

**STANDARDS AND GUIDELINES FOR
IDENTIFYING, TRACKING, AND RESOLVING OIL AND GAS VIOLATIONS
(820-4000-001)**

FINAL TECHNICAL GUIDANCE DOCUMENT

COMMENT AND RESPONSE DOCUMENT

JANUARY 17, 2015

INTRODUCTION

In assembling this document, the Pennsylvania Department of Environmental Protection (Department or DEP) has addressed all pertinent and relevant comments associated with this proposed guidance document. For the purposes of this document, comments of similar subject material have been grouped together and responded to accordingly.

The proposed technical guidance document was published in the *Pennsylvania Bulletin* on October 4, 2014, with a 30-day public comment period (44 Pa.B 6290) under document number 550-3000-001. On October 25, 2014, the Department extended the comment period an additional 15 days (44 Pa.B 6853), ending the comment period on November 18, 2014. During the public comment period, the Department received 474 comments from 321 individuals, corporations, and organizations. The following table lists these commentators. The Commentator ID number is found in parenthesis following the comments in the comment/response document.

Table of Commentators

Commentator ID #	Name	Address
1	John Walliser Vice President, Legal and Government Affairs Pennsylvania Environmental Council	2124 Penn Avenue Pittsburgh, PA 15222
2	Henry Berkowitz	141 Sperry Young Rd Sabinsville, PA 16943
3	Allen Martin	740 Oak Hill Boiling Springs, PA 17007-9624
4	Mark Fiorini Secretary, Maiden Creek Watershed Association	958 Rte 143 Lenhartsville, PA 19534
5	Laura Horowitz	6544 Darlington Road Pittsburgh PA 15217
6	Marianne Atkinson	221 Deer Lane DuBois, PA 15801
7	Andrea Young	552 Tescier Rd Muncy, PA 17756
8	Sr. Mary Franceline (Margaret Ann) Malone	644 N. 43 rd St. Philadelphia, PA 19104
9	Cynthia Iberg	Juniata County
10	Judith A. Parker	2317 Naudain Street Philadelphia, PA 19146
11	Rachel C. Parker	2317 Naudain Street Philadelphia, PA 19146
12	Ryan Aponick	2317 Naudain Street Philadelphia, PA 19146

Commentator ID #	Name	Address
13	Trey Casimir	9 Mill St. Lewisburg, PA
14	Burt A. Waite Moody and Associates, Inc	11548 Cotton Rd. Meadville, PA 16335
15	Mary Ann Leitch	526 Reed St. Philadelphia, PA 19147
16	Holly Williams	153 E. King St. Apt 311 Lancaster, PA 17602
17	Margaret S. Goodman	51 Broomall Lane Glen Mills, PA 19342-1734
18	Mary Ann	Marot1421@comcast.net
19	Karen Budd	126 Upper Tincum Church Rd. Erwinna, PA 18920
20	William D. Moutz	1335 Maple Ave Verona, PA 15147
21	Patricia Bidlake	P.O. Box 89 Dimock, PA 18816
22	Briget Shields	2329 Tilbury Ave Pittsburgh, PA 15217
23	John W. Parana	Johnsonburg, PA
24	Anne Jackson	P.O. Box 516 Morgantown, PA 19543
25	Dylan Weiss	1503 Grand Cypress Lane Presto, PA 15142
26	Marian Trygve Freed	133 East Marylyn Avenue State College, PA 16801
27	Alana Balogh	P.O. Box 121 Revere, PA 18953
28	Kenneth Barker	2349 Highland Ave. Allison Park, PA 15101
29	Hetty Baiz	26 Shore Drive Tunkhannock, PA 18657
30	James Powell, President Buffalo Creek Watershed Association	Box 408 Claysville, PA 15323
31	John Silla	410 Skymeadow Drive Muncy Valley, PA 17758
32	Lois U. and Oliver J. Drumheller	200 Scott Drive Monroeville, PA 15146
33	Marian Szmyd	711 Cora Street Jeannette, PA 15644
34	Robert Donnan	107 Southview Ct McMurray, PA 15317

Commentator ID #	Name	Address
35	Aaron Booz	3181 Bel Air Drive Pittsburgh, PA 15227
36	Betsy Andrews	
37	Laura Neiman	60 Seaman Ave 5G New York, NY 10034
38	Alyson Holt	4830 Primrose Lane Murrysville, PA 15668
39	Kathy Fox	1513 Elm St. Bethlehem, PA 18017
40	Marlena Santoyo	515 Glen Echo Rd Philadelphia, PA 19119
41	Thomas K Sharpless	6017 Greene Street Philadelphia, PA 19144
42	Emily Krafjack, President Connection for Oil, Gas & Environment in the Northern Tier, Inc.	1155 Nimble Hill Road Mehoopany, PA 18629
43	Marilyn K. Hunt	619 Whitehaven Blvd. Steubenville, OH 43952
44	Kate Ryan	87 Sal Bren Rd. Delhi, NY 13753
45	Mary Anne Heston	179 Leech Hill Rd. Sabinsville, PA 16943
46	Shannon Pendleton	PO Box 306 Bryn Athyn, PA
47	Tracy Carluccio, Deputy Director Delaware Riverkeeper Network	925 Canal St. Suite 3701 Bristol, PA 19007
48	Nancy Wottrich	1322 Williams Pond Rd. New Milford, PA 18834
49	David Clark Kimberly Angove Pennsylvania Grade Crude Oil Coalition	P.O. Box 211 Warren, PA 16365
50	Sarah Casper	525 Hopewell Rd. Downingtown, PA 19335
51	Charles Hollister	2091 Oldroyd Rd Columbia Cross Roads, PA 16914
52	James Cleghorn	2771 Paradise Rd Reynoldsville, PA 15851
53	Bill and Carrie Hahn	994 Indiana Run Rd. Volant, PA 16156
54	Scott Cannon	61 Girard Ave Plymouth, PA 18651
55	Denise Coyle	Washington County

Commentator ID #	Name	Address
56	Erin Crump	Granar Rd Blue Bell, PA 19422
57	J. Stephen Cleghorn Paradise Gardens and Farm	2771 Paradise Rd. Reynoldsville, PA 15851
58	Terry Supowitz	
59	Pamela Poholsk	244 Rainprint Lane Murrysville, PA 15668
60	Timothy P. Reim	27 West 33 rd Street Erie, PA 16506
61	Martin Matteo	1230 New Bedford Sharon Rd West Middlesex, PA 16159
62	Jason Walters	5344 Seip Rd Bethlehem, PA 18017
63	Randall R. Baird	1273 Highland Street EXT DuBois, PA 15801-4543
64	Laurie Barr	
65	Jenny Lisak	2975 Rte 410 Punxsutawney, PA 15757
66	Kristin Landon	11 Baker Hirkey Rd Tunkhannock, PA 19657
67	Richard Martin, Coordinator PA Forest Coalition	
68	David Spigelmyer, President Marcellus Shale Coalition	24 Summit Park Drive 2 nd Floor Pittsburgh, PA 15275
69	Bonita C. Hoke, Executive Director League of Women Voters of PA	226 Forster St. Harrisburg, PA 17102-3220
70	Kenneth Brackett	
71	Cynthia Walter	9176 Essex Dr. Greensburg, PA 15601
72	Stephanie Catarino Wissman, Executive Director API – PA	300 North Second St. Suite 902 Harrisburg, PA 17101
73	Veronica Coptis, First Vice-President Harry Enstron Chapter of IQLA	PO Box Jefferson, PA
74	Michael D. Sherman, Vice-President of Environmental Compliance Range Resources	300 N. Second St Suite 901 Harrisburg, PA 17101
75	Katy Dunlap, Eastern Water Project Trout Unlimited Brian Wagner, President Pennsylvania Council of Trout Unlimited	6281 Cayutaville Rd. Suite 100 Alpine, NY 14805

Commentator ID #	Name	Address
76	Sheila E. Lunger	1755 Route 239 Highway Unityville, PA 17774
77	Walt Hufford, Manager Regulatory Affairs Talisman Energy US Inc.	50 Pennwood Place Warrendale, PA 15086
78	Lou D'Amico, President and Executive Director PIOGA	Northridge Plaza II 115 VIP Drive Suite 210 Wexford, PA 15090
79	James E. Rosenburg	555 Davidson Rd. Grindstone, PA 15442
80	Robert Cross, President Equinox, Ltd	1307 Park Avenue Williamsport, PA 17701
81	Melissa Troutman, Managing Editor & Co-founder Public Herald	
82	Iris Marie Bloom, Director Protecting Our Waters	4808 Windsor Avenue Philadelphia, PA 19143
83	Karen Frock	7288 Route 87 Highway Williamsport, PA 17701
84	Barbara Jarmoska	766 Butternut Grove Road Montoursville PA 17754
85	Linda Reik	P.O. Box 423 Youngsville, NY 12791
86	Mary Anne Lang	1526 Oakland St Bethlehem, PA 18017-5923
87	Gregory Lotorto	495 Log Tavern Rd. Milford, PA 18337
88	Jim Cummings	Philadelphia, PA
89	Jill Tressel	10 Leslie Place Newtown, PA 18940
90	Lydia Garvey	429 S. 24 th St. Clinton, OK 73601
91	Mercedes Lackey	16525 E. 470 Rd Claremore, OK 74017
92	Steven Kostis	
93	Jan London	376 Evergreen Lane Narrowsburg, NY 12764
94	Bill Sharfman	
95	Marie Catanese	215 E. Heather Rd. Wildwood, NJ 08260

Commentator ID #	Name	Address
96	John J. Zimmerman Damascus Citizens for Sustainability, Inc NYH20, Inc Citizens for Water	13508 Maidstone Lane Potomac, MD 20854
97	Jan Milburn	114 Mountain Rd Ligonier, PA 15658
98	Mary Ruth Aull	
99	Elissa Weiss, M.D.	134 Dennis Drive Glenshaw, PA 15116
100	Suzanne Matteo	
101	Elizabeth Donohoe	220 Overdale Rd Pittsburgh, PA 15221
102	Debra, Larry, and Caelan Borowiec	3629 Baxter Dr. Upper Burrell, PA 15068
103	Karen Bernard	1829 Middle Rd Glenshaw, PA 15116
104	Elisa Beck	
105	B. Soltis	690 Hopewell Rd Downingtown Pa 19335
106	Jim Black	5978 Newtown Ave Philadelphia, PA 19120
107	Jon Levin	1899 Aster Rd Macungie, PA 18062
108	Chris Grimley	52 Shannon Rd North Wales, PA 19454
109	Jennifer Foulk	21 Edinboro Circle Chalfont, PA 18914
110	Allison Saft	1327 Willow Ave Elkins Park, PA 19027
111	William Giddings	122 Whitetail Circle Wellsboro, PA 16901
112	Nathan Sullenberger	185 Winfield Circle Greensburg, PA 15601
113	Elaine Unger	Bethwp Easton, PA 18020
114	C Walturz	204 N 10th St Easton, PA 18042
115	Merv Stoltzfus	270 Little Creek Rd Lancaster, PA 17601
116	Seamus MacCallum	McClellan Philadelphia, PA 19148
117	Tawnya Shields	83 Ginger Hill Road Finleyville, PA 15332

