

**A Response to the  
43rd Pennsylvania Investigating  
Grand Jury Report**

**On Hydraulic Fracturing  
for the Extraction of Natural Gas**

**By**

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## **Introduction**

For several years I had the privilege to serve the citizens of the Commonwealth of Pennsylvania as the Secretary of the Department of Environmental Resources. During that time, I made it my business to get to know and spend time with as many DEP personnel as I could. In my view, every single one of the more than 3,000 people, many of whom devoted their entire career to environmental protection are dedicated, honest and took their work at the DEP very seriously.

Those people left an indelible impression with me and it is because of them that I feel compelled to speak out forcefully against the Grand Jury Report. It would be inappropriate for me, as their former Secretary, to sit idly while 3,000 DEP personnel are attacked with broad brush. I know that the people at DEP never wavered from the law, never turned a blind eye to wrongdoing and always kept the safety of Pennsylvania's citizens paramount.

I commend the current administration of DEP for its comprehensive 56-page written response to the Grand Jury Report which in many respects accurately describes actual regulatory and enforcement history and practices and is an appropriate defense of the work of the Department's dedicated management and personnel.

Were we perfect? Of course, not and we never claimed to be. Did we make mistakes? Yes, we never claimed we didn't. No government, much less any organization, is ever perfect. But to besmirch the entire Agency and all 3,000 employees as is done here is unfair. It would be no different than lambasting the entire Attorney General's office because crime has not been eradicated.

Although my response is not intended to be an exhaustive refutation of each assertion in the Grand Jury Report, the essence of my response appropriately conveys more balanced and complete background regarding the subjects presented in the order presented in the Grand Jury Report.

Michael L. Krancer  
June 26, 2020

## **DEP's Oversight of Hydraulic Fracturing by the Natural Gas Industry Was Poor**

This is untrue. We innovated in regulatory practices and were diligent in our oversight of an industry, natural gas, which DEP had a long history of regulating. We consistently implemented the laws passed by the General Assembly and did more via regulation, policy, guidance and “boots on the ground”. DEP was not the body that decided that natural gas drilling was permitted by law. DEP never took a position on hydraulic fracturing. The General Assembly and Governors from both parties deemed it to be the policy of the Commonwealth to provide for the extraction of natural gas. We addressed every situation as it arose. We remained focused on environmental impacts of each project and permit application. I stand by the record we established and reject the assertions of the Report.

Also, Pennsylvania's regulatory program was evaluated by the independent, non-profit, multi-stakeholder State Review of Oil and Natural Gas Environmental Regulations organization (STRONGER) and received positive marks. STRONGER has been recognized by the United States Department of Energy Shale Gas Subcommittee's August 2011 draft report on Shale Gas development as an “exceptionally meritorious” mechanism for improving the availability and usefulness of shale gas information among constituencies. According to STRONGER, “the Pennsylvania program is, overall, well-managed, professional and meeting its program objectives.”

## **DEP Failed to Act as a “Trustee and Guardian” for the Public Interest**

We studied public health concerns and data we acquired from hydraulic fracturing sites and developed and implemented new guidance, policies, general permits and other practices that we felt were appropriate and called for. DEP took steps in the “call to drillers” to limit the use of certain municipal water treatment facilities accepting produced water that contained chemicals (bromide) that those plants were incapable of managing. We enacted an effective ban that prevented Marcellus Shale drillers from delivering produced water to those ill-equipped facilities. This was an innovative and creative step that succeeded in getting virtually immediate compliance. To have used the traditional channels to deal with this, i.e., issue an Order or change the regulations, would have taken years to implement. Moreover, we initiated a comprehensive study on radioactivity in drilling wastewater. We were tough but fair.

Democratic and Republican administrations over the last 12 years have substantially upgraded the state's water treatment laws. My message was “[i]f you can't meet the standards in Pennsylvania, you are not welcome to do business in Pennsylvania.

## **DEP Waited to See Whether the Worst Outcomes Would Happen**

False. We monitored and constantly evaluated scientific information generated from all sources whether supportive in conclusions or critical of fracturing and calibrated our regulatory and oversight practices to remain current and protective of public interests. The “call to drillers” to stop delivering drilling wastewater to certain ill-equipped treatment facilities stands in direct contradiction to this “wait and see” allegation. So, to do those other actions we took in real time to strengthen protections such as the new air general permit for oil and gas activities and the new waste management general permit for drill sites.

