

Statement of Karen Feridun
Road Spreading of Brine in Pennsylvania
PA Senate Democratic Policy Committee Hearing
April 17, 2024

Good morning, Chairman Muth, Senator Comitta, and committee members. Thank you for allowing me this opportunity to speak about road spreading of conventional drilling waste in Pennsylvania.

My name is Karen Feridun. I am the Co-founder of the Better Path Coalition, a statewide frontline- and grassroots-led coalition. I have been researching and writing about road spreading since 2021.

In the six years since the DEP declared a moratorium on road spreading, drillers have reported spreading more than 83,600 barrels, or 3.5 million gallons of conventional drilling waste on unpaved roads in Pennsylvania.

‘Reported’ is the operative term because, as we learned in 2022, more than half of conventional drillers fail to file production and waste reports. In a compliance report ordered by Governor Tom Wolf, the DEP found that from 2017 through 2021, an average of 56.6% of drillers failed to file the reports.

A closer look at each year’s figures shows that noncompliance trended upward, from 53.7% in 2017 to 61.8% in 2021. In March, Kurt Klappowski, Deputy Secretary for the Department of Environmental Protection’s Office of Oil & Gas Management, [told](#) the House Environmental Resources and Energy Committee that 86% of conventional drillers failed to file annual production and waste reports for 2023. That figure will likely go down a little because the DEP also found in 2022 that 16.3% of drillers filed reports after the deadline.¹

I had been looking at waste reports for a couple of years by the time the DEP’s report came out, but I was already concerned about how little information the waste reports provide. Conventional drillers only file reports annually, by February 15 of the following year, so even the entries that are filed on time are dated. Glaring data gaps in the system prevent the user from getting critical details, like when and where the waste was disposed. Knowing when waste was disposed is an issue across all disposal methods. Knowing where it was disposed is a problem that is more

¹ Earlier this month, I tallied the amount of road spreading waste reported between 2018 and 2021. The total was nearly 83,000 barrels, nearly 4,200 more barrels than had been reported when I did the same tally in December of 2022. The reporting deadlines are missed by years, not weeks or months, in some cases

specific to road spreading because entire municipalities are considered to be road spreading waste facilities.²

DEP's 2022 report refers to a culture of noncompliance within the conventional drilling industry, but the agency's own culture of see-no-evil, enabling behavior toward drillers contributes to a system that is broken in almost every way possible.

An unnamed Pennsylvania agency administrator in a 2017 [report](#) Colorado's Department of Health commissioned when it sought guidance for state policymakers on road spreading said it is "grandfathered in," that DEP "has not seen anything yet that gives them 'significant pause' impact-wise," and that "DEP finds that it is quite difficult to have a rational conversation with the public on seismic activity and radiation, specifically." Asked about regulatory and legal realities, the administrator responded that "DEP believes that compliance is going well overall."

In 2021, Kurt Klappkowski [told](#) the Grade Crude Development Advisory Council (CDAC), "We have to be able to defend our decisions with data. And that was the attempt, with working with Penn State (referring to the study DEP funded), that's what we were attempting to do was to develop that data to be able to have a program that we could go to the Environmental Hearing Board and the Commonwealth Court and Supreme Court under the constitution and under the statutes that we administer, that would be defensible.

"I don't think we would have any objection to working with [CDAC] and the legislature to try to figure out a way to develop that data. I think we're hopeful that the study that we funded and expect to have finished will provide data that will allow us to have a program that we can defend in court."

As recently as last year, Klappkowski [said](#), "The challenge the conventional oil and gas industry faces is finding a way to get produced water designated for 'beneficial reuse.' Klappkowski acknowledged that that outcome may be unlikely."

May be unlikely? What he's referring to is the industry's attempt to sidestep the moratorium by using a program under the Bureau of Waste Management's residual waste program called the Coproduct Program.

Drilling waste is hazardous waste that has never been classified or regulated as such. Drillers will never be able to make the case that their toxic, radioactive waste qualifies for the Coproduct Program. It's like trying to force a hazardous peg into a residual hole.

The Coproduct Program allows owners of a waste product to use it in place of a commercial product as long as it works as well and does no more harm to the environment or health than the commercial product does. [Section 287.8](#) of the Pennsylvania Code, entitled Coproduct Determinations lays out what must be considered in making a determination. However, the

² The waste report contains a pair of GPS coordinates labeled Facility Latitude and Facility Longitude. Unlike other forms of disposal that occur at a site, road spreading occurs over a distance. Do the GPS coordinates refer to the place where a road spreading began or where it ended? Neither. The DEP maintains a list of waste facilities on its website. Ninety-one municipalities in 15 counties are currently listed as road spreading waste facilities. The coordinates appear to refer to a spot roughly at the center of the municipality.

program is so loosely structured that waste owners who believe their product passes muster can start using it without notifying the DEP. They are only required to keep their determination report on file to give to prospective clients and to the DEP should the agency request it.

In 2021, the Bureau started requesting Coproduct Determination reports from drillers who had reported road spreading in 2020, so I filed a Right-to-Know request to receive whatever they received. What drillers [submitted](#) bore no resemblance to what a determination report should look like. They sent extraneous information – a copy of 287.8, form letter ‘testimonials’ from municipalities that like road spreading, random lab reports that did not meet the requirements of 287.8. None of them appeared to be trying to do a proper determination. To date, none has.

That is what should raise concerns about an action DEP took in 2019 when it added a nonexistent product type, brine coproduct, to its waste reports. Until or unless a driller’s waste qualifies as a coproduct, there is no such thing.³

I learned in a mediation with DEP earlier this year that the agency recalls that the request for the product type came as a verbal request from Penny Duckett of Pennfield Energy.

I had also asked for documents that showed how DEP decided to act on her request. No documents exist. Without documentation, we do not know if the Oil & Gas office contacted the Bureau to ask if drillers were using the Coproduct Program appropriately. What we do know is that the Oil & Gas office added the product type two years before the Bureau began requesting drillers’ reports.

The Office of Oil & Gas Management was willing to corrupt the state’s official record of oil and gas waste handling to fulfill the request of a drilling company that was violating the division’s own moratorium.

Even after the DEP added the product type, Pennfield Energy failed to file reports in 2019 and 2020⁴ and told prospective clients in a 2019 letter, “Pennfield has obtained a Co-Product status instead of

³ Not surprisingly, brine coproduct does not appear on the state’s list of [Residual Waste Codes](#), nor does it appear on the list of product types in Appendix D of the [OGRE’s Conventional Wells Production and Waste Reporting Guide](#) updated in 2020, the year following the its addition to the waste report.

⁴ Pennfield Energy did not use the product type, but others did. 26 conventional drillers reporting entries for 9 disposal methods other than road spreading and three unconventional drillers used the brine coproduct product type to report a combined 2.8 million gallons of waste since 2019.

Waste with our brine. What this means is you don't have to report spreading and it can be spread all year round. I know this is hard to believe because D.E.P. doesn't make anything easy, but it's true..."

Road spreading was a heavily-used method of disposal before the moratorium went into effect. Nearly 29.4 million gallons of waste was road spread in the three years before the moratorium, roughly 92% more than was reported in the three years after the moratorium.

Where did all that waste go? Nobody knows, but there is no question that some of it went where it always went – on our roads. We need a permanent ban on all road spreading and serious consequences for any driller who ignores it.