Commentator ID #	Name	Address
118	Ellen A Smith	192 Heart Lake Road Montrose, PA 18801
119	K L Paul	105 Trevose Rd Trevose, PA 19053
120	Brian Fink	1806 Green St. Philadelphia, PA 19130
121	DE Bassett	5 Ida Street Imperial, PA 15126
122	Mary Jean Sharp	107 Lexington Avenue Altoona, PA 16601
123	Jacqline Wolf Tice	5427 Chestnut Hill Road Center Valley, PA 18034
124	Patrick Vogelsong	443 W Penn St. Carlisle, PA 17013
125	Logan Welde	36 Ardmore, PA 19003
126	Lori Lojak	245 Dellenbaugh Rd Tarentum, PA 15084
127	Mara Obelcz	3283 Roxbury Rd Hatfield, PA 19440
128	David Lutes	160 Maple Rd. Washington, PA 15301
129	Diana Bekkerman	1 Gruver St. Nanticoke, PA 18634
130	Kim Clemens	439 S. Wyomissing Avenue Shillington, PA 19607
131	Bill Ferullo	4834 Leraysville Rd. Warren Center, PA 18851
132	Sheila Gallagher	2807 N. Delaware Drive Easton, PA 18040
133	Gene Lane	901 frost Rd Easton, PA 18040
134	David Guleke, Jr.	2320 Chestnut St Chester, PA 19013
135	Vicki DaSilva	1413 W Linden St Allentown, PA 18102
136	Poune Saberi	1504 Montrose St Philadelphia, PA 19146
137	Craig Silbert	10 W. Creamery Rd. Box 241 Hilltown, PA 18927
138	Jane Srygley	414 Grandview Blvd Rear Bethlehem, PA 18018

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139	Deanne O'Donnell	137 Ron Drive Derry, PA 15627
140	Jean Nick	1911 Gallows Hill Rd Kintnersville, PA 18930
141	Boel Stridbeck	46 Market Street Philadelphia, PA 19103
142	Aaron Libson	4919 N 9th St Philadelphia, PA 19141
143	Julie Edgar	534 North Cir Bethlehem, PA 18018
144	Edmund Swiger	5850 Meridian Rd Apt 502C Gibsonia, PA 15044
145	Crystal Hart	28-10 Fort Evans Rd apt #203 Leesburg, VA 20176
146	Paul Parker	60 Morrow Road Avella, PA 15312
147	Diane Lilly	3208 Greenbriar Drive East Stroudsburg, PA 18301
148	Karla McNamara	155 McCartney Lane Baden, PA 15005
149	Faustino Dunckhorst	5153 Villaview Dr Pittsburgh, PA 15236
150	Jennifer Lowans	219 Wilkson Lane Fayetteville, PA 17222
151	Jean Olivett	441 E 3rd St Emporium, PA 15834
152	Cynthia Mac Farland	6514 Rising Sun Ave Fl.2 Philadelphia, PA 19111
153	Helen Touster	624 Liberty St., Apt. 216 Clarion, PA 16214
154	Jerry Yeager	146 Honor Roll Rd Lake Lynn, PA 15451
155	Patti Rose	919 N 26th St Reading, PA 19606
156	Therese Hoetzlein	5372 Orchard Hill Drive Pittsburgh, PA 15236
157	Maximilian Kiefer	5000 Forbes Avenue Pittsburgh, PA 15213
158	Nicholas Diamond	2020 Cypress Drive White Oak, PA 15131
159	Theresa Reiff	210 Stonybrook Drive Norristown, PA 19403

Commentator ID #	Name	Address
160	Charlene Rush	2670 Thoroughbred Ct. #835 Allison Park, PA 15101
161	J.T. Smith	1000 Old Bethlehem Pike Sellersville, PA 18960
162	Mark Jordan	7104 Tulip Street Philadelphia, PA 19135
163	Gregory Pais	2304 Steam Valley Rd. Trout Run, PA 17771
164	Ann Kuter	562 Taylor Ave Warrington, PA 18976
165	Errikka Jordan	7104 Tulip Street Philadelphia, PA 19135
166	Janis Kinslow	514 Schick Rd Aston, PA 19014
167	Richard Himmer	1035 Hereford Drive Blue Bell, PA 19422
168	Georgia Coffey	1036 Cemetery Street Williamsport, PA 17701
169	Margaret Lenahan	7147 Blue Ridge Trl Mountaintop, PA 18707
170	Judith Pearsall	115 Madison Rd Lansdowne, PA 19050
171	Herbert Jeschke	38 Aberdale Rd Bala Cynwyd, PA 19004
172	Rosemary Caolo	1512 E Gibson St Scranton, PA 18510
173	Michael Lawrence	10 Saxony Drive Harrison City, PA 15636
174	Thomas Nelson	105 Drexel Ave. Lansdowne, PA 19050
175	Matt Miskie	14 W Penn Ave Cleona, PA 17042
176	William Granche	24 Lincoln St. Ridgway, PA 15853
177	Grace Bergin	216 E. Scribner Ave. Du Bois, PA 15801
178	Lisa Beatty	13 Patricia Dr Enola, PA 17025
179	Robert M Cohen MD	2401 Pennsylvania Ave Philadelphia, PA 19130
180	Patricia Greiss	198 1/2 York Rd. Carlisle, PA 17013

Commentator ID #	Name	Address
181	Daryl Rice	887 Deep Run Road Perkasie, PA 18944
182	Herbert Elwell	350 Button Hill Rd Lawrenceville, PA 16929
183	Barbara Moore	4652 Cheryl Dr. Breinigsville, PA 18031
184	Dennis Ober	1833 Upper Rd. Shamokin, PA 17872
185	Robert Bruckman	421 Anglesey Terrace West Chester, PA 19380
186	Jameson McDonnell	809 McClellan St Philadelphia, PA 19148
187	Diane Brown	807 Stonybrook Lane Lewisberry, PA 17339
188	Rosemarie Allen	210 Lincoln Drive Philadelphia, PA 19144
189	Harry Hochheiser	5742 Woodmont St Pittsburgh, PA 15217
190	Caroline Binder	1140 Union Church Road McConnellsburg, PA 17233
191	Anna Tangi	2642 S. Alder Street Philadelphia, PA 19148
192	Monica Willard	1809 Meadow Ridge Ct Bethlehem, PA 18015
193	Dawn Mason	1547 W. Market St. Pottsville, PA 17901
194	Linette Schreiber	75 Ardmore Ave. Ardmore, PA 19003
195	Mark Jordan	7104 Tt Philadelphia, PA 19135
196	Melissa Katterson	PO Box 253 South Heights, PA 15081
197	Debra Kline	Bolivar Bradford, PA 16701
198	Judith Ryan	27 St Rt 184 Trout Run, PA 17771
199	Kristen Lightbody	8672 Church Rd Germansville, PA 18053
200	Sheila Stevens	1501 B Marcy Place Philadelphia, PA 19115
201	Mark Sustarsic	604 Windover Drive Pittsburgh, PA 15205

Commentator ID #	Name	Address
202	Lee Bible	155 Cherry Lane Abbottstown, PA 17301
203	Elaine Hughes	721 E. Butler Pike Ambler, PA 19002
204	Arlana Gottlieb	1734 Academy Lane Havertown, PA 19083
205	Reid Joyce	114 Keithwood Dr Valencia, PA 16059
206	Karen Vasily	306 Rogers Road Norristown, PA 19403
207	Pau Brown	105 Marlboro Rd. Pittsburgh, PA 15238
208	Craig Martin	Hemlock Drive New Stanton, PA 15672
209	Wendi Taylor	435 Parkview Court Camp Hill, PA 17011
210	Michelle Dugan	222 Maypole Road Upper Darby, PA 19082
211	Aislinn Pentecost-Farren	1208 S 46th Street Philadelphia, PA 19143
212	Greg Skutches	301 E Washington Avenue Bethlehem, PA 18018
213	Angelene B.	1234 Philadelphia, PA 19122
214	Eva Westheimer	2741 Voelkel Ave Pittsburgh, PA 15216
215	Domenick Catrambone	3105 S.13th St. Philadelphia, PA 19148
216	Mike Peale	5 Worth Hill Lane Aston, PA 19014
217	Emma Shock	16 Fairway Road Paoli, PA 19301
218	Mark Williams	6848 Yellow Church Rd Seven Valleys, PA 17360
219	James Johnston	1555 Clear Run Road DuBois, PA 15801
220	Juliann Pinto	4438 Pennypack Street Philadelphia, PA 19136
221	Jeff Schmidt	55 Greening Life Lane Shermansdale, PA 17090
222	Elliot Ross	Lyon St Union Dale, PA 18470

Commentator ID #	Name	Address
223	Barbara Benson	6558 Blue Church Rd S Coopersburg, PA 18036
224	Carolyn Wells	1604 Baker Rd Montrose, PA 18801
225	Sharon Hayes	55 Long Vw Carlisle, PA 17013
226	Elizabeth Guldán	612 Delaware Erie, PA 16505
227	Giovanna Tonelli	905 Mountain St Philadelphia, PA 19148
228	Kimberly Seger	11373 Us Route 422 Kittanning, PA 16201
229	Karen Berry	3505 Dartmouth Drive Bethlehem, PA 18020
230	Lee Ann DeMars	191 Ranchlands Bushkill, PA 18324
231	David LaVerne	844 Lincoln Street Dickson City, PA 18519
232	Mary Scanlon	1160 Bower Hill Rd. 712-A Pittsburgh, PA 15243
233	Matthew Rosa	7104 Tulip Street Philadelphia, PA 19135
234	J.M. Lavassaur	617 W Marshall Street Norristown, PA 19401
235	Susan Shaak	3440 Stoner Ave Reading, PA 19606
236	Vivian Schatz	6907 Sherman street Philadelphia, PA 19119
237	Margit Söderström	Hantverkargatan 19B Gävle, PA 80323
238	John W. Parana	323 Mill Street Johnsonburg, PA 15845
239	Peggy Hansen	437 Oysterdale Oley, PA 19547
240	Mary E. Corbett	3015 Chestnut Street Lafayette Hill, PA 19118
241	Kay Reinfried	797 Scott Lane Lititz, PA 17543
242	Gina Coker	6635 Oakland St. Philadelphia, PA 19149
243	John Kotarski	49 S 3rd St 1st Flr Perkasie, PA 18944

Commentator ID #	Name	Address
244	Henry Berkowitz	141 Sperry Young Rd Sabinsville, PA 16943
245	Marcia Lehman	998 Mayfield Ave Ambridge, PA 15003
246	David Barlup	1027 Drexel Hills Blvd New Cumberland, PA 17070
247	Stacie Hartman	206 Main St. Blossburg, PA 16912
248	Gwenn meltzer	1847 Constitution Ave Woodlyn, PA 19094
249	Patricia Parker	211 N. 2nd St Lewisburg, PA 17837
250	Dave Weinkauff	Thatcher Road Conneautville, PA 16406
251	Noreen McCarthy	Millstone Lane Pottstown, PA 19465
252	Jennifer Zielinski	6 Farmington Way New Providence, PA 17560
253	Andrea Saunders	1133 Delaware Avenue Bethlehem, PA 18015
254	Clark Sharlock	4782 Havana Dr Pittsburgh, PA 15239
255	Bonnie Craig	128 West Liberty Rd Slippery Rock, PA 16057
256	Dorothy Dunlap	4041 Murray Ave Pittsburgh, PA 15217
257	Lois Sharlock	1121 McCauley Dr Pittsburgh, PA 15235
258	Carrie Speca	5824 Longview Circle Bridgeville, PA 15017
259	Gary Sharlock	1121 McCauley Dr Pittsburgh, PA 15235
260	Terri Vasko	128 West Liberty Rd Slippery Rock, PA 16057
261	Gayle A'Harrah	7-20 Aspen Way Doylestown, PA 18901
262	William Bader	1402 Lorain Ave Bethlehem, PA 18018
263	Steve Kunz	1015 Brookwood Dr Phoenixville, PA 19460
264	Leslie Sharlock	128 West Liberty Rd Slippery Rock, PA 16057

