of
25 Pennsylvania's back woods will drastically jeopardize

1 these very resources that are so important to
2 Pennsylvania's future and well-being.

3 The setbacks proposed by the provision
4 of 200 feet of publicly-owned lands and wildlife
5 areas, and historical and natural landmarks are simply
6 token distances for the Department to tell the
7 citizens of Pennsylvania that they are indeed
8 regulating the drilling of new wells. These distances
9 are not even as long as my driveway, and that's
10 ridiculous.

11 Okay, now I've lost my place. A
12 thousand feet from a private water well has been
13 proven so many different times to be totally
14 inaccurate that this distance is a moot point at this
15 point. The DEP isn't prepared to have water provided
16 to the whole of Pennsylvania once their water has been
17 contaminated, which it surely will be if this
18 industry's allowed to continue with such woefully poor
19 regulations.

20 The problem of water contamination must
21 be solved as this is the biggest issue of the many,
22 many, many problems with this industry. And it is in
23 the forefront of many of the catastrophes associated
24 with gas extraction. The only reasonable solution to
25 this destructive, catastrophic industry is a total ban

1 of the activities in Pennsylvania. This is the only
2 true and accurate way that we can be sure our water,
3 air and land will not be polluted for us and for
4 future generations.

5 Now on the subject of unplugged,
6 abandoned wells: again, a thousand feet is the
7 allowable distance for drillers to drill new wells
8 when the provisions admit that abandoned wells have
9 been known to be altered and contribute to methane
10 migration when new wells are drilled. And with
11 horizontal hydraulically fractured wells, what
12 difference will a thousand feet make from the original
13 vertical well bore? And the provisions proposed that
14 visual monitoring and plugging is required by the
15 operator of the well drilling. We all know from past
16 experience that that is simply a ridiculous notion on
17 all fronts because the dream of huge amounts of money,
18 which almost never materializes, are far too strong a
19 draw for them to follow regulations. And fines are
20 simply tokens and not even a slap on the fingers if
21 they're not followed. Again, the solution for this
22 problem is a total ban of this industry in
23 Pennsylvania.

24 Containment practice: These should all
25 be monitored by a third party that has absolutely

1 nothing to do with gas extraction and is not beholding
2 to them in any way. This is the only way that any
3 data can be trusted at all and even then it's on the
4 periphery as how can we be sure the gas companies
5 aren't lining the pockets of these third parties as
6 they're doing with our elected officials?

7 The industry simply cannot police
8 themselves because that just does not happen. They
9 simply cannot be trusted in any way, shape or form.
10 Now to stop this type of criminal activity, there must
11 be a complete and total ban.

12 Protecting water resources and land
13 reclamation: Currently restoration practices are
14 really inadequate. Most of what we are seeing at the
15 well pads and pipelines are simply greenwash.
16 Planting grass does not restore a hundred-year-old
17 forest that has been decimated. The ecosystem has
18 been totally destroyed by the creation of well pads,
19 pipelines and compressor stations. The forests have
20 been fragmented and planting grass won't restore that.
21 We are left with predator species of insects and
22 wildlife that wasn't there before the industry
23 infiltrated our once beautiful areas. So to that end,
24 the only solution to this problem is a complete and
25 total ban.

1 This is just promoting an environmental
2 disaster ---

3 CHAIR:

4 One minute.

5 MS. LAIDACKER:

6 --- much worse than anything we've seen
7 in the last couple hundred years. I keep hearing how
8 environmentally-friendly this industry is and they are
9 using best practice techniques and they want to be
10 good neighbors, but the only way any of that will work
11 in Pennsylvania is if this industry is totally and
12 completely banned from doing its business within our
13 borders. Thank you.

14 CHAIR:

15 Teresa McCurdy.

16 MS. MCCURDY:

17 Hi. It's Teresa McCurdy (corrects
18 pronunciation). That's okay. I'm here on behalf of
19 pretty much myself. I own a small public relations,
20 government relations firm and do a lot of work with
21 the industry. And, you know, I prepared a long speech
22 and I think a lot of it was already covered, though.
23 I guess I'll, you know, start with, you know, I
24 represent a lot of clients that's in energy
25 businesses, but it doesn't matter whether it's coal or

1 generation of power or what, but there keeps seeming
2 to be a resounding voice out there to not want to have
3 or use any type of fossil fuel for energy and it's
4 simply not practical. You can't ban everything. We
5 use windmills, we use solar. They don't work all the
6 time ---.