### **DEP Failed to Balance Economic and Public Health Interests**

Democrat and Republican Governors and the State General Assembly had made the policy decision to allow for natural gas development in Pennsylvania by hydraulic fracturing based on a number of factors including economic and geopolitical impacts. DEP was responsible for regulating that activity and that is what it did. Our regulatory efforts were consistent and appropriate. We operated and enforced to assure balance. We were consistently guided by science and the facts. During my tenure as Secretary, the head of EPA's Drinking Water Protection Division asserted that “there was no evidence that the states aren't doing a good job already [*regulating fracking*].” I completely agreed with that then and I do now.

In addition, during our administration the Legislature passed, and the Governor signed Act 13 of 2012. The current Administration’s DEP website accurately describes Act 13 as follows:

*Act 13 of 2012 enacted stronger environmental standards, authorized local governments to adopt an impact fee and built upon the state's ongoing efforts to move towards energy independence as unconventional gas development continues. Among the Act's provisions are increased setback requirements for unconventional gas development; enhanced protection of water supplies; and strong, uniform, consistent statewide environmental standards. As a result of these provisions, the Department of Environmental Protection will continue to ensure the responsible development of this important resource.*

(See: <https://www.dep.pa.gov/Business/Energy/OilandGasPrograms/Act13/Pages/default.aspx#:~:text=Act%2013%20of%202012,as%20unconventional%20gas%20development%20continues>)

Act 13 also required significantly strengthened disclosure requirements relating to chemicals used in the fracturing process. Pennsylvania’s Act 13 disclosure law is one of the most forward thinking and expansive disclosure laws in the nation. Our law was modeled after the Colorado disclosure law that was embraced by a broad spectrum of stakeholders including environmental groups such as the Environmental Defense Fund. Our law provides for disclosure through a publicly accessible web-based database known as *FracFocus.org*. The law provides for mandatory disclosure--even of proprietary information--to health care professionals for the purpose of diagnosis or treatment and immediately in an emergency. These health care professionals can share the information with their patients, as well as other health care professionals as needed to care for the patient. Previously, there were no such disclosure requirements in Pennsylvania regarding health care professionals.

## **Despite Citizen Complaints, DEP Took Insufficient Actions**

The following are just a few examples of DEP's actions.

Just before we took office DEP issued an enforcement action (Consent Order and Agreement) in December 2011 against a driller for contamination of water wells in Susquehanna County which required the driller to pay to affected residents the sum of over \$4,100,000 and to restore and/or replace affected water supplies at 16 residences. The order also required the driller to install water filters at the residences and to pay \$500,000 in settlement of related claims for stipulated penalties under a prior order. Furthermore, the order put a moratorium on further drilling in the affected area until written approval for such drilling is provided by DEP. That moratorium remained in effect during my tenure as Secretary and, in fact, DEP has continued to enforce that moratorium to the present time. The driller denied that its well drilling was the cause of the problem with the water supplies but agreed, nonetheless, to fulfill the terms of the order.

It is worth noting that the December 2011 DEP consent order entered into 8 and a half years ago covers the same activities outlined in the June 15, 2020 Presentment against Cabot Oil and Gas. Also, from the description outlined in the Presentment the DEP across two administrations, Democrat and Republican, was very proactive in taking investigative and enforcement actions relating to the matter. Our regulatory policy and actions were consistent with the laws, enacted by the General Assembly. The state's natural gas operations emitted 4 percent of its 2011 industrial air pollution, a sliver of the 72 percent created by power plants, according to our natural gas emissions review. There is consistent and growing evidence that the use of natural gas has reduced air pollution and made the environment healthier. In addition, natural gas extraction has created economic opportunities for many Pennsylvanians.

DEP was and is very active in taking enforcement actions when they are necessary. DEP issued an enforcement action against Chesapeake Energy in response to the well pad fire at Avella, Washington County in February 2011, just one month into our tenure. We also told Chesapeake to cease and desist from all operations in the Commonwealth until an investigation was completed into the cause of the incident. Very quickly after the incident DEP fined Chesapeake a total of \$1,088,000 for that incident and for inadequate protective measures in well drilling that resulted in contaminating the private water supplies of 16 residences in Bradford County.