Commentator ID #	Name	Address
265	Jeanne Held-Warmkessel	110 Santa Anita Dr North wales, PA 19454
266	Tess Dunlap	258 Needle Point Rd Evans City, PA 16033
267	A Puza	720 15th St New Cumberland, PA 17070
268	Richard Alloway	11814 Basile Road Philadelphia, PA 19154
269	June Gollatz	1819 Richmond Bethlehem, PA 18018
270	Maria Payan	9 Aubel Rd Delta, PA 17314
271	Lois Klotz	2332 Warren Center Road Warren Center, PA 18851
272	Angela Rapalyea	501 E. Gravers Lane Wyndmoor, PA 19038
273	Sherry McNeil	170 Royal Oak Drive Butler, PA 16002
274	Donald Brault	25 Windsor Way Camp Hill, PA 17011
275	Stephanie Novak	PO Box 408 Melcroft, PA 15462
276	Joyce Crowley	212 Elder Ave Morton, PA 19070
277	Sarah Caspar	525 Hopewell Rd Downingtown, PA 19335
278	Judith Parker	2317 Naudain Street Philadelphia, PA 19146
279	Beverly Smalley	1943 Summit Ave Oakford, PA 19053
280	Greg Navarro	266 Lyceum Ave. Philadelphia, PA 19128
281	Frank Sabatini	119 Aster Ct Exeter, PA 18643
282	Kathy Fox	1513 Elm St Bethlehem, PA 18017
283	Carol Miller	5454 Hartford Court Macungie, PA 18062
284	Patrice Tomcik	211 Chesapeake Drive Gibsonia, PA 15044
285	Tracey Eakin	1011 Sheriff's Court McMurray, PA 15317

Commentator ID #	Name	Address
286	Bill Ridgeway	842 N Sumner Ave Scranton, PA 18504
287	Marlene Warkoczewski	126 Union Road Coatesville, PA 19320
288	Thomas Brenner	512 Bella St. Hollidaysburg, PA 16648
289	Dale Kashner	313 Claremont Drive Seven Valleys, PA 17360
290	John Cooper	36 N 7th St Lewisburg, PA 17837
291	Barbara Hegedus	404 Fox Trl. Parkesburg, PA 19365
292	Odean Cusack	2730 Butler Pike Plymouth Meeting, PA 19462
293	Randall Baird	1273 Highland St DuBois, PA 15801
294	Jeffrey Shuben	46204 Delaire Landing Rd Philadelphia, PA 19114
295	Christine Catania-Rachlin	75 Chris Ct Bangor, PA 18013
296	George Petrisko	P.O. Box 301 Montgomeryville, PA 18936
297	Robert Feaser	5663 Valley Glen Road Annville, PA 17003
298	Julie Schampel	1017 Glenn Avenue McKeesport, PA 15133
299	George Stradtman	700 Elkins Avenue Elkins Park, PA 19027
300	Gerritt & Elizabeth Baker-Smith	338 Braeside East Stroudsburg, PA 18301
301	A. Cohen	142 Hoernerstown Rd. Hummelstown, PA 17036
302	Joanne Mack	347 Chippewa St Lester, PA 19029
303	Susan Anderson	105 E Evergreen Rd. Lebanon, PA 17026
304	Diane Kolessar-Berl	3849 Township Line Road Bethlehem, PA 18064
305	Gayle Cragger	2555 Welsh Rd Philadelphia, PA 19114
306	Guy Harris	9728 Roosevelt Blvd., #1 Philadelphia, PA 19115

Commentator ID #	Name	Address
307	Rob Heist	22 Somerset Drive East Fallowfield, PA 19320
308	Lee Maloy	106 Claremont Dr Lansdale, PA 19446
309	Rick Ralston	4214 Longshore Ave Philadelphia, PA 19135
310	Sheila Gallagher	2807 N. Delaware Drive Easton, PA 18040
311	Edmund Weisberg	1720 Spruce St. Philadelphia, PA 19103
312	Chris Gebert	731 Plummer School Road West Newton, PA 15089
313	John Flynn	210 Worman St Bloomsburg, PA 17815
314	Lee Fister	N. 12th St. Allentown, PA 18102
315	Thomas Bejgrowicz	10 N. Plum St. Lancaster, PA 17602
316	Matt Barry	4131 Davis Ave Munhall, PA 15120
317	Ashley Parker	450 South Easton Road Glenside, PA 19426
318	Mary Hufford	307 Bryn Mawr Ave Bala Cynwyd, PA 19004
319	Alan Septoff	301 Mountain View Dr. Cumberland, MD 21502
320	Giovanna Tonelli	905 Mountain St Philadelphia, PA 19148
321	Paul Kalka	357 W Elm St Conshohocken, PA 19428
322	COL Corey Britcher, Director Pennsylvania Fish & Boat Commission Bureau of Law Enforcement	P.O. Box 67000 Harrisburg, PA 17106-7000

GENERAL COMMENTS

1. **Comment:** Commentator commends the Department for pursuing continuous improvement of its policies and regulations with respect to shale gas development. (1)

Response: The Department acknowledges this comment.

2. **Comment:** I am not satisfied with the rigor of this policy and I encourage your office to take stronger steps to protect the health of Pennsylvanians and of our ecosystems. (5)

Response: The Department acknowledges this comment.

3. **Comment:** The PA DEP is funded by taxpayers; it must protect the public. ALL opportunities to inspect natural gas well drilling, fracking, & operation must be thoroughly conducted to ensure the industry is following safe practices. DEP must maintain sufficient adequately trained personnel to do such inspections. (7)

Response: The Department acknowledges this comment.

4. **Comment:** I know people in the oil and gas business in Texas, where they have fairly stringent regulations. They tell me that the certainty is what they seek, and they don't much care about the details. If there isn't certainty about the expectation, as business people you can count on the drillers to push at every opportunity in the direction that most benefits themselves.

We should have learned from our experience with coal here in PA to be more business-like in our expectations of resource extraction industries. The state Constitution guarantees us a protected environment -- please go ahead and protect it, without apology or deference. (13)

Response: The Department acknowledges this comment.

5. **Comment:** The document would be easier to read and more useful as a reference if there was a table of contents to identify specific sections of the guidance. (14)

Response: The Department has reorganized the document to provide for clarity.

6. **Comment:** The Department of Environmental Protection should 'follow the book'. Their guidelines should be followed in actual practice. (16)

Response: The Department acknowledges this comment.

7. **Comment:** You are supposed to protect the environment, not the fossil fuel industry. (17)

Response: The Department acknowledges this comment.

8. **Comment:** I live in Bucks County where there is deep concern about the policy directing the oil and gas program, especially water supply investigations, the number of DEP field staff, and the frequency of inspections. I and my neighbors and friends care deeply about any endangerment to the environment and public health and safety. (19)

Response: The Department acknowledges this comment.

9. **Comment:** I own about 25 acres in Dimock Twp, Susquehanna County, PA. I have a conservation easement on my land, but I am surrounded by gas wells (2 within 1/2 mile of my property, several underground gas lines). Over the past few years I have watched as the gas industry drilled wells, put in gas lines, and trespassed on private land; I have watched as the streams become diverted or dried up and/or polluted; I have seen inadequately protected “settling pools” (I don’t know the official name for these, but they are pools of contaminated fluids near existing wells); I have spent sleepless hours listening to the grinds and thumps of drilling, and the earth-shaking roar of the flaring; I have experienced the total deterioration of the local roads (and had near-misses because of the heavy traffic); I have seen communities (Dimock, South Montrose, Springville, Montrose) permanently changed for the worse in terms of community spirit, values, appearance, et cetera.

I and many others feel that DEP has not fulfilled its mandate for monitoring and inspecting gas wells and gas pipelines, nor its mandate for enforcing standards for local streams and rivers, nor its protection of the environment in general. The oil and gas industry seems to have drilled, excavated, withdrawn water, spilt toxic wastewater, and trespassed on virtually all of Northeastern Pennsylvania, without very much at all being done to monitor/control/inspect/enforce what few laws seem to exist. The prevailing political situation is of course part of all this.

For the good of the land and the people of NE Pennsylvania (and elsewhere over the Marcellus Shale), I urge that the DEP rethink, reorganize its policies with regard to enforcing the existing laws, tighten and standardize monitoring and inspection of activities of the oil and gas industry. (21)

Response: The Department acknowledges this comment.

10. **Comment:** My comments for the DEP in regards to regulations comes from living near gas drilling and processing in the S W part of the state. We have hundreds of families living without potable water for over 4 years now. Some had replacement water, many not. Relying on church donations and help from others but not the industry or our government. We need our government to protect the people of this commonwealth. Once there is no more water none of this will be worth anything. People will have to move. Our rivers and streams are already at risk with many contaminated high levels of pollutants. I ask that there be more inspectors. Job growth can happen in governmental jobs to protect the people. (22)

Response: The Department acknowledges this comment.

11. **Comment:** It has become very evident the industry doesn't want tighter regulations but they are necessary if we are going to protect what we have left. Please do what you are paid to do. Protect the people of PA. That means regulations that are strong enough to allow the industry to have the need for good practice for fear of getting violations. It's a win win. The industry operates to correct what they have harmed, the DEP inspects the sites regularly, (creating PA jobs) and the people are protected. Is that too much to ask? Please make these regulations much stronger. (22) (23) (25)

Response: The Department acknowledges this comment.

12. **Comment:** I strongly believe that the DEP has not lived up to its own standards regarding their policy of identifying, tracking and resolving violations in the fracking industry. This industry is potentially very dangerous to our environment and it is time that it is monitored and regulated with the safety of our lands and waters and people as top priority. Please take this very seriously and start being the watch dog you are supposed to be for our safety. (24)

Response: The Department acknowledges this comment.

13. **Comment:** I strongly urge DEP to do everything possible to prevent violations from occurring! This entails first and foremost a policy of actualization, neither inspirational nor "aspirational." (26)

Response: The Department acknowledges this comment.

14. **Comment:** Use common sense. The goal is for all water in the finite supply on the planet to be pure enough for ALL life forms to consume it and not be harmed in any way and that the environment where life must live not be harmed. You, DEP, are charged with regulating harm. Do your job. Make rules and supply enforcement that will make sure no harm comes to the finite water supply and the environment that is caused by the fossil fuel industry or anybody else. There is no need for the public to become familiar with gas drilling practices, coal mining practices or any other fossil fuel practice, or whatever else could pollute the water and harm the environment. We are busy doing our jobs. That's your job. That's why it's called The Department of Environmental Protection, so protect the environment! You must write the rules to make sure nobody can harm the water all life depends on and the environment where all life exists, period. (27)

Response: The Department acknowledges this comment.

15. **Comment:** I live in Allegheny County. While there has been no drilling in my immediate vicinity, there is drilling activity in all the adjacent counties, and in many nearby townships.

I am a long-time member of many Pennsylvania-based environmental organizations, such as the Western PA Conservancy, the Audubon Society of Western PA, Keystone Trails and

Allegheny Land Trust, to name a few. As such, I am concerned about the impact of drilling violations on many of our fragile ecosystems.