7 In working with one of my clients who
8 does treat wastewater and has a wastewater treatment
9 facility, part of my job, then, too, is to also
10 monitor legislation, attend DEP meetings and the TAB
11 water group meeting. I had a lot of conferences that
12 educate industry on best management practices. I also
13 ended up attending a lot of conferences that the
14 associations themselves have, such as some Marcellus
15 Shale Coalition or PIPP or Pennsylvania Grade Crude
16 Coalition out there. They're all trying to bring in
17 both the DEP or scientists or other people to provide
18 them technical information to be a good citizen.

19 It's kind of out there that everyone
20 says all lawyers are bad or all doctors are bad
21 because you hear about the ones that do something bad.
22 It doesn't mean you should throw everybody out because
23 there are people wanting to do something that's wrong.
24 The general industry is very
25 environmentally-conscious.

1 Getting back to a couple of key points I
2 wanted to make, though. One of the differences that
3 I've come to find with the circulation is the fact
4 that it is unfair to conventional operators with
5 respect to the cost that's incurred and some of the
6 different requirements that they have.

7 One of the press conferences I was at
8 where the PGCC had ---. I love the guy who said ---
9 or the legislator, actually, he was talking about the
10 fact that you wouldn't take construction standards for
11 a single-dwelling house and apply them to a nursing
12 requirement, and that's kind of what this regulation
13 tends to do, because there's not enough specifics of
14 where --- which sections apply and overlap.

15 I also love the one gentleman who was a
16 fifth generation operator out there too as well, who
17 hung up a pen and he hung up a wrench. And he said
18 when I have the wrench, I'm making money, and when I
19 have a pen, I'm usually losing money. It's not that
20 he's against regulation, it's just that it comes to a
21 point where it can be so burdensome to fill out all of
22 the required paperwork that you can't make money and
23 you can't continue to be able to do your job. Doctors
24 complain about it all the time with all the Medicare
25 or all the requirements they have to go through, and

1 malpractice insurance, et cetera, so it's not just
2 this industry but many different industries.

3 One of the things that I support, many
4 associations are reaching out about and talking about
5 the PA Supreme Court case that was just held. It was
6 found to be unconstitutional and, you know, we're
7 asking that DEP not be including that into the Chapter
8 78 regulations until either pertinent legislation or
9 something ---.

10 CHAIR:

11 One minute.

12 MS. MCCURDY:

13 Thank you. Specifically under 78.57(f)
14 --- I'm sorry, 78.58(f) for onsite processing of
15 sludges, filter cake. One of the things that we do
16 want to make sure that ---. How it's worded right now
17 is somewhat confusing, and we've spoken about that
18 concern before, that you should do a couple analyses
19 on what's going for disposal and where it's going to,
20 where it's being treated for reuse. And that's all I
21 have for my testimony. Thank you.

22 CHAIR:

23 Thank you. Dan Alters. Alters (changes
24 pronunciation).

25 MR. ALTERS:

1 Good evening, members of the
2 Environmental Quality Board and alternates. My name
3 is Dan Alters. I'm the chairperson of the
4 Conservation Committee of the Lycoming Audubon
5 Society. Our organization's a chapter of the National
6 Audubon Society and represents members primarily in
7 Lycoming and Clinton Counties, Pennsylvania.

8 Myself, I have a degree in Biological
9 Sciences as well as a Master's degree in Environmental
10 Protection. And I've also had 35 years experience as
11 an environmental regulator. After reviewing the
12 proposed regulations under your consideration, I offer
13 the following comments.

14 On December 19, 2013, not quite a month
15 ago, the Pennsylvania Supreme Court struck down key
16 provisions of the 2012 Oil and Gas Act, also known as
17 Act 13. In addition to key portions of the Act being
18 declared unconstitutional, Commonwealth Court was
19 directed to address whether remaining provisions of
20 Act 13, to the extent that they are valid, are
21 severable.

22 This Act is the primary basis of the
23 proposed regulations that you are considering. I
24 submit to you that in light of the Supreme Court's
25 determination of the unconstitutionality of Act 13,

1 the ongoing review by Commonwealth Court, and the
2 prospect of many months of legal wrangling, that there
3 is no current basis for the adoption of regulations
4 under Act 13, there is no law.

