



Pennsylvania Attorney General Josh Shapiro

Testimony submitted to the Senate Democratic Policy Committee

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For the hearing entitled:

Closing Pennsylvania's Hazardous Waste Loophole

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Chairwoman Muth and all members of the committee, I want to thank you for inviting me to provide testimony related to these very important environmental issues.

My name is Rebecca Franz. I am the Chief Deputy Attorney General in the Environmental Crimes Section of the Office of Attorney General. For those who do not know, our section handles the investigation and prosecution of environmental crimes that occur throughout the Commonwealth. We do not have original jurisdiction to investigate and prosecute these crimes. What that means is that our section requires a referral, either from an agency that has enforcement powers, such as DEP, or from a district attorney who has a conflict or lacks the resources to investigate and prosecute the case. Typically, a district attorney's office will not have the expertise to conduct these investigations, which leaves our section as the only agency that can criminally enforce Pennsylvania's environmental statutes.

It is no secret at this time that in the recent past, our section received several referrals from district attorneys' offices that led our office to submit the matters to one of our statewide investigating grand juries. 287 hours of testimony from government personnel, experts and impacted Pennsylvanians and mounds of documentary evidence later, the 43rd Statewide Investigating Grand Jury issued its report on unconventional oil and gas activity in Pennsylvania. This report included a historical look at this industry and the two main state agencies charged with oversight of it: DEP and DOH. The report told the stories of Pennsylvanians who suddenly found themselves living in an industrial zone. And finally, the report included 8 common sense recommendations for legislative or executive branch changes.

Before I get to the recommendation in the report that you wanted me to discuss, I wanted to take a moment to speak about the citizens who were brave enough to come and tell their stories to the grand jurors. The grand jurors expressed their gratitude in the pages of the report. They wrote: *"We are deeply grateful to the homeowners who shared their stories with us. We were moved by the profoundly emotional experiences many have endured. Often, their pain was still raw, but they nevertheless testified and taught us about the sometimes harsh reality of shale gas operations. While we cannot truly capture what it was like to witness their testimony, all those reading this report should understand that we find the testimony of these homeowners credible and compelling."*

Grand Jurors heard testimony from these residents that their water had a black film, that it looked like sludge, and was cloudy. Those who tasted what came out of the tap described it as foul or metallic tasting. Black slime would clog and damage the pumps and filters used to treat well water, costing thousands to fix.

Families came to doubt the safety not just of their water, but of the air around them.

Some homeowners started feeling nauseous and dizzy. Their eyes, nose, skin, and throat would burn. They got persistent nosebleeds and mouth ulcers. The Grand Jury heard repeated testimony of small children waking up with sudden, severe nosebleeds.

One parent testified that her four-year-old daughter would often wake up crying with blood pouring from her nose. On one of those occasions, there was so much blood that her daughter's princess bedspread was ruined. Families often couldn't get clear answers from their doctors on what they should do.

One homeowner testified that, after taking her son to see the doctor multiple times for rashes, the doctor told her that there was nothing she could do for the woman. The doctor's advice was to get an attorney or move. But sometimes neither of these options is feasible—an attorney is too expensive and the amount owed on a house is too large.

Think about being a parent, trapped in a home you no longer feel safe in, comforting a child, feeling powerless to help. Feeling like your complaints and questions were drowned out by the big companies drilling a few hundred feet away.

Residents that the grand jurors heard from cried out for help and no one came.

It is for these people—for the citizens of Pennsylvania who find themselves suddenly surrounded by shale gas activity—that the recommendations are directed. The grand jurors noted: *“Ultimately, the recommendations in this Report are rooted in and validated by the experiences of everyday Pennsylvanians who shared with us the real world effects unconventional oil and gas operations can have on people's lives. Confronting and fixing the legal, regulatory, and executive-level norms that enabled the harms experienced by the homeowners will go a long way toward restoring some balance between fracking operations, public health, and the constitutional right to "clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment.”*

I also think that it is appropriate to acknowledge the concerns related to the current system that allows disposal of fracking waste at the landfills within our Commonwealth. There are concerns that the leachate at these landfills could have harmful constituents that ultimately flow to waste water treatments plants that may not have the capacity to treat the water for all of the potentially harmful fracking constituents that could be in it. And then that water gets discharged into waters of the Commonwealth. While there is certainly a long way to go to fix this difficult problem, DEP has agreed to at least begin requiring landfills to analyze their leachate for Radium 226 and Radium 228 and record that data on their quarterly Form 50. This step is an important one to allow citizens of Pennsylvania to have the information necessary to inform next steps with how to deal with this lifecycle of waste.