Especially as drilling has moved into more environmentally sensitive areas, the need for prompt, thorough and strict inspections of all phases of drilling activity is even more crucial. Time has shown over and over that the drilling industry cannot be trusted to self-regulate its own activities. And the threat of government inspections are insufficient unless it is backed up by prompt enforcement, including suspensions, injunctions and civil or criminal proceedings.

Thank you for this opportunity to advise you of my concerns regarding the guidance document, *Standards and Guidelines for Identifying, Tracking, and Resolving Violations*. In addition to my noted comments, I support moving forward with the guidance document as written. (28)

Response: The Department acknowledges this comment and thanks the commentator for their support.

16. **Comment:** I am writing in strong support of the document “Standards and Guidelines for Identifying, Tracking and Resolving Violations.” I feel this is critical to protect our drinking water and surface water, and the health and safety of members of our rural community. Moreover, having these standards in place will reduce the stress and worry of many residents about the impacts of drilling on our environment and the health of our children. To make this a reality, I strongly endorse the need for adequate DEP staffing. (29)

Response: The Department acknowledges this comment and thanks the commentator for their support.

17. **Comment:** Having standards that are in place and enforced, will provide a system of checks and balances to industrial practices that might otherwise become loose with short cuts taken. This has the potential to result in serious environmental damage and poses serious health and safety risks for residents of our community. I strongly support speedy inspections, harsh penalties for non-compliance, water supply investigations, and swift resolution of all violations by the gas drilling industry. (29)

Response: The Department acknowledges this comment.

18. **Comment:** The commentator recognizes the merit of exploring opportunities for improving processes and policies to assure their continued relevance and effectiveness over time. Likewise, it recognizes the administrative value of procedural uniformity and process standardization. The burgeoning expansion of natural gas exploration, extraction, production, and transportation activities within the state has created a significant strain on the department’s resources and thus its ability to effectuate its Mission to provide for the health and safety of its citizens. Conducting an internal review aimed toward corrective action is most certainly appropriate. (30)

Response: The Department acknowledges this comment.

19. **Comment:** The commentator accepts that the natural gas industry has created a significant economic impact on many local landowners and businesses, and contributed to the economic recovery of the state as well. It is critical to note that there is, however, emerging evidence that the gas industry can and does create significant adverse public health and environmental impacts as well. That being said, while applauding the PADEP policy review and improvement intention, the commentator believes that any reduction in site inspection frequency and/or regulatory compliance enforcement, however stated, will severely weaken the protective role of this agency which is charged with the core responsibility of administering the state's environmental laws and regulations. The commentator has been following the number of spills, leaks, fires and explosions, as well as the number of violations associated with unconventional natural gas activities. Although accidents do happen, there have been far too many that could have most definitely been averted by more stringent oversight. (30)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Program.

20. **Comment:** The 161 square mile Buffalo Creek watershed has been besieged by an uninvited industrial invasion which has brought hundreds of diesel truck convoys to our rural roads; noise and bright lights to our quiet agrarian environment; dust, toxic emissions and unpleasant odors to our air; hazardous chemicals to our water sources; litter to our roadsides; severe disturbance to our wildlife habitats; destruction to our riparian buffers and trees; unsightly rigs, tanks, processing and compressor buildings, holding ponds and access roads to our once scenic landscapes; decreased market values of our property; and, a myriad of physical ailments and mental stress to our lives.

To provide perspective, there are currently 82 wells permitted on 26 well sites in the mere 41.5 square miles of Washington County's Donegal Township alone. The commentator does not support any reduction in industry oversight and/or violations enforcement that serves only to accommodate the convenience of industry operation and further jeopardize the long-term health and safety of the residents of this pristine high-quality watershed. Those enduring this industrial intrusion are dependent upon the integrity of the state's Department of Environmental Protection. The root problem is an imbalanced ratio of wells-to-field inspectors. The only viable resolution is an increase in the PADEP budget and human resources. A reduction in the momentum of industry progression would also provide much need balance. Any proposal that does not aggressively address the welfare of the at-risk citizens and natural resources of the state nullifies any good intention and is unacceptable. (30)

Response: The Department acknowledges this comment.

21. **Comment:** The changes being proposed to enforce regulations by mandating inspections at least once a year are in my opinion, not sufficient. I am in favor of identifying critical

stages of gas/oil well development and having a DEP agent verify that safety regulations have been met and are being met. I know from my experience in construction that homes, apartments, commercial buildings all have staged inspections to verify that regulations regarding fire and plumbing and all building codes have been met, and it seems to me that no less an inspection regimen is prudent at well sites. (31)

Response: This policy, *Standards and Guidelines for Identifying, Tracking, and Resolving Violations* has identified the critical stages of development for inspections, but it is by no means a limit on the number of inspections per well.

22. **Comment:** I'm a licensed respiratory therapist. Requirements for my preparation to be an RT include adhering to standards and practices on behalf of patient safety. Your task for environmental protection is no different and we, the citizens living in Pennsylvania have the right to clean air and water. We therefore expect you to enforce strong laws that every industry adhere to. These laws, similar to those to administer the kind of health care that "does no harm" are based on a set of strong standards, which are based on scientific research. the similarities are striking because they BOTH have biological implications. (32)

Response: The Department acknowledges this comment.

23. **Comment:** My family who reaches far and wide are constitutionally protected to demand clean air and water. We are constitutionally guaranteed that every operator be in compliance with air quality rules for Oil and Gas operations. (32)

Response: The Department acknowledges this comment.

24. **Comment:** Better coordination with the Bureau of Air Quality over who verifies, and methods used, to ensure a well operator is in compliance with the new EPA Air Quality Rules. (34) (53) (65)

Response: The Department has recently initiated a staffing increase that included additional field staff in our Northcentral and Southwest Regional DEP offices in the Air Quality Program. These Air Quality staff will be conducting compliance evaluations at permitted facilities to assess compliance with air quality rules.

25. **Comment:** The Bureau of Oil & Gas Management needs to coordinate with the Bureau of Air Quality over who verifies (and how!) that a well operator is in compliance with the new EPA Air Quality Rules for Oil & Gas wells. (The DEP's notorious Exemption 38 allows a well operator to be exempt from needing an Air Quality permit, even though it is subject to the EPA rules.) (35) (58) (59)

Response: The Department has recently initiated a staffing increase that included additional field staff in our Northcentral and Southwest Regional DEP offices in the Air Quality Program. These Air Quality staff will be conducting compliance evaluations at permitted facilities to assess compliance with air quality rules.

26. **Comment:** We need better oversight, all violations enforced, contaminated water restored! Proposed rules must be strengthened to help those harmed and make companies accountable for pollution. (36) (39)

Response: The Department acknowledges this comment.

27. **Comment:** Despite Pennsylvania Department of Environmental Protection's (DEP) acknowledgement of its responsibility to oversee gas and oil development to provide safety and protect the environment, DEP's proposed inspection policy scales back on inspections from what is currently recommended in Pennsylvania law. This, in the face of criticism for poor inspection performance that leaves communities and the environment vulnerable to pollution and degradation. (37) (60) (87) (90 - 95)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

28. **Comment:** I urge DEP to adopt the entire auditor general's recommendations and hire more people to do the work. I am utterly disappointed in DEP's track record to date. (38)

Response: The Department acknowledges this comment.

29. **Comment:** Gas and oil operators pollute our environment, our drinking water, and our communities and they expose the public to negative health effects that can cause serious health problems and disease. We need more inspections and more fines to reign in the freewheeling, careless gas and oil companies. We need strong laws in PA to protect our citizens from corporations more interested in profits than the health of people. (39)

Response: The Department acknowledges this comment.

30. **Comment:** We need strict and enforced standards for oil and gas corporations that are publicly published and easily available for us to read. No permits should be given out to gas and oil companies that violate the standards. We need more inspections and more enforceable standards, not less! (39)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in

conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

31. **Comment:** DEP's job is to protect the public against environmental hazards. The proposed standards would be a big step backward, handing polluters even more immunity than they now enjoy. Please do your job and see that the Department adopts stronger standards, not weaker ones.

The interests of the energy industry are well enough served by other branches of our state government, don't sell them DEP too. (41)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

32. **Comment:** Commentator wants to see a robust environmental protection program to ensure the areas we love most and live within, are adequately protected for public health and safety, the environment and our communities at large. We want to see adequate measures to protect our environment and thus our water resources, to ensure that our Region will continue to have economic development coupled with a desire by our families continuing to live here, and for tourists continuing to visit our Region experiencing in our opinion, one of the most scenic regions of our great Commonwealth. In order to reach this delicate balance where all stakeholders may thrive, it is imperative that the Department have a sufficient mechanism to guide compliance, policing, and enforcement of regulations. This mechanism is built upon sufficient staffing along robust regulations, compliance and when necessary enforcement, that create this reality in the future. (42)

Response: The Department acknowledges this comment.

33. **Comment:** Additionally, we recommend that the Department sufficiently increase the field staff in order to make this policy more than a policy on paper, but an actual policy that is in reality on the ground daily ensuring that operations are satisfactory near our homes, schools and local hospitals. (42)

Response: The Department has recently initiated a staffing increase that will add more staff to the Oil and Gas Management Program, including additional inspectors.

34. **Comment:** The first unconventional drilling boom caught Pennsylvania off guard. While miles and miles of gathering lines have been placed in operation, and continue to be proposed and constructed, Pennsylvania is still lacking sufficient transportation – transmission lines to move the natural gas beyond the gathering fields. These lines are now in process of being proposed and built and will be placed in operation in the near future.

Power plants are being proposed not only within the gathering fields, but also beyond. Thus, it is conceivable that Pennsylvania will experience another drilling boom. So, again it is a hard call, how many inspections are necessary to ensure sufficiently policed operations and what are they? What we know bottom line is, we want an adequate number of eco-cops on the beat with the necessary tools; proper equipment, current technology and robust regulations – including prescribed inspections, ensuring that Pennsylvania is not exhibiting growing pains, but rather is an example of good enforcement assuring operations are safe for the public and the environment regardless of locations on our farms, in our forests, near our homes, schools and hospitals. (42)

Response: The Department acknowledges this comment.

35. **Comment:** Please don't let fracking companies get away with poisoning water. Please enforce strict regulations. We have to get away from fossil fuels if we want our grandchildren to be able to live. Climate Change is a reality and we have to adopt new ways of living - not continue to allow global warming to occur sooner and sooner. (44)

Response: The Department takes appropriate enforcement actions against companies that violate the law, including those that impact water supplies. A significant purpose of this guidance document is to ensure that timely action is taken to remedy impacted water supplies.

36. **Comment:** Because of the widespread and invasive nature of drilling operations, it is imperative that DEP not only has the regulations to adequately protect the air, water, soil, forests, farms, and communities of the Commonwealth, it must also have (1) the leadership, (2) the budget, (3) the support staff for record-keeping and reporting to the public, and (5), most importantly, a sufficient number of well-qualified and committed inspectors to adequately and frequently monitor the thousands of drilling sites in PA. (45)

Response: The Department acknowledges this comment.

37. **Comment:** Even the best regulations mean little without adequate monitoring and enforcement, and as we proceed with extracting gas from both conventional and unconventional formations, we need to be documenting impacts in ways that both now and in the future will help scientists understand how such impacts may be affecting our resources and, consequently, our health. For example, do we know how many companies have buried drill cuttings on state forest lands? Such "toxic tea bags," as they have been called, may come to haunt us in years to come. Do we have the analysis of records to show how many wastewater pits with liners have leaked, such as EQT's illegal pit in Duncan Township, Tioga County? Do we truly know where the millions of gallons of wastewater from drilling sites go?