5 You have already heard numerous problems
6 with these new regulations from engineers, the
7 environmental community and from conventional oil and
8 gas well operators. I believe these regulations are
9 far from being acceptable. I urge the Environmental
10 Quality Board to return the proposed regulations to
11 the Department of Environmental Protection until such
12 time as a legal basis exists for such promulgation and
13 the problems identified have been fully addressed.

14 I also have some specific comments on
15 these regulations. I'm going to skim through these
16 very quickly.

17 All fluids related to oil and gas
18 development should be contained in engineered
19 facilities, not natural depressions or open pits as
20 some people would call them.

21 The definition of seasonal high ground
22 water table should be retained in the proposed
23 regulations because the term continues to play a key
24 role in regulating oil and gas activities.

25 The permit applicant, not the DEP,

1 should be responsible for determining whether proposed
2 oil and gas operations would affect threatened or
3 endangered species.

4 The DEP should respond to comments
5 received about a permit that may affect an important
6 public resource.

7 The DEP should not compromise its
8 obligation to protect the environment by balancing the
9 citizens' constitutional guaranteed right against
10 private interests in oil and gas.

11 The DEP's duty to investigate water
12 pollution should extend to all oil and gas activities.

13 The prohibition on construction of fluid
14 storage areas within 100 feet of certain water bodies
15 should be extended to all water bodies. That would
16 include wetlands.

17 The DEP should stop promoting the
18 disposal of residual waste at well sites and on dirt
19 roads.

20 The DEP should not allow natural springs
21 to take the place of engineered monitoring wells used
22 to measure the effects of fluid storage areas.

23 The DEP should strengthen its regulatory
24 mechanisms for ensuring that wells --- I'm sorry, that
25 pits and impoundments are constructed in a

1 structurally sound manner and according to
2 regulations.

3 CHAIR:

4 One minute.

5 MR. ALTERS:

6 Any disposal of waste materials at well
7 sites should require that representative samples of
8 the material be taken and analyzed and submitted to
9 the agency to demonstrate that those drill cuttings
10 are not contaminated or that the residual waste meets
11 the regulatory standards.

12 In addition to these comments, I'll be
13 providing some additional comments and providing far
14 greater details to the comments I've made this
15 evening. I thank all of you folks for hearing our
16 comments this evening.

17 CHAIR:

18 Thank you. Ella Forsyth. Ella?
19 Carmalene Charba? Doug McLinko. I butchered most of
20 the names tonight. I'm doing really well with some.

21 COMMISSIONER MCLINKO:

22 Actually you did pretty good with that.
23 I've been everything. I'm a Commissioner for Bradford
24 County. We're the most drilled-out county in the
25 state and we're proud of it. And we're --- you know,

1 we're paying you guys for what you're doing here. And
2 Bradford County, thanks to oil and gas, we've been
3 able to eliminate all our county debt, cut taxes for
4 every Bradford County resident. It's been terrific
5 and we're very blessed.

6 We do demand safe, responsible drilling
7 of our natural resources. I support development of
8 our natural resources. County Commissioners are
9 resident a hundred percent ---. And I'm glad you guys
10 are there to oversee it with oversight. And I believe
11 in state-based regulations because I think you guys do
12 a really good job.

13 Bradford County has 36,000 parcels of
14 property. 14,000 of those are one acre and under.
15 Seventy (70) percent of our population sees ten acres
16 or under. This is not about large property owners,
17 however, it's been terrific for our farms, but it
18 affects every working family and every retired person.
19 It's terrific. We're not talking about great sums of
20 money in oil fees but we're talking about a bunch of
21 people who are proud to contribute to the United
22 States of America for energy development, for national
23 security. We're proud that we contribute money to
24 state coffers of Pennsylvania as well as the complete
25 economic blessings that we've seen locally.

1 We have 50 freshwater withdrawals on our
2 lakes ---. I screwed it up. It's our rivers, the
3 streams, the creeks. We have a hundred freshwater
4 impoundments with a thousand miles of installed
5 permitted gathering lines. We have 500 plus oil pads.
6 We have 2,000 drilled wells. We have 20 built and
7 ready compression stations. If any of you folks are
8 aware of ---. We're approaching 800 billion cubic
9 feet of gas to be produced out of Bradford County, and
10 I'll tell you, we're proud of it.

