



June 30, 2020

Dear Honorable Member of the General Assembly:

On June 25, 2020, Pennsylvania Attorney General Josh Shapiro released a report, which, in reality, was written by his office and provided to the grand jury, related to unconventional shale gas drilling in the Commonwealth. The sheer breadth of factual inaccuracies, misrepresentations, legal omissions and unsubstantiated allegations compel my response on behalf of the tens of thousands of Pennsylvanians – your constituents – who take great pride in working to safely and responsibly develop the Commonwealth’s natural gas resources for the benefit of us all.

The Attorney General’s report exhibits a jarring lack of reality as to how shale gas development occurs in Pennsylvania. It also exhibits an equally disturbing ignorance as to the laws and regulations which govern shale gas development in the Commonwealth – an ignorance which even the PA Department of Environmental Protection (PA DEP) sought to rectify with the Attorney General in advance of his public statements on June 25th, to no avail. In response to the Attorney General’s comments, the PA DEP stated that his report “does a disservice to the citizens of the Commonwealth” and that many aspects of the report “were factually and legally inaccurate.”

Much of the report conveys “evidence” that simply relays anecdotal stories offered without proof, corroboration or attribution. The report fails to identify any specific instance that substantiates its claims of impacts, which conveniently means they cannot be directly refuted. Interestingly, there is no evidence that any member of the grand jury – or the Attorney General – has ever visited an active drilling or production site, pipeline construction site, compressor or processing facility.

At its core, the Attorney General’s report issues several recommendations for the General Assembly’s consideration. Several of these recommendations deserve a direct response:

Recommendation: *Expanding no-drill zones in Pennsylvania from the required 500 feet to 2,500 feet*

Response: Act 13, passed by the General Assembly in February of 2012, expanded setbacks from shale gas wells for waterways, private water wells, occupied buildings and public drinking water supplies. These setback distances were unanimously endorsed by leading environmental organizations and local government associations as part of the Governor’s Marcellus Shale Advisory Commission. At the time, the law represented the farthest setback of any state and became a model for other states. Today, Pennsylvania still has the second farthest setback provision in the nation.

A 2,500 feet prohibition for development has been specifically advocated by opponents of natural gas development, as it would essentially make much of the shale play in the Commonwealth undevelopable, resulting in a significant impact on the private property rights of tens of thousands of landowners who wish to develop their mineral rights.

Recommendation: *Requiring “fracking” companies to publicly disclose all chemicals used in drilling and hydraulic fracturing before they are used on-site*

Response: Shale gas operators are already required to disclose all chemicals used in the drilling and hydraulic fracturing process. This requirement is contained in Act 13 of 2012 (58 Pa.C.S. §§3222 & 3222.1). Operators are required to disclose all chemicals, including any confidential or proprietary information, to PA DEP. Additionally, well-specific data is available online at www.fracfocus.org. Under Act 13, Pennsylvania became just the second state in the nation to provide an affirmative right to health care professionals to access all chemical information (including confidential and proprietary data) in the care of a patient. It should be noted, as well, that exploration and production companies engage contractors to perform both the drilling and the hydraulic fracturing stages of development. Operators rely on these contractors for their reporting requirements.

Recommendation: *Requiring the regulation of gathering lines, used to transport unconventional gas hundreds of miles*

Response: Gathering line construction is heavily regulated in Pennsylvania. Operators are required to obtain erosion and sediment control permits as well as separate permits should the pipeline cross a waterway. They also are subject to rigorous onsite inspections by PA DEP and conservation district personnel. Additionally, under Act 127 of 2011, known as the Gas and Hazardous Liquids Pipelines Act, the Pennsylvania Public Utility Commission is empowered to serve as an agent to enforce federal pipeline safety laws.

Recommendation: *Adding up all sources of air pollution in a given area to accurately assess air quality*

Response: Both U.S. EPA and PA DEP have established rigorous standards for aggregation of sources of air emissions during the permitting process. Additionally, air quality permits for midstream facilities and well pads (referred to as GP-5 & GP-5A) establish facility



control and emission standards for unconventional well sites and midstream facilities. The standards established in these permits exceed federal requirements.

Recommendation: *Conducting a comprehensive health response to the effects of living near unconventional drilling sites*

Response: Employees of the natural gas industry live in the very communities in which we operate. They have every incentive to ensure that they, and their families, are healthy and that development is done safely. At the same time, we must be careful not to equate correlation with causation, but rather be guided by science and facts. The shale gas industry has already expressed its support for a broad-based, impartial approach to studying health impacts that properly takes into account all risk and environmental factors.

Recommendation: *Limiting the ability of Pennsylvania Department of Environmental Protection employees to be employed in the private sector immediately after leaving the Department*

Response: This recommendation is premised – falsely – on the belief that state employees are unethical and will behave in a manner that is untoward. The recommendation is discriminatory in nature (why not also apply it to employees of the Office of Attorney General or other state agencies?) and would appear to improperly interfere with the right of a citizen to work in their chosen profession.

It should come as no surprise that many businesses (and non-governmental organizations) in Pennsylvania seek to employ experienced and knowledgeable employees. This is particularly true for companies seeking to raise their environmental performance and enhance their understanding of and adherence to the environmental requirements of the state. The state Ethics Act already establishes appropriate “cooling off” periods for former state employees after their tenure in state government concludes.

Recommendation: *Allowing the Pennsylvania Office of Attorney General original criminal jurisdiction over unconventional oil and gas companies*

Response: The General Assembly has thoughtfully and appropriately allocated original jurisdiction of the Commonwealth’s statutes among the elected district attorneys of each county and the Attorney General. There does not appear to be any rational justification to extend jurisdiction of one segment of one industry to the Attorney General.