I realize that the work of DEP has been and continues to be hampered by politics. Budget cuts, Secretaries who do not have backgrounds in environmental science, directives from an administration that is closely tied with the industry, and a legislature that continues to work against the efforts of your Department have all affected your oversight and authority.

Nevertheless, I take this opportunity to present you and, hopefully, Governor-Elect Wolf through this email to his transition team, with my recommendations regarding identifying, tracking and resolving violations:

- Many more inspectors need to be hired to monitor and write reports about drilling sites and operations.
- More support staff must be hired to adequately document the reports' findings.
- Serious violations, such as illegally using a freshwater pit for wastewater or illegally burying drilling waste on site, should immediately be fined. If a company has acted in violation of its permit, there should be no "grace period" before exacting a fine.
- Fines should be commensurate with the violation. If pollution is the result of a violation, the fine should be prohibitive.
- Companies that repeatedly commit the same violations should have to pay greater fines for each subsequent violation.
- Companies that do not pay fines should have their permits to operate in the state suspended or revoked. (45)

Response: The Department has recently initiated a staffing increase that will add more staff to the Oil and Gas Management Program, including additional inspectors. Additionally, the Department takes appropriate enforcement actions against companies that violate the law.

38. **Comment:** DEP's proposed Standards and Guidelines for Identifying, Tracking, and Resolving Violations currently do not protect the public, nor its water and air, from the damages that accompany gas and oil development. (46)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance.

39. **Comment:** We are greatly concerned that the Department's issuance of penalties for violations at both unconventional and conventional well sites has decreased over time. According to data in the DEP Oil & Gas Compliance database, in 2009, 34% of violations at unconventional well sites were linked to enforcement actions in which fines were issued, but only 13% in 2013; conventional wells show a similar trend, declining from 12% to 8% during the same period.¹ This trend deprives the Department of a much-needed source of revenue for its environmental protection and enforcement programs, while also signaling to operators that it is possible to violate the law at literally no cost. (47)

Response: The Department works diligently to pursue and resolve violations and to ensure that the enforcement process is followed in a consistent and appropriate manner. Violations are followed up with penalties when appropriate. One of the purposes of this guidance document is to improve consistency in identifying and resolving violations, including taking additional enforcement actions when appropriate.

40. **Comment:** We understand the resource constraints facing the Department. Our organizations have advocated for increased budgets for the Department, in particular the Oil and Gas Bureau, in light of the Department's accelerated issuance of well and facility permits in recent years. The Department acknowledges this problem; in its response to the Pennsylvania Auditor General's recent Performance Audit, resource constraints and burdens on staff were frequently cited as key reasons why the Department is unable to fully implement its own policies.

However, a lack of inspectors and enforcement capacity should never trump the Department's mandate to ensure protection of the environment. Yet the Guidelines would do just that, by proposing an inspection schedule that would be *less* frequent than the Inspection Policy Regarding Oil and Gas Activities incorporated into the Pennsylvania Code in 1989. (47)

Response: The Department has recently initiated a staffing increase that will add more staff to the Oil and Gas Management Program, including additional inspectors. It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program.

41. **Comment:** It is not DEP's fault that over the last 4 years, their funding has been slashed by an administration that favors the gas industry. But it is DEP's responsibility to do as much as they can with the resources they have to continue to oversee this rapidly expanding and as a result, too often irresponsible industry. It is not DEP's fault that they have been ordered to push through permits and skimp on inspections, but it IS DEP's responsibility to oversee the gas industry to the best of their ability and to hold operators fully accountable. (48) (51)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance.

42. **Comment:** In its 2013 Oil and Gas Annual Report, DEP states that it is responsible for "conducting regular inspections to ensure that well sites are operated in a manner that is safe for Pennsylvania's citizens and protective of the environment." This will be impossible under the proposed guidelines, which would make inspections less frequent than recommended in the 1989 policy in the Pennsylvania Code. (48) (51) (54) (106 - 321)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the overall number of times a well should be inspected.

43. **Comment:** Even though the total number of inspections conducted statewide has increased in recent years, the average number of inspections conducted per unconventional

well has gone down. Given the expansion of drilling, this means that most active wells operate with no oversight. In 2008, 89% of active wells were left uninspected; by 2013, 83% still operated with no agency oversight. (48) (51) (54) (106 - 321)

Response: The department conducted 12,391 unconventional well inspections in 2013, up from 1,262 in 2008. At the same time, violations and enforcements have steadily declined with the introduction of better technology and more rigorous regulations that industry is complying with and in many cases, exceeding. Additionally, the Department has implemented a well integrity assessment program that requires operators to inspect their wells quarterly and if any integrity issues are noted, report the results to the Department immediately and take necessary corrective action.

Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

44. **Comment:** It makes absolutely no sense for DEP to propose a weaker inspection policy now than what was put in place long before shale gas development even existed. If anything, a stronger policy is needed with penalties that are more than a slap on the wrist. Given the complexity and intensity of current operations, DEP needs to conduct regular inspections. (48) (51) (54) (106 - 321)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

Please also see the response to Comment No. 39.

45. **Comment:** It is my hope that with a new administration, funding to DEP will greatly increase and the attitude in Harrisburg will be one of regulation for the health of the people and the good environment and not the horror story we've had for the past four years. But until then, DEP needs to continue to do whatever they can and to the highest level possible to protect health and the environment—including through a strong inspection policy. (48)

Response: The Department acknowledges this comment.

46. **Comment:** These are all serious problems: if your regulations can't resolve them then DEP needs to review and resolve. If more qualified personnel are needed to solve the issues, then do something about it. Otherwise nothing will ever resolve itself. (50)

Response: The Department acknowledges this comment.

47. **Comment:** As a resident of Columbia Cross Roads in Bradford County I have had way too much impact from the side effects of nearby fracking operations. The numerous flareoffs in my area impact air quality and disturb sleep for weeks. I now have to pay a rather substantial fee (nearly \$1000) every three years to have my water tested, which I consider a tax by the State of PA, because water monitoring is so infrequent. The rather astonishing lack of any benefit of this industrial invasion for me or my community is compounded by the environmental neglect that has been endemic from the Corbett administration and the DEP leadership that is currently “monitoring” this activity. If I polluted even a fraction as much as the gas industry, you would have me rightfully in jail. (51)

Response: The Department takes very seriously its mission to protect the environment. Please also see the response to Comment No. 39.

48. **Comment:** You are getting the standardized letters from Earthworks and others. I agree with their points, but you are not getting that from me because this is personal to me. I know some of the people harmed by fracking. I know what is at stake if DEP gets politicized (as it has under Corbett) and fails to protect us and our environment. It astounds me to read that DEP will be cutting back on inspections. That seems so impossible and wrong-headed, but I trust that my sources are not wrong. I can only do so much in terms of writing you, so I urge that you take seriously all the following points made by my friends at Delaware Riverkeeper. Just because I paste them in here does not mean that each one is personally important to me as a citizen of the Commonwealth. If you have read these before, then just know now that I vote for their inclusion in your deliberations. Please pay attention to each and every one. (52)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the overall number of times a well should be inspected.

49. **Comment:** Regulations are only as good as the enforcement that backs them up. The DEP is grossly understaffed in its ability to inspect natural gas wells, and of particular concern are the highly contentious non-conventional gas wells. We need more inspectors! (53)

Response: The Department acknowledges this comment.

50. **Comment:** Pennsylvania has a bad geology for fracking as evident in the 243 plus cases of water contamination. We need more regulations and oversight, not less. Do what you need to, to find the funds available. Fine the drillers for every violation that requires fines. I really don't want to pay for their damage with my tax dollars. (54)

Response: The Department acknowledges this comment.

51. **Comment:** DEP may have limited staff and financial resources and be having a hard time overseeing a rapidly expanding shale gas industry, especially as the agency issues more and more drilling permits. But it's DEP's job to oversee the gas industry and hold operators accountable—not let drillers police themselves. (54)

Response: Please see the response to Comment No. 39.

52. **Comment:** The regulations need to be made as strong as possible to protect the health and safety of the public and the environment. We are going to be dealing with hundreds of thousands of gas wells in most if not all zoning areas and need strong protection from the effects of the wells. We need to prevent the long term detrimental effects on our water and air that is going to occur with weak regulations as already evident in other states such as Texas. (55)

Response: The Department acknowledges this comment.

53. **Comment:** To make the regulations stronger, please: increase inspections, hold gas companies responsible for the prompt replacement of contaminated water (verifying it's replacement with the water user), provide easy access to information to keep the public informed of issues (including CACP and NOV), correctly write citations (example, use NOV and not reporting problems as Comments in Inspection Reports), strongly enforce regulations by revoking permits when needed using established criteria, recognize the complexity of water contamination and hold companies responsible for its contamination, hold companies accountable for compliance with EPA Air Quality Rules (stop using DEP's exemption 38), and establish water testing standards to be used by DEP and companies. (55)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

Please also see the response to Comment No. 39.

54. **Comment:** I am sending this letter to request that you help protect the water resources of PA by enforcing rules and regulations on fracking operations in PA. When operators repeatedly receive fines and violations, those operators should not be allowed to work in our state any longer. They should not receive any more work permits! I think large oil and gas companies can afford to pay whatever fine is levied, and so they do and then go back to business. Drinking water is a precious resource and you need to protect it by making sure that no one feels they can pay to contaminate it. (56)

Response: Please see the response to Comment No. 39.

55. **Comment:** Generally, the Draft TGD fails to abide or reflect the clear instruction of the Oil and Gas Act of 2012, which requires PADEP to oversee the oil and gas industry in Pennsylvania in a manner that will “permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.” 58 Pa. C.S. § 3202(1) (Declaration of Purpose). For example, the existing compliance and enforcement policies for oil and gas operations (the 2005 Compliance Policy and the 2005 Enforcement Policy) both contain important statements that have been removed from the Draft TGD, such as “All companies are to be treated fairly and equally by the Department” and a description of the objectives of the Department’s compliance efforts to “identify opportunities for and to provide technical and educational assistance to oil and gas operators and the public.” While the commentators hope that such aspirations on the part of the Department remain, it is not clear why these statements would be removed from the Draft TGD.

It would be helpful to state, as it did in 2005, that the Department seeks to assure public safety, resource conservation, and environmental protection, while at the same time promoting a healthy oil and gas industry. Along these same lines, the Department’s Office of Policy and Communications issued a policy several years ago to encourage self-monitoring by means of environmental compliance audits and implementation of compliance management systems. Doc. No. 012-0840-001 (Sept. 25, 1996). Such a policy provides strong incentives to promptly correct and disclose violations, knowing that the Department will not seek penalties where the disclosure is promptly made, reasonable action is taken to correct the violation, and no economic benefit was realized as a result of noncompliance. The Department would do well to consider such a policy with respect to oil and gas operations, especially where little or no environmental harm has occurred as a result of the violation. (49) (78)

Response: The Department disagrees that the guidance document is inconsistent with the 2012 Oil and Gas Act’s statement of purpose. It should also be noted that Pennsylvania is now the second largest producer of natural gas in the country and that more of this resource has been produced every reporting period. As such, it is clear that development of this resource has been robust. Finally, the optimal development of Pennsylvania’s oil and gas resources cannot come at the expense of compliance with the law and the purpose of this guidance document is to establish the policies the Department will follow to ensure compliance with the law.

The Audit Policy mentioned above is a Department wide policy and the Oil & Gas Program continues to follow it where appropriate. The Office of Oil and Gas Management staff will continue to provide technical and educational assistance to operators across the Commonwealth and treat them fairly and equally.