This was the largest penalty in the history of the oil and gas program just 4 months into our tenure in office. At the time I said in a statement that, "[t]he water well contamination fine is the largest single penalty DEP has ever assessed against an oil and gas operator, and the Avella tank fire penalty is the highest we could assess under the Oil and Gas Act..."[o]ur message to drillers and to the public is clear." Also at the time, Jan Jarrett, then head of PennFuture said "[t]he amount is large enough to get the attention of the other drilling companies operating in Pennsylvania...This action should

also begin to restore public confidence in DEP's commitment to strong enforcement of our environmental laws."

DEP also acted quickly with regard to a defective well drilled in Moreland Township, Lycoming County. The well was drilled between February and March 2011. The well was fractured in June to July 2011. In January and February, the well was pressure tested and methane were observed by DEP personnel in the cemented annular spaces. This is indicative of a defective cement job. DEP notified the well owner by inspection report dated February 7, 2012. The owner submitted a corrective action plan but DEP rejected the plan finding it to be inadequate. DEP also initiated in January 2012 an investigation of reports that discolored water was observed in a nearby private water well. DEP acted on findings that methane levels in the water supply were higher than pre-drilling sampling by issuing five property owners' determinations that their water supplies had been impacted by the oil and gas activity associated with the well in question. Just before I left the Department, the operator denied that its well was responsible, but DEP continued to pursue the matter as vigorously as it could including pushing for corrective actions by the owner of the well and the issuing of an Order directing certain corrective actions in May 2015. The operator contested that Order to the Environmental Hearing Board. Continued attempts to fix the well were unsuccessful and DEP continued to pursue the matter. DEP notified the owner of the well that it intended to assess it a fine of \$8,957,000. The owner appealed that notice to the Environmental Hearing Board. DEP later rescinded that assessment. The matter culminated with the issuance of another Order in January 2020 and that Order was also appealed to the EHB and is currently under litigation.

DEP imposed a \$107,500 fine against a driller in September 2013 in three different Orders relating to multiple surface impoundment sites in Washington County.

A year later, in September 2014, DEP imposed a \$4,150,000 fine against an oil and gas operator, the largest fine ever imposed at that time in the oil and gas program, for leaks and other problems at six surface water impoundments in Washington County. DEP, at the same time, ordered the company to close five surface water impoundments and take corrective actions at two others including installing thicker linings and improved leak detection systems. It is worth noting that the June 12, 2020 Grand Jury Presentment against Range Resources with the fine of \$150,000 covers the very same activities covered over five and a half years before in the 2014 DEP \$4,150,000 fine and enforcement action.

### **DEP Delayed Promulgating and Implementing Regulatory Regimes**

False. We pursued activist review and regulation of the breadth of the industry, engaged with drilling enterprises to fix problems and responded fully and without limitation to the General Assembly. In our tenure we implemented the "call to drillers", we put into effect a more protective air general permit for drill sites that was one of the first in the nation to control methane emissions, we implemented a new general waste management permit for drill sites and we started the formal regulatory process for development of an entire new comprehensive set of regulations

governing surface activities at well sites that become final law as new Chapter 78a under the current administration.

### **DEP Lacked Expertise and Failed to Educate Its Critical Staff**

DEP had very robust expertise in house. In fact, the federal EPA relied on DEP's drinking water quality personnel with respect to oil and gas regulation while I was there. The natural gas industry was evolving as were the understandings and experience of DEP's management and field personnel. This is common in many regulated industries because technology in all regulated industries advances quickly and we are seeing that today for example with respect to Autonomous Vehicles. We were vigilant in implementing the law. Our people were engaged with all stakeholders and with communities to acquire insight and knowledge as the industry changed and grew. DEP changed and grew with it. It is common for those who as an ideological matter oppose hydrocarbon fuels and natural gas development to challenge the capacity of states to regulate this industry. I have strongly disputed that perspective and still do.