11 The jobs that grow from prosperity you
12 can't ignore because what you folks do with the
13 oversight of natural gas is a result of that. And we
14 thank you very much for it. We've seen things happen
15 in our county beyond our wildest dreams.

16 Heard someone talking about roads.
17 We've seen \$300 or \$400 million worth of full-depth
18 reclamations put in our roads in Bradford and close to
19 the surrounding ---. That is an environmental
20 blessing to all of us because that's berms and ditches
21 and drainage. And you folks know that's asphalt ---
22 seven inches of asphalt that our township could never
23 ever have done through natural gas.

24 We've seen increased growth to our tax
25 base, to our local economy, filling, again, the state

1 coffers through the Marcellus region. We've seen new
2 hospitals and healthcare grow as a result of this.
3 The good news just goes on.

4 We appreciate what you folks do for
5 water testing, when it comes to our water wells,
6 through your casing and grouting standards you
7 implemented a few years ago. It has just been
8 terrific.

9 And I'm going to tell you something
10 right now as a County Commissioner. I personally am
11 tired of the chicken little naysayers that go around
12 spewing misinformation about what goes on in
13 Marcellus. The industry does a great job. You guys
14 do a great job of oversight. But I will tell you it
15 hurts counties and businesses when people get
16 misinformation. We have had more people visit our
17 county ---. We take them on pickup truck tours. And
18 when they leave, their words are --- carpenter locals,
19 from all over New York came down and went on a tour;
20 this isn't what we're told.

21 We've had film crews from Norway. We've
22 had Japan. We've had them all over the place. And
23 because of what they hear outside the Marcellus region
24 from chicken little naysayers they walk away saying,
25 this is beautiful. Good job on what you folks do, the

1 reclamation, the pipeline. The wildlife is
2 flourishing up there. You know, the industry will
3 plant food plots for wildlife. People need to go and
4 look.

5 You know, record high gas prices, high
6 coal heating fuel prices, our seniors and working
7 families are having to struggle today. What we do in
8 Pennsylvania to help fuel this country is ever --- of
9 most importance. And real quick, Dan Yello (phonetic)
10 is here. I was in New Mexico trying to learn as much
11 as I can about natural gas. He called me because we
12 had people at a County Commissioners meeting that were
13 coming to Pennsylvania to put in sand reclamation off
14 wellheads, a new procedure that they do. Dan called
15 me up to say, the DEP can help you with these people
16 to get them here in Pennsylvania. We will help ---.
17 I've never had that. One time in ten years of being a
18 Commissioner. My hat's off to you.

19 It's safe, responsible to science and
20 law first. Let's get the job done. It's a great way
21 to do it and I'd like to thank you folks for the work
22 that you do. And I believe you keep state-based
23 regulations to make sure that unconventional drillers
24 are taken care of as well as conventional. Thank you
25 very much.

1 CHAIR:

2 Bryan Hammerstorm.

3 MR. HAMMERSTROM:

4 Bryan Hammerstrom (corrects
5 pronunciation).

6 CHAIR:

7 Bryan Hammerstrom (changes
8 pronunciation).

9 MR. HAMMERSTROM:

10 That last County Commissioner obviously
11 doesn't speak for the renters in Bradford County.
12 He's retired now, but the previous --- Tioga/Bradford
13 Housing Authority had a long interview in the
14 Wellsboro Gazette about the harm done to more renters
15 because the rents were unaffordable because some
16 Section 8 housing money could not bridge the jacked-up
17 rents that landlords were getting with what the
18 families could pay. So there are losers in this, sir,
19 and the biggest losers may be our children and
20 grandchildren.

21 My name is Bryan Hammerstrom. I am vice
22 president of Tioga County's Pine Creek Headwaters
23 Protection Group and I'm also co-clerk of the
24 Wellsboro Friends Meeting Religious Society of
25 Friends, but my remarks are my own. Given the

1 comments already made by the first as well as many
2 subsequent speakers, we know that we have no federal
3 protection for Pennsylvania's citizens for our land,
4 air and water from the exploitation of our oil and
5 natural gas. With that fact, you and other
6 Pennsylvania public employees are Pennsylvania's
7 citizens only protection from the harmful effects of
8 hydraulic fracturing.