56. **Comment:** After careful review of the Draft TGD, and consideration of the existing enforcement policies for Oil and Gas Management as well as other program areas, the commentators are concerned that the Draft TGD:
- 1) precludes necessary discretion by inspectors to allow alleged violations to be corrected without additional and unnecessary enforcement;
 - 2) contains procedural defects in failing

to address or provide a means by which inspection reports can be corrected or NOV's can be disputed; 3) would allow contested NOV's, or those issued for de minimis violations, to be used in the calculation of penalties; 4) inappropriately requires an admission of guilt from operators negotiating Consent Assessments of Civil Penalty, while depriving operators from information necessary to negotiate such agreements, and 5) provides overly detailed provisions for inspections that further constrain the Department staff from identifying opportunities for providing technical and educational assistance to oil and gas operators where little or no environmental harm results from the alleged violations. Finally, the list of "data reported to the Department" in Part III.B. provides a confusing list of "requirements" with uncertain legal authority and should be deleted or revised for accuracy. (49)

Response: The Policy clearly provides appropriate discretion for Department staff. With respect to providing inspector discretion, for example, the document does allow violations to be corrected immediately. Moreover, when a NOV is issued by the Department, the operator is given an opportunity to provide a response to the NOV. The Department has many options available when developing enforcement documents and will consider the facts associated with each violation. Department staff will continue to spend a great deal of time providing technical and educational assistance to operators while conducting their daily inspections.

57. **Comment:** The DEP must understand that when gas and oil operators violate the law, they pollute our environment, our drinking water, and our communities and they expose the public to negative health effects that can cause serious health problems and disease. DEP's proposed *Standards and Guidelines for Identifying, Tracking, and Resolving Violations* doesn't provide the standards to accurately identify, thoroughly track, and rigorously enforce the laws that are meant to protect us and our water and air from the damages that accompany gas and oil development. (60) (85) (87) (89)

Response: Please see the response to Comment No. 39.

58. **Comment:** I truly believe when gas and oil operators violate the law they are doing harm to our environment by polluting our ground, our air and our drinking water. Those harms are quantifiable and well known, but let there be no doubt that these violations also take their toll on a community in terms of health effects. The proposed DEP standards do not go far enough in identifying, tracking and enforcing the laws that are meant to protect our people from this very development. (62)

Response: The Department acknowledges this comment.

59. **Comment:** It is so critical for the DEP to be staffed to fully oversee gas and oil development. After all we opened the flood gates, by not imposing a severance tax, but even more unconceivable is the fact that we are not keeping up with proper oversight of these operations. When we scale back on inspections, we leave the environment and our people vulnerable. (62)

Response: The Department acknowledges this comment.

60. **Comment:** DEP needs more employees in the field so they can properly oversee and enforce current and new regulations imposed on the oil and gas industry. Since I was once in the employ of Schlumberger Well Svc. I have some knowledge of this industry and the way it operates. (63)

Response: The Department acknowledges this comment.

61. **Comment:** There are too many wells in the Northwest region for the inspectors to provide proper oversight over the oil and gas operations. It's not humanly possible to do so. (64)

Response: The Department acknowledges this comment.

62. **Comment:** The current inspectors don't have the desire to protect the environment and callously ignore violations overlooking violations causing harm to the environment and loss of property values. (64)

Response: The Department strongly disagrees with this assertion. Department inspectors take great pride in their work and have strong environmental ethics.

63. **Comment:** In the Allegheny National Forest (ANF) large areas have been harmed due to non-compliance and lack of enforcement. This has caused loss of value of publically owned land. Pennsylvania DEP doesn't have funds to indemnify for property damage caused by general lack of inspector's will to recognize and cite violations. (64)

Response: The Department strongly disagrees with this assertion. Department inspectors take great pride in their work and have strong environmental ethics.

64. **Comment:** The commonwealth recently went after an operator who was paid to plug wells, he didn't plug so he's in jail while DEP inspectors who are getting paid to enforce regulations refused to enforce them and have caused harm to the environment. Does that seem fair? The DEP inspectors have gotten away with failing to do their job for a long time. They are not capable of providing adequate oversight over oil and gas operations no matter how you re-word the guidelines. They DEP inspectors need to be replaced with more inspectors who are qualified and willing to do the job. (64)

Response: The Department strongly disagrees with this assertion. Department inspectors take great pride in their work and have strong environmental ethics. As noted in the comment, the operator was imprisoned for failure to comply with environmental laws – evincing the Department's commitment to enforcing the law in an appropriate manner according to the circumstances.

65. **Comment:** All violations due to spills, leaks, blowouts, improper storage or disposal of waste, casing failures etc should be made known immediately to everyone within a 3 mile circle and the local water authority, township supervisors, county government, watershed

associations, and the Fish and Boat Commission and published in local newspapers. A letter notification or home visit should also be considered as there are many who would not otherwise have access to the information. Minimally, all alerts should be immediately posted on your web site. What would be your opposition to this? (65)

Response: The Department does notify any individual that may be affected by a spill or release.

66. **Comment:** Fish and Boat Commission violations and investigations should be shared with PA DEP and vice versa. (65)

Response: The Department often partners with the appropriate PFBC Law Enforcement or Environmental Services staff to pursue violations and investigations and remains committed to continuing this mutually beneficial relationship.

67. **Comment:** I live in Lemon Township, Wyoming County, right in the heart of the Marcellus development. Within a mile of my house I have a Compressor Station, four active well pads, a freshwater detention pond, and countless miles of pipeline. It should be noted that I have leased my mineral rights by choice and I am not against development, however it needs to be done correctly and with minimum impact to the environment. There are hundreds of Natural Gas Operating Companies and Contracting Companies working in the Marcellus Shale region in the State of Pennsylvania. They all have different ways and methods of procedure, and not all of them are performing correctly with respect to the environment, per the listing of violations found on the DEP website. (66)

Response: The Department acknowledges this comment.

68. **Comment:** I would like to see some of these comments addressed. However, I support the guidance document moving forward at the minimum as written. Please do not bow to industry pressure to lessen these requirements. The DEP's role is Environmental Protection and these policies and procedures outlined are reasonable. (66)

Response: The Department acknowledges this comment.

69. **Comment:** The Guidelines do not state that pipeline activities are included. The language suggests that the Guidelines apply to conventional and unconventional drillers. The commentator recommends that the DEP clarify the scope of these Guidelines, and clarify that they only apply to conventional and unconventional drillers. (68)

Response: The Department agrees with this comment and has modified the guidance document to specify that it applies to wells and well sites.

70. **Comment:** The commentator appreciates the opportunity to comment on this important subject. Nothing is more critical to our health and well-being than the ability to breathe air and drink water that doesn't make us sick or shortens our life. With the rapid expansion of the oil and natural gas industry in recent years, an ever growing number of people who live

near oil and gas wells or infrastructure like wastewater impoundments, compressor stations, etc. complain of a variety of symptoms that indicate their health may have deteriorated because of exposure to water or air borne chemicals that were previously not present in their environment. Health studies have indicated that oil and natural gas wells or infrastructure needed to extract, store or transport these products pose the highest risk to unborn babies, very small children, the sick and frail elderly. These are the Pennsylvanians who are at greatest risk when violations occur in this industry and why dealing effectively and consistently with violations can save lives. (69)

Response: Please see the response to Comment No. 39.

71. **Comment:** We suggest that the “Standards and Guidelines” be changed to “Regulations” that “must” be enforced and that the words “should” and “may” be changed to “must” in many places throughout the document and also during DEP Inspectors’ Training. Furthermore, after strengthening the language and using phrases like, “The Department ‘will’ make unannounced inspection visits” to verify compliance,” would let companies and their employees know that consequences will be real and that suspension of drilling, hauling and other permits are not just idle threats. Life threatening and other egregious offenses, including repeated serious offenses should result in a permanent suspension of drilling rights and permanent permit revocation. (69)

Response: The Department disagrees with this comment. A guidance document, by its very nature, cannot establish binding requirements similar to a promulgated regulation. While the vast majority of inspections are unannounced, some require operator participation (such as when equipment operation is necessary).

72. **Comment:** Refer health complaints near oil or gas drilling sites or infrastructure to PA Health Dept. Referrals for health complaints near drilling sites, frack wastewater impoundments, finishing plants, pumping stations and compressor stations need to be sent to the PA Health Department so that affected people can be referred for diagnosis and proper medical treatment. In the case of health complaints near compressor stations and also oil or natural gas wells (especially where several are in close proximity), it is critical that 24 hour onsite monitoring with continuous remote feedback capacity be ordered and testing be done by an independent, certified lab (money to come from escrow account) with results sent simultaneously to DEP, the company responsible, the permit applicant (if different), the PA Health Department and the person who lodged the complaint because of health symptoms. (69)

Response: The Department refers all health related complaints to the appropriate personnel within the Pennsylvania Department of Health.

73. **Comment:** In recent years, many actions and inactions by the DEP are evidence of behavior that falls far short of the needs for public protection. In some instances, DEP monitoring and reporting do not reflect the current science of air or water pollution. Other, more serious gaps include sub-par record keeping, and delayed and incomplete responses to citizen requests for assistance in circumstances of serious pollution. Furthermore, the

systematic lack of availability of records through on-line systems hampers both citizens and conscientious DEP staff. One approach to regain public trust and truly improve environmental protection is through substantial revisions to processes. (71)

Response: This policy outlines the processes and course of action that the Oil and Gas Management staff should take for conducting inspections and carrying out actions necessary to ensure compliance. The ultimate goal of this policy and the Department is achieving compliance with all laws and regulations in an expeditious manner.

74. **Comment:** The document is thorough and complete, and should result in consistency in enforcement of the statutes, regulations, and other requirements across the DEP Oil and Gas Districts. The document also affords the operators and others with an insight into DEP expectations. (72)

Response: The Department acknowledges this comment.

75. **Comment:** It is usual for Technical Guidance documents to provide guidance to DEP personnel in the performance of their duties, as stated under “Purpose.” This document states, however, under “Applicability,” that the policy applies to all conventional and unconventional oil and gas operators conducting business in Pennsylvania. Notwithstanding the disclaimer, this document could arguably be challenged as rulemaking without going through the regulatory review process. It is recommended that the Applicability section be revised accordingly. (72)

Response: These sections of the document have been revised.

76. **Comment:**
In 2013, the commentator organization participated on the six-person panel that reviewed Pennsylvania’s oil and gas regulations as part of the State Review of Oil and Natural Gas Environmental Regulations (STRONGER) process. Through the STRONGER review process, several important recommendations were made regarding how violations are issued, reported and tracked over time. Specifically, the STRONGER review team made the following finding and recommendation related to tracking violations:

Finding II.4.

The review team has determined that DEP has not historically utilized a consistent method for issuing violations, making it difficult to evaluate compliance with regulations and DEP performance over time.

Recommendation II.4.

The review team recommends that DEP maintain consistent standardized data for tracking violations and enforcement actions, to facilitate accurate internal DEP performance evaluation and to provide accurate information to the public. (STRONGER 2013 Guidelines Section 4.1.2.1.)

The commentator organization applauds the Department’s efforts to address several of the shortcomings identified in the STRONGER report, including creating a standardized method for Department staff to report and track violations. However, the commentator

organization continues to be concerned about the number and frequency of inspections required as part of the proposed guidance document. (75)

Response: The Department takes very seriously its mission to protect the environment and has continually focused resources on improving consistency in the Oil and Gas program. The most recent example is updating and increasing the number of violation codes within eFACTS, the Department's data management system. This will enhance staff's ability to specify and correctly identify violations while concurrently offering greater transparency and explanation to the public on the eFACTS website.