### **DEP Failed to Enforce Regulations**

As set forth above, from the very outset of my tenure as DEP Secretary -- when we called on drillers to cease delivering wastewater from shale gas extraction to certain wastewater treatment facilities that then legally accepted it under Total Dissolved Solids regulations -- through my last day on the job, my role and leadership as a regulator and policy implementer focused on enforcement of regulations an development of new guidance, policies and other devices including new regulations that reflected the laws and policies of the Commonwealth.

### **DEP Was Biased In Favor of the Fracking Industry and Was Never an "Honest Broker"**

I reject that assertion and, again, the examples set forth above contradict this allegation. Pennsylvania had made a decision to facilitate and regulate natural gas extraction through hydraulic fracturing. That position was established well before I was appointed by Governor Corbett and prior to his election as Governor.

### **DEP Failed to Manage Toxic Wastes Generated From Hydraulic Fracturing**

This is incorrect and is contrary to the record. The immediately preceding Democratic administration put on line Chapter 95 of our regulations to address the cumulative impacts of oil and gas wastewater discharges. This rule was the first of its kind in the country and limits the discharge of Total Dissolved Solids from new or expanded facilities that take oil and gas wastewater to drinking water standards. This means that new discharges cannot exceed 250 mg/l for chlorides and that drinking water supplies will never be impaired because of oil and gas drilling. The process of eliminating the TDS will also remove radium – which has been the subject of recent articles. Thus, in addition to reducing the contaminants discharged to our streams, the

Chapter 95 rule increased the use of recycled water, promote the development of alternative forms of disposal and perhaps promote the use of alternative sources of fracturing fluid.

Our administration, among other measures, took Chapter 95 a step further by preventing drillers from taking wastewater to facilities which had been grandfathered under the Chapter 95 regulations (they were exempted from these provisions and which were incapable of treating the wastewater to adequate levels). Further, through the Bureau of Waste Management, we also issued a revised and reissued General Permit WMGR 123 that regulated the disposal of processed liquid wastes generated on oil and gas well sites and infrastructure. Wastewater sent off site was always regulated as a residual waste under the regulations and required permitting by DEP. The WMGR 123 required, among other things, bonding, sampling protocols, facility siting requirements, inspection and recordkeeping requirements. This permit facilitated the important goal of treatment and reuse of drilling wastewater as opposed to disposal.

### **DEP Failed to Utilize Scientific Information to Inform its Policies and Decision Making**

This allegation is contradicted by much of what is set forth above. As just one example, it was real time research from Carnegie Mellon University that informed the decision to issue the call to drillers to stop sending drilling wastewater to grandfathered treatment facilities. This work was conducted by Dr. Jeanne Van Briesen and was considered groundbreaking for its time.

(See: <https://www.post-gazette.com/news/environment/2011/03/13/Bromide-A-concern-in-drilling-wastewater/stories/201103130368> )

### **DEP Motives for Lax Regulation Were Nefarious**

This allegation is unfair and irresponsible. When I was Secretary and worked closely with many personnel at DEP and I made it a point to personally meet almost every one of the over 3,000 DEP personnel in both Central Office in Harrisburg, the six DEP Regional Offices and the six DEP District Mining Offices. I never doubted the dedication of any one of them to their job.

### **DEP Exhibited Managerial Incompetence**

This is demonstrably false and is flatly contradicted by the unbiased STRONGER Report of 2011. And, in fact, we did a comprehensive reorganization of DEP in order to improve managerial and organizational effectiveness. Part of that reorganization focused specifically on the experienced and projected growth of the natural gas sector and was a reflection of the administration's emphasis on proper oversight of that activity. We took the important step of elevating the Bureau of Oil and Gas Management to becoming the Oil and Gas Deputate which was headed by a Deputy Secretary of DEP. This moved shale gas regulation from a 'back bench' operation to front line and provided a centrally based organization within DEP to unify oversight of that industry. This is more regulation, not less. This move gave DEP the ability to better coordinate its permitting, inspection and enforcement efforts.

(See: [https://www.inquirer.com/philly/business/20110921\\_DEP\\_reorganizes\\_to\\_oversee\\_Marcellus\\_drilling.html](https://www.inquirer.com/philly/business/20110921_DEP_reorganizes_to_oversee_Marcellus_drilling.html)  
and <https://www.prnewswire.com/news-releases/pa-dep-reorganizes-to-improve-efficiency-transparency-130205408.html>)