More to the point: when someone seeks additional prosecutorial jurisdiction, they should, at a minimum, be able to demonstrate a modicum of understanding of the subject matter and current statutory requirements, a threshold which has clearly not been met in this instance.

Failure to Recognize the General Assembly's Actions

In evaluating and maligning Pennsylvania's response to the rise of shale gas development in Pennsylvania, the Attorney General fails to acknowledge a single environmental act passed by the General Assembly. In doing so, the report knowingly obscures the true response of Pennsylvania to ensure that shale gas development occurs safely and responsibly. Examples of legislative accomplishments ignored by the Attorney General include:

Act 13 of 2012 – Act 13 was a comprehensive re-write of Pennsylvania's Oil and Gas Act and contained nearly 40 significant enhancements to strengthen Pennsylvania's environmental standards. Examples of enhancements include:

- Increasing setback distances of wells from waterways, water wells, occupied buildings and public drinking water supplies;
- Mandating operators to fully disclose chemicals used in the well development process;
- Guaranteeing health care providers access to chemical data disclosures;
- Expanding 'rebuttable presumption' safeguards for landowners to protect water supplies;
- Mandating PA DEP on-site inspections at critical times of the well development process;
- Expanding notification of permit applications to all nearby landowners and municipal governments;
- Increasing the standard of water quality for a restored or replaced water supply;
- Prohibiting development in floodplains;
- Mandate water management plans;
- Requiring inspection reports to be posted online;
- Increasing fines and penalties;
- Instituting an Impact Fee for each shale gas well, which provides nearly \$14 million to PA DEP and county conservation districts to oversee the industry.

Act 127 of 2011 – Entitled the "Gas and Hazardous Liquids Pipelines Act", this law empowers the PA Public Utility Commission to act as an agent to oversee and enforce federal pipeline safety laws.

Act 9 of 2012 – Entitled the "Unconventional Well 911 Emergency Response Act", this law requires unconventional operators to prepare and file emergency response plans with PA DEP and local emergency response agencies.



Failure to Recognize Regulatory Actions

The Attorney General's report fails to adequately capture the significant number of new regulatory packages that were promulgated by the PA DEP, under multiple administrations. The following identify some of the higher-profile regulatory actions taken in response to the rise of shale gas development:

- 2008 Adoption of a new Erosion and Sediment Control permit for earthmoving activities related to shale gas development
- 2009 Shale permit fees increased from \$100 to over \$2,500 to fund the hiring of 137 additional oversight staff
- 2010 Updating of 25 PaCode Ch. 102, establishing new performance standards for erosion and sediment control
- 2010 New wastewater treatment and discharge standards related to Total Dissolved Solids promulgated
- 2010-11 Comprehensive rewrite of 25 PaCode Ch. 78, PA DEP's oil and gas regulations, to establish modern well casing and construction standards to protect water supplies
- 2012 Issuance of revised, updated Erosion and Sediment Control permit for earthmoving activities related to shale gas development
- 2013 Issuance of a new permit (GP-5) governing air emission standards at compressor stations and other midstream facilities related to shale gas development
- 2014 Shale gas permits increase to \$5,000 to sustain Oil & Gas program and expand staff by additional 24 employees. Fee increase in addition to new \$6 million annual Impact Fee allocation to PA DEP.
- 2016 Second comprehensive rewrite of 25 PaCode Ch. 78a to update and enhance environmental performance standards for surface activities
- 2019 Revised and new air quality permits (GP-5 & GP-5A) finalized for shale gas transmission, midstream and production sites

Misstatements of Fact & Law

The Attorney General's report contains misstatements and inaccuracies that demonstrate a clear lack of understanding of how shale gas is developed. Consider the following claims from the report:

- Operators use explosives to fracture shale

False, no explosives are EVER used to fracture a well. The statement is absurd.

- Chemicals are not identified or disclosed

False, as discussed in detail above.

- PA DEP did not undertake regulatory action until 2016

False. Among other things, as stated above, PA DEP adopted regulations to raise permit fees and hire inspectors in 2009, and finalized well construction, casing and cementing rules in 2011.

- Due to federal exemptions, during transport wastewater is placarded as "residual waste" rather than "hazardous waste"

False. Wastewater is placarded as residual waste because it is residual waste.

- If a water supply is impacted, a homeowner can either continue drinking it and take their chances, or purchase and haul their own water

False. If a water supply in proximity to an oil or gas well is impacted, the operator is presumed to be responsible. Operators who impact a water well must provide both a temporary and permanent water supply to the landowner which meets Safe Drinking Water Act standards, which often is better than pre-existing water quality standards.

Conclusion

Pennsylvania's shale gas industry has led the way in establishing, endorsing and implementing some of the highest environmental standards in the nation. In many cases, the industry voluntarily implemented operational changes even before regulatory changes were adopted. It should be noted that the regulatory standards implemented have been lauded by independent entities such as the State Review of Oil and Natural Gas Environmental Regulators (STRONGER).

This industry is comprised overwhelmingly of Pennsylvania residents who are valued members of their community and take pride in their work. They – and you – deserve better than a report



which ignores facts and science, is ignorant of current law, omits several dozen regulatory enhancements made over more than a decade, lobs unsubstantiated allegations of uncorroborated events, questions the integrity of state environmental regulators and seeks to sensationalize that which the Attorney General clearly does not understand.

Thank you for your support of safe and responsible development of Pennsylvania's natural resources, and the jobs, energy security and environmental enhancements this development advances. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DJS', is positioned above the typed name.

David J. Spigelmyer
President