77. **Comment:** As a resident and land owner close to many shale gas extraction activities, I am deeply concerned that the oversight of these operations is woefully inadequate. In the past few years there have been ample reports concerning the lack of person power to adequately oversee this incredibly large and dangerous activity in our state and perhaps not the will by the state to make sure that the people, the wildlife, the water, the air, and the land are protected. I urge that a review and implementation of much stronger, more diligent, more frequent, standards be set and abided by. At present I do not have confidence in our elected state officials or in DEP to perform these functions for the good of the commonwealth. (76)

Response: The Department acknowledges this comment.

78. **Comment:** Page i, Authority: Article 1 Section 27 of the PA Constitution must be cited as an authority. Ignoring the plurality opinion of the Supreme Court of the Commonwealth of Pennsylvania in the Act 13 Case1, DEP is continuing its outrageous, inexcusable, and politically motivated willful disregard of the plain meaning of the words of Article 1 Section 27 of the Constitution of the Commonwealth of Pennsylvania by failing to recognize Article 1 Section 27 as an authority for Standards. This must be corrected. DEP does not have the authority to perform a back door repeal of Article 1 Section 27 by omitting it from its list of authorities in Technical Guidance documents. Article 1 Section 27 must be inserted at the top of the list of authorities on Page i. (79)

Response: The Policy lists the relevant statutory authority for the policy, as it does with all DEP policies.

79. **Comment:** Page i, Authority: The Air Pollution Control Act must be added to the list of authorities. (79)

Response: The Department agrees and has made the change.

80. **Comment:** Page i, Disclaimer: There is no mechanism for informing the public about deviations from Standards. The Disclaimer on Page i states: "The Department reserves the discretion to deviate from this policy statement if circumstances warrant." So, why are we even going through this exercise? Is Standards a policy document, or not? A generous-minded citizen is willing to grant that an endeavor as complex as unconventional Oil &

Gas drilling may require occasional flexibility. But on those occasions where DEP considers itself justified in disregarding its own stated policies, the public must be informed and given an opportunity to comment. Without such a mechanism, the very concept of “policy” is rendered meaningless. (79)

Response: The Department disagrees with this comment. This is standard language used in all Department Policies. It emphasizes that the document is a Policy, not a regulation, and contains flexibility throughout for Department staff to exercise appropriate discretion.

81. **Comment:** Page 1, Goal: Protection of the public health, safety, and welfare must be added to the description of DEP’s primary objective. The first paragraph of Page 1 baldly confesses: “the primary objective of the enforcement program is to attain and maintain a high degree of compliance with the laws governing oil and gas development.” (Emphasis added). One’s breath is taken away by the naked candor of this admission of perversion of DEP’s actual mission, which is protection of the environment, and thereby protection of the public health safety and welfare. It is sad beyond measure to have to point out in plain English that the objective of DEP is not oil and gas development. This paragraph must be amended. DEP should be ashamed of itself for this wording. That this paragraph as written does in fact encapsulate the shameful practices that are actually occurring in the field (details below) is not an excuse. (79)

Response: The Department’s statements in this section of the document are consistent with documents pertaining to other regulated industries.

82. **Comment:** As companies like Inflection Energy move operations into residential areas around Williamsport, DEP will have an increasingly critical role in protecting Pennsylvanian’s citizens. Children and pregnant women, we know from peer reviewed studies, will be a prime risk. It is essential that you increase staff, increase the number of inspections and expand the monitoring that you perform. (80)

Response: The Department acknowledges this comment. Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13’s notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

83. **Comment:** Let me begin with a quote from the document:

“There is no precise formula of enforcement action that is appropriate for every situation.”

After four years of interviewing Pennsylvanian’s negatively impacted by this industry (water contamination, loss of property value, stress and other health problems, layoffs) we can say with confidence that residents would agree – there is no precise formula of enforcement action. They might also add that this is both a good and bad thing.

It's good because every case is different and deserves individual attention. It's bad because there seems to be no specific details about how each case is handled and what scientific rationale is used to make a determination.

Take this document for example. Its purpose is to provide "direction to DEP's Oil & Gas Management staff in determining what courses of enforcement to pursue to resolve violations and bring about compliance." But what should be a dictionary instead leaves the reader with more questions than answers. (81)

Response: This policy outlines the processes and course of action that the Oil and Gas Management staff should take for conducting inspections and carrying out enforcement actions on violators. The ultimate goal of this policy and the Department is achieving compliance with all laws and regulations in an expeditious manner.

84. **Comment:** No changes to inspection or tracking practices should be made that weaken or lessen the frequency and rigor of those activities. We need to increase funding and staff power at DEP to maintain constant scrutiny of these well sites. (83)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the overall number of times a well should be inspected. This policy outlines the processes and course of action that the Oil and Gas Management staff should take for conducting inspections and carrying out enforcement actions on violators. The ultimate goal of this policy and the Department is achieving compliance with all laws and regulations in an expeditious manner.

85. **Comment:** The Department should consider in this guidance or a separate program, how it would handle enforcement for violations voluntarily discovered through internal audit programs and voluntarily disclosed to the Department. A mechanism that encourages voluntary compliance disclosures through mitigated enforcement would support stakeholders' interest in increased operational transparency and give operators the ability to identify and address non-compliance issues in a proactive and constructive manner. (77)

Response: The Department already has such a policy in place (Document # 012-0840-001 Policy To Encourage Voluntary Compliance By Means of Environmental Compliance Audits And Implementation of Compliance Management Systems) for addressing violations discovered as part of environmental audits. It is a Department wide policy and has been used in the appropriate application.

86. **Comment:** Section I, General, Page 2, 4th paragraph regarding enforcement action considerations. The commentator assumes that the term "history" is defined as the operator's compliance history. The commentator recommends that the DEP clarify the term "history." (74)

Response: The term “history” does refer to the operator’s compliance history.

87. **Comment:** Sections III, Identifying a Violation and IV, Standards and Guidelines for Initiating, Documenting and Resolving Water Supply Investigation Requests are unrelated to discussion of the “Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations” and the commentator recommends that the DEP remove them from this document. The commentator agrees that these are important components of the DEP’s responsibilities; however, they should be stand-alone documents and not incorporated into this policy. (74)

Response: The Department acknowledges this comment.

88. **Comment:** Current processes at the PA DEP are in need of substantial revision in order that Pennsylvanians might begin to believe again in the department’s integrity and validity. The DEP is meant to protect us and our land base, not the fracking industry. It has utterly lost our trust in recent years through lax oversight and industry-friendly responses to fracking violations.

The following are in need of immediate improvement at the DEP:

- *air quality testing and responses to problems
- *water quality testing and responses to problems
- *digital public access
- *reporting for notice of violations
- *routine inspections
- *documentation of accidents

Additionally:

- *Records of industry actions should be made available to the public
- *Information on penalties rendered by the DEP should be online
- *The standards for DEP professionals should be protected.

As we move into an uncertain future thanks to the degradation of Pennsylvania by the oil and gas industry and hydrofracking, I will watch for immediate improvement by your office in all of the above areas. The future will judge harshly those who allowed this destruction to happen in this beautiful state. (101-104)

Response: The Department acknowledges this comment.

89. **Comment:** “When you change the way you look at things, the things you look at change.” This is a quote from one of my mentors, and applies to gas activity and pathways of pollution. Narrow standards let polluters off the hook. More variables in the way hydrologic pathways are formed should be included in any assessment of harm.

Please pass regulations that favor the citizens and environment rather than the interests and profitability of the industry. (84)

Response: Please see the response to Comment No. 39.

90. **Comment:** DEP do your job, protect our precious environment and stop greedy corporations from exploiting our precious resources. Stand up for the planet and for us citizens. (98)

Response: The Department acknowledges this comment.

91. **Comment:** Among its 25 findings, the 70-page Earthworks report alleges that the DEP's oil and gas office:
- has failed to consider the cumulative health impacts from shale gas development
 - keeps incomplete permitting and enforcement records that makes it impossible for residents to assess their exposure to air and water emissions
 - has increased inspections, but they still don't meet even the voluntary goals the department set
 - poorly tracks, records and responds to citizen complaints
 - puts a higher premium on speedy permitting than enforcement

Weaknesses in DEP oversight can result in deleterious effects to public health and the environment. The public has the right to expect better regulation of gas operations which were deemed as industrial by the Pennsylvania Supreme Court. DEP was created to protect the environment, including the state's air and water. It is failing in that mission, in part, due to many aspects of managing violations. (97)

Response: Please see the response to Comment No. 39.

92. **Comment:** PA DEP is charged with protection of human health through practices that safeguard and protect our environment. PA DEP is not charged with the facilitation of oil and gas drilling activities. It is my impression that DEP's current processes need to be substantially revised to accomplish the aforementioned goal, which is described as a citizen's right in the Pennsylvania Constitution. (99)

Response: Please see the response to Comment No. 39.

93. **Comment:** We need better oversight, all violations enforced, contaminated water restored! Proposed rules must be strengthened to help those harmed and make companies accountable for pollution. When gas and oil operators violate the law, they pollute our environment, our drinking water, and our communities and they expose the public to negative health effects that can cause serious health problems and disease. DEP's proposed Standards and Guidelines for Identifying, Tracking, and Resolving Violations doesn't provide the standards to accurately identify, thoroughly track, and rigorously enforce the laws that are meant to protect us and our water and air from the damages that accompany gas and oil development. (105)

Response: Please see the response to Comment No. 39.

94. **Comment:** In general terms, this Draft Policy fails to reflect the clear instruction of the Oil and Gas Act, requiring PADEP to oversee the oil and gas industry in Pennsylvania in a manner that will “permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.” 58 Pa. C.S. § 3202(1) (Declaration of Purpose). For example, the existing compliance and enforcement policies for oil and gas operations (the 2005 Compliance Policy (DEP ID No. 550-3000-001) and the 2005 Enforcement Policy (DEP ID No. 550-4000-001) both contain critical statements that are not included in the Draft Policy. This includes such statements as “All companies are to be treated fairly and equally by the Department” and a description of the objectives of the Department’s compliance efforts to “identify opportunities for and to provide technical and educational assistance to oil and gas operators and the public.” It is not clear why these statements would be removed from this Draft Policy document, as the removal, without explanation, could be interpreted that PADEP no longer agrees with these statements. (78)

Response: Office of Oil and Gas Management staff work every day to provide technical and educational assistance to operators across the Commonwealth and to treat each operator fairly and equally. The Department agrees these are important concepts.

95. **Comment:** Finally, the list of “data reported to the Department” in Part III.B. provides a confusing list of “requirements” with uncertain legal authority and should be deleted, or revised for accuracy and to state the legal authority. (78)

Response: The appropriate legal authority has been provided.

WELL INSPECTIONS

96. **Comment:** Section III(A)(2) of the proposed policy, which details frequency of well inspections, states: “Each District Office should ensure that all wells are inspected at least once in accordance with the following schedule...” (emphasis added). The policy then lists 12 possible inspection events relating to the cycle of well development and restoration, including responses to complaints or permit violations. However, it is clear by the language of the proposal that only one inspection is required.

Over the past several years and across two Administrations, the Department has made much of the fact that it has increased capacity for well inspection and enforcement. There is collective recognition that consistent well inspection is essential for proper management and environmental protection. Even the Marcellus Shale Advisory Commission, in its recommendations report, underscored this tenet, which was subsequently reflected in the Act 13 of 2012 revisions to the Oil and Gas Act – requiring operators to provide the Department with notice prior to certain steps in the well development process. (1)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The language in the proposed policy has been edited to clarify that wells are inspected at least once for each of the stages described in the document.