And so, with that backdrop, I will shift my focus to talk about the recommendation that is most relevant to today's topic:

RECOMMENDATION FIVE: Transport the Toxic Waste More Safely

The waste that is produced by the unconventional oil and gas industry is staggering in its quantity. The grand jurors learned that unconventional drilling creates two categories of waste requiring special disposal.

First, there are the drill cuttings – the rock and mud that is ground up and brought out to create the well during the drilling process. The drill cuttings are mixed in with the sludge of industrial chemicals used for the drilling processes. This is not just normal rubbish that can be tossed onto a regular garbage dump. The chemicals in drill cuttings are potentially hazardous even beyond the standards of landfill sites used for municipal trash.

Second, there is the wastewater – which is not just water at all. The fluid injected into a fracking well cannot perform its function with mere H₂O. As discussed previously frack fluid is an elaborate and often secret chemical cocktail of lubricants, biocides, solvents, and other agents. And then when it is shot deep into the ground, it undergoes various chemical reactions that change the nature of the fluid and adds radioactive material to it as well. And the issue isn't just the composition of this waste water, but the *quantity*. A single well may create *millions* of gallons of contaminated water over its lifetime.

Yet this hazardous material is not treated as such. The grand jurors learned during their investigation that when the chemicals used to frack the well are initially transported to the site, the tanker trucks are labeled as carrying hazardous material if that designation fits. But after these chemicals are injected into the ground, and then return to the surface in wastewater, the contaminated water is transported *from* the well as if any danger had ceased to exist. The very same chemicals that were identified as hazardous before they were used are now identified as non-hazardous “residual waste,” although their composition has not changed. Thus, the transportation of fracking-generated wastewater in Pennsylvania does not account for the toxic nature of this waste being hauled all over the Commonwealth.

This creates a serious problem. Fracking wastewater can be a relatively harmless briny concoction, an extremely dangerous combination of chemicals, or highly radioactive. But because it is labeled as “residual waste” there is no way to know whether a tanker came from a shale gas site or carries something that does not carry the same potential risk. If one of these trucks overturns and spills all over a roadway, the signage on the truck will not provide adequate notice to those at the scene about what they are dealing with. This system puts the public and first responders at risk.

The grand jurors struggled with trying to come up with a recommendation that would serve as a long-term solution for permanently disposing of waste generated from shale gas operations. It is a problem that truly has no easy solutions. The current thought is to try to recycle the waste water as much as possible by reusing it to frack another well. But this shell game will only last for so long. While regulators and the industry work on finding a permanent solution to the waste water problem, the grand jurors felt that, at a bare minimum, Pennsylvania should require that trucks carrying waste from fracking sites display signage specifically identifying that which they are hauling as unconventional oil and gas waste.

This could be easily accomplished by creating a new subsection to the sign requirement that would specifically note that the waste is unconventional oil and gas waste. There is already a classification of residual waste that gets this special designation

and that is Regulated Medical/Chemotherapeutic Waste. See Signs on Vehicles, 25 PA Code 285-218

DEP's response to the grand jury's recommendation is to claim that current wastewater transportation labeling requirements are completely adequate. DEP says it's fine to classify fracking wastewater as "residual waste," but does not address the Grand Jury's observation that the very same chemicals labeled as mere "residual waste" *after* fracking are often required to be classified as "hazardous waste" *before* fracking. Yet the standards for transportation of residual waste are more lenient than those for hazardous waste. The residual waste category generally includes materials that are far less dangerous than hazardous waste, thereby jeopardizing first responders and other members of the public who do not realize what they may be facing when dealing with fracking wastewater.

Interestingly, the MSC did not include any reasons that this particular recommendation doesn't make sense or shouldn't be passed.

I will end my comments with a plug for the other recommendations that the grand jurors made. They may not be relevant to today's hearing, but they are no less important. They include recommendations to:

- #1: Expand **no-drill** zones.
- #2: Stop the **chemical cover-up**
- #3: Regulate all **pipelines**.
- #4: Add up the **air pollution** sources.
- #6: Deliver a real **public health** response.
- #7: End the **revolving door**.
- #8: Use the **Criminal laws**.

Perhaps at some point in the future, we will have the opportunity to discuss some of the other recommendations. I thank you for your interest in the Environmental Crimes Section and the work that we are doing. I also want to take a moment to thank you all for the important work that you do every day. I hope that you can build coalitions to draft and enact all of the recommendations that the grand jurors made. The health and safety of Pennsylvanians and our environment depend on it!