9 Pennsylvania's constitution guarantees
10 all citizens the right to clean air and clean water
11 yet we have an industry hell bent on energy
12 exploitation exempt from all laws and regulations. If
13 someone doubts this, you just have to look at the
14 Halliburton loophole driven through a Republic in
15 Congress by vice president Chaney under the Bush oil
16 presidency. Yet every private industry speaking here
17 tonight gave repeated lip service to their company's
18 commitment to the environment. Their record proves
19 otherwise.

20 As officials bound by and operating
21 under the Pennsylvania Constitution, I ask that you
22 mandate no further oil/gas exploration or exploitation
23 unless and until the hydraulic fracturing industry is
24 put back under the Federal Clean Air and Clean Water
25 Acts.

1 I'll quote from a statement adopted
2 unanimously on behalf of Quakers in Delaware, Eastern
3 Pennsylvania, Maryland and Southern New Jersey. This
4 statement calls for a moratorium and was adopted
5 unanimously by a number of groups speaking on behalf
6 of all Friends. It calls for a moratorium on
7 continued exploitation by hydraulic fracturing until
8 it is reregulated under the Federal Clean Air and
9 Clean Water Acts, until adequate training staff are
10 available to the Department of Environmental
11 Protection to monitor these activities.

12 I'll use the rest of my time to remind
13 you of known harms already suffered from hydraulic
14 fracturing. The massive water consumption by fracking
15 converts the clean water disseminating from numerous
16 towns and cities, as well as the Chesapeake Bay,
17 downstream into polluted, even toxic, wastewater.

18 Two, the use of deep well injection to
19 get rid of return water has been churning costs --- in
20 both neighboring Ohio as well as in Oklahoma.

21 Three, the industry-wide use of
22 subcontractors distances the big man, Shell, Exxon
23 Mobil, Chesapeake, et cetera, from the frequent
24 intentional criminal and toxic actions of their
25 pirates. These actions have been caught and

1 prosecuted from Allegheny National Forest to Bradford
2 County and to the Williamsport area. And we all know
3 far more ---

4 CHAIR:

5 One minute.

6 MR. HAMMERSTROM:

7 --- occurrences have not been detected.
8 The history of old oil wells and mine shafts in Tioga
9 County has already led to a huge methane water geyser
10 in the southeastern corner of our county, which
11 necessitated five separate gas wells be flared for two
12 months to reduce the methane pressure caused by
13 fracking and released by the known but ignored
14 80-year-old oil well.

15 Five. The leaking of return water and
16 water pond --- frack water pond, return water pond
17 near Wellsboro, which was owned by the Johnson family,
18 beef cattle, led to a Pennsylvania Department of
19 Agriculture quarantine on their cattle for up to 18
20 months. Last year the 18-month quarantine on their
21 calves was lifted. And as Mrs. Johnson asked
22 rhetorically, do you think I should just sell these
23 cattle? And I ask you, would you want to eat their
24 meat? Thank you.

25 CHAIR:

1 Are there any additional commenters?

2 Yes, sir?

3 MR. OCHS:

4 Five minutes ---?

5 CHAIR:

6 Yes. It's five minutes. If you could
7 state your name and ---.

8 MR. OCHS:

9 Thank you. Michael Ochs, O-C-H-S ---
10 member of the Pennsylvania Green party, however I'm
11 speaking on behalf of myself. I just happened to read
12 in this weeks Guardian Weekly from the United Kingdom,
13 an article by Suzanne Goldenberg.

14 The cover article title says, meet the
15 frackers. And inside it's fracking hell, what it's
16 like to live next to a shale gas well. Nausea,
17 headaches and nosebleeds, invasive chemical spills,
18 constant noise. Welcome to Ponder, Texas, where
19 drilling has overtaken the town. Could Britain be
20 facing the same dire fate? It ends with comments by
21 Caroline Lucas, whose a Green Party Member of
22 Parliament.

23 Quickly, just half a dozen comments
24 based on what I've heard tonight. One, this handout I
25 could dismiss it right away because I read under

1 written comments and verbal comments that below that
2 it's dated August 27, 2013 and then you say proposed
3 regulations can be commented on for 60 days this fall.
4 I mean it's outdated already, that you handed out
5 tonight. It needs to be updated.

6 Secondly, this February 12th date line,
7 really it should be 60 days beyond the final public
8 hearing, which should be in Bradford or Butler
9 Counties. We need time to read all of the comments
10 given verbally or in writing. But you're giving us
11 less than a month after the final public hearing.
12 It's not sufficient.

13 I sympathize with Mr. Fink. The
14 lighting here is so poor. That may be why you
15 stumbled over your reading of the statement from your
16 paper when you began tonight. It was hard to follow
17 you, sir. It's hard for me to see what I'm reading.
18 So I urge improvements in the process and the
19 facilities.

20 Fourth, what's the overall impact of
21 these proposed regs on state greenhouse gas emissions
22 that cause climate change?

23 Fifth, how do the regs encourage
24 attainment of the Commonwealth's Renewable Energy
25 Portfolio Standard? Where is the Commonwealth on

1 Renewable Energy ---? And finally, we need a
2 toll- free number for the public to call, not an area
3 code 717 number that requires us to pay out of pocket.
4 Thank you.

5 CHAIR:

6 Thank you. Additional comments? Please
7 state your name.

8 SENATOR HUTCHINSON:

9 Hello. My name is Scott Hutchinson. I
10 am the State Senator for the 21st Sentorial District,
11 which covers all or part of the six counties in
12 Northern and Western Pennsylvania. I will be
13 submitting written comments at a later time, but my
14 schedule allowed me to sneak up here this evening and
15 I just wanted to add my voice verbally today in favor
16 of a separate regulatory regime for the conventional
17 oil and gas producers that is vitally important to
18 maintaining important jobs in Northwestern
19 Pennsylvania. Everything from folks who work on these
20 very different kind of wells and operations just
21 night-and-day comparison between Marcellus and shale
22 wells versus these conventional oil and gas wells. So
23 we will reserve the jobs of those who work directly on
24 those as well as two refineries, which depend upon
25 Pennsylvania grade crude for --- to run their

1 refineries and the hundreds of jobs involved in both
2 of those refineries.

3 Pennsylvania is the birthplace of the
4 worldwide petroleum industry. That happened to occur
5 155 years ago in my district, near Titusville,
6 Pennsylvania. And we are proud of that legacy, but,
7 more importantly, we want to maintain that industry
8 and those jobs, family-sustaining jobs, hard working
9 people who follow the rules but have been caught up in
10 this tidal wave of reaction to a new industry in
11 Pennsylvania. So as I said, I will be submitting
12 written comments in the future but I just wanted to go
13 on verbal record this evening since I happened to be
14 here. So thank you for listening and I look forward
15 to working with you in the future.

16 CHAIR:

17 Thank you. Additional commenters,
18 comments?

19 MS. RUPERT.

20 My name is Allison Rupert. I'm from
21 Hughesville, (phonetic) Pennsylvania and I have a
22 suggestion, perhaps, for an additional regulation. Is
23 that within the purview of this hearing?

24 BOARD MEMBER:

25 Yes.

1 MS. RUPERT:

2 Okay. In December I got a flyer from a
3 pipeline company and it referred to a law that came
4 out in 2002, which requires more stringent pipeline
5 regulation and more communication with residents
6 living in certain areas along pipeline facilities.
7 And I was very concerned by the next thing that
8 followed because it said that areas of high
9 consequence, which would be population density, would
10 have more regulations.

11 Those areas the law would require
12 natural gas pipeline operators to, quote, develop
13 integrity management programs for use in high
14 consequence areas. And these programs identified
15 methods for addressing threats and maintain structural
16 soundness or integrity of the pipelines. And I'm
17 fairly insulted by not being considered, in my rural
18 area, an area of high consequence. I think pipelines
19 should be regulated the same no matter whether it's
20 next to my house or next to a high-population area.
21 Thank you.

22 CHAIR:

23 Thank you. Additional comments? If
24 not, we want to thank everyone on behalf of the
25 Environmental Quality Board for coming out tonight. I

1 want to remind you again, A Citizen's Guide to DEP
2 Regulations is available on the website and the
3 October --- February 12th comments --- deadline for
4 the comments. Thank you. I adjourn this meeting.
5 Thank you.

6 * * * * *

7 HEARING CONCLUDED AT 8:06 P.M.

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1 CERTIFICATE

2 I hereby certify that the foregoing
3 proceedings, hearing held before Chair Fink was
4 reported by me on 1/13/2014 and that I Lindsey Powell
5 read this transcript and that I attest that this
6 transcript is a true and accurate record of the
7 proceeding.

8
9 
Court Reporter