97. **Comment:** Inspection and enforcement is fundamental to the central mission of the Department. The proposed policy, in Section III(A)(2), fails that mission by relegating a core function into an aspirational objective. In fact, failure of the Department to sufficiently inspect well sites undercuts the entirety of the proposed policy, regardless of its other merits.

Based on this policy and corresponding statements made by agency personnel, this provision equates to an acknowledgement by the Department that it does not have the necessary resources to perform a core function, and/or it is disproportionately restrained by other administrative limitations with respect to well site permitting and enforcement. The solution to this problem is not creating undue leeway in necessary policy or guidance. For that reason we believe this proposed policy ultimately fails its intended purpose. (1)

Response: The Department agrees that inspection and enforcement is a central mission of the agency. The Department disagrees with the remainder of this comment.

98. **Comment:** If the Department is unable to maintain robust inspection, it has the responsibility to identify the cause and take affirmative and immediate steps to rectify any shortfall. Both the Department and the Commonwealth are much better served by a comprehensive response that ensure that not only will the agency have the financial and staffing support needed to meet its obligations, but that it has also reconciled any competing policies that frustrate this commitment. While there is strong value in seeking ongoing improvement, that improvement must be reinforced and commitments must be met.

Unless the consistency and frequency of inspections is increased both in writing though this policy and in practice by the Department, this guidance fails both the missions of the Department and the citizens of the Commonwealth.

The Department should formally amend this policy to require greater consistency and frequency of inspection for each and every well site in Pennsylvania. (1)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

99. **Comment:** The Department should conduct a public analysis on limitations to its monitoring and enforcement capabilities, whether due to funding/staffing or other administrative constraints. The findings of this analysis should guide all future amendments to policy, permits, or regulation to ensure the Department has the ability to fulfill its mission. (1)

Response: The Department provided this public comment opportunity when it increased its well permit fees through the regulatory development process.

100. **Comment:** As a resident of Tioga County, and one who has been approached many times by the fracking industry with regards to leasing my land for their purposes, I have great concern for how the DEP handles the violations of this industry.

Everything I read indicates that there are not enough inspectors to do the job the DEP is required to do. (2)

Response: The Department has recently initiated a staffing increase that will add more staff to the Oil and Gas Management Program, including additional inspectors.

101. **Comment:** I feel strongly that DEP should not fail to follow the present guidelines, even if your agency is overwhelmed by the number of drilling permits. A way must be found to ensure that a minimum of 6 inspections be performed on each well. One inspection should be done before drilling commences and subsequent inspections must be “passed” before the next step commences.

The Auditor General has made good suggestions regarding your standards and guidelines. Follow them all. Inspections must be made at the dozen critical steps in gas extraction operations. The industry does not self-report often enough to ensure that all accidents are known. (3)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. Please also see the response to Comment No. 39.

102. **Comment:** The DEP Should follow existing laws regarding inspection. There should be at least one inspection prior to drilling and a clearly- mandated minimum total of at least six inspections per well. The ability of DEP to inspect wells must not be overwhelmed by the number of permits issued. (4) (6)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all

wells are inspected, but it is not a limit to the number of times a well should be inspected.

103. **Comment:** Inspections at critical drilling stages over the well’s lifetime should be mandated, and not required “at least once!”

Apparently the present guidelines are not being followed — 16 stages with 9 from start of drilling to oil or gas being produced. There should be at least one inspection prior to drilling and a clearly mandated minimum of at least six per well. (8)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

104. **Comment:** What has prevented DEP from inspecting the required number of well? Too many permits? Cut back on the number of permits, many of which, understand from news media reporting, are standing idle. We do not need our Pennsylvania forests manhandled by an overabundance of wells, each requiring not only the well site, but roads, pipe lines, contaminated water overwhelming local purification facilities’ ability to clear out the contaminants.

We depend on the DEP to keep our environment healthy for people, animals and vegetation including forests. (8)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

105. **Comment:** We must, for the safety of ourselves and children, have better inspections of the active and proposed drilling sites. (9)

Response: The Department acknowledges this comment.

106. **Comment:** Pennsylvania residents are deeply concerned about the oil and gas industry’s activities in our state. The Auditor General, Mr DePasquale, has urged the DEP to update its inspection policy to include mandated inspections at critical drilling stages and over a well’s lifetime. His comments are excellent and should be followed to keep the public and our drinking water and environment safe. We feel that as a minimum there should be at least one inspection prior to drilling and a clearly- mandated minimum total of at least six inspections per well. The ability of DEP to inspect wells must not be overwhelmed by the number of permits issued. (10)(11)(12)

Response: The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. This policy outlines the processes and course of action that the Oil and Gas Management staff should take for conducting inspections and carrying out enforcement actions on violators. The ultimate goal of this policy and the Department is achieving compliance with all laws and regulations in an expeditious manner.

107. **Comment:** “Aspiration” should not be a term that is used in regard to official policy documents. If it is only reasonable to inspect wells 6 times at various stages of production, then don’t “aspire” to doing it 12 times. (3)

Response: The Department acknowledges this comment.

108. **Comment:** Section III. Identifying a Violation. Subpart A.4.a) Right of Entry: This section should be expanded to define “all reasonable times to make investigations”. Further, the section should clearly note if the owner and/or operator of the site has the right to be present and if advanced notice is needed. (14)

Response: The Oil and Gas Act of 2013 (Act 13), 58 Pa. C.S. § 3258(a) provides authority for this section.

109. **Comment:** I feel that DEP must “follow the book” - the guidelines should be followed in actual practice, not just as “aspirational goals”. The inspections, staffing, resolving violations and water supply investigations presently are a very bad joke on the citizens. Remember, you have a job to protect our environment not please a reckless industry.

As a minimum there should be at least one inspection prior to drilling and a clearly mandated minimum total of at least six inspections per well. The ability of DEP to inspect wells must not be overwhelmed by the number of permits issued. Your department would NOT be doing the job we are paying you for if you do not at least follow the guidelines. There is room for improvement also in your standards; give us more protections. (15)

Response: The Department takes very seriously its mission to the protect the environment and has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. Please also see the response to Comment No. 39.

110. **Comment:** The DEP must follow the rules regarding the inspections of gas and oil well. These inspections must be done regularly without regard for cost. Our environment must be protected at all costs. (18)

Response: The Department acknowledges this comment.

111. **Comment:** As set forth in your policy document, inspections and the frequency of such inspections should be observed carefully for each of the 12 different phases. (19)

Response: The Department acknowledges this comment.

112. **Comment:** In my humble opinion no permits should be issued if there is insufficient man power to do timely inspections before during and after the drilling begins. (20)

Response: The Department acknowledges this comment.

113. **Comment:** Having “inspection of a well at least once” is not sufficient. They need to be inspected at least once at each stage of drilling. The records show the process has not been working with many people now proving the contamination of their water happened after or while drilling took place. Or by leaking frack pits, or a spill. The regulations already in place are not working so they all need to be tighter in order for the people to be safe. (22)(23)(25)

Response: The draft policy was not intended to limit the number of inspections to one time per well. It was intended to direct all Oil and Gas Districts to inspect at least once during each of the critical stages of development that were identified. The language has been revised for clarity.

114. **Comment:** Obviously, inspections need to be multiple, ongoing, and overseen by competent inspectors. The number of permits issued should not surpass the ability of DEP to inspect wells! I would like to believe DEP spokeswoman’s statement that the department is confident it has the positions necessary to conduct approximately 27,500 inspections annually, including about 10,500 annual inspections for new wells. (26)

Response: The Department takes very seriously its mission to the protect the environment and has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The Department has recently initiated a staffing increase that will add more staff to the Oil and Gas Management Program, including additional inspectors.

115. **Comment:** I live in Lemon Township, Wyoming County on a natural lake fed by streams and underground springs. My family has enjoyed the benefits of fresh drinking water from our well for nearly 100 years, 5 generations of family members. I am deeply concerned about the impacts that gas drilling will have on our drinking water, as well as the surface water that feeds into our lake from streams in close proximity to natural gas pads. We live less than a mile from a gas pad on Stony Mountain Rd and another one situated behind the Lemon township building, also less than a mile from our home. With much of the land leased around us, we are fearful that without adequate inspections by DEP, the quality of our drinking and surface water could be seriously degraded. (29)

Response: The Department acknowledges this comment.

116. **Comment:** DEP leaves too much decision making up to the field inspector which has already led to inconsistent application of the law and can prolong noncompliance, as revealed by the PA Auditor General's Special Performance Report. (37) (52) (60) (73) (85) (87) (89) (90 - 95)

Response: The Department works diligently to provide training and guidance to field inspectors to improve and maintain consistency in the inspection process across the Commonwealth.

117. **Comment:** Do more inspections, unannounced of well pads/sites at every stage of drilling and keep consistent logs of what is found. Every type of violation should have its own code in the database and new ones added as different types of violations are discovered. (38)

Response: The Department has recently added additional violation codes to eFACTS, the Department's data management system, to provide Department inspectors greater ability to more clearly identify violations in the database.

118. **Comment:** Our rural, farmland and forested communities now host industrial sites with such frequency in some areas that it is rather evident families are living within a developed industrialized area. This is quite a change and in some respects, attention paid to public health has been lacking. We are not satisfied with the unscientific method in which setbacks are created from the wellhead, rather than edge of well pad and with no available data to assure the public that 500' is adequate for safety and the multitude of exposures a family may receive. Certainly there is an increased number of field staff since the early unconventional years. There has been a decrease in activity in many areas. Rig moves are less frequent as it has become common to drill or fracture multiple wells with one rig move to sites. These facts have provided more opportunities for inspectors to visit a site during the months while activity occurs. However, while this has increased, we are not always seeing inspections for all casing cementing events so critical in an area prone to gas migration. Fracturing events, which have the greater possibility of spills also, do not always have an inspection. There is also a lag time from the point of inspection to when the inspectors are able to key their inspection reports into the computer. While the interactive online Compliance Reports are a useful tool for the public – landowners who host pads, and their neighbors who live nearby – both having a variety of concerns, the timeliness of the available information is also a concern. (42)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

119. **Comment:** The CDJ location in Wilmot Township, Bradford County is a good example of why inspections are important on producing wells. It is noted that (015-22578) elevated

conductivity and surface crystallization was found at the site, the location of six producing wells. This was a follow-up inspection. The conductivity was noted as being highest near the methanol units. It was further noted that there was elevated conductivity, elevated strontium and barium near the wellhead pad and between the wellheads and the production unit. Violations were noted (695453, 695455, 695456, 698976) and NOV was issued (310907, 312467). We are also concerned about opportunities for (flowback) sand blasting well heads possibly creating dangerous situations and gas perhaps leaking through annular space that may not be necessarily promptly monitored or acted upon by operators. Thus, we are concerned that the requirement of an annual inspection has not been included for producing wells. (42)

Response: The Department acknowledges that violations have been documented at well sites that are currently in production and will continue to inspect these well sites as resources allow.

120. **Comment:** This particular section of the policy has been interpreted by some with understanding that each 12 events will have at least one inspection and by others that there will be only one required inspection that may occur at any one of those events. Clearly, the seriousness of each activity merits one inspection at each of the 12 events - before & during drilling, during casing & cementing, following well stimulation and completion, after post-drilling restoration, alteration and repairs or casing replacement, verifying inactive status, during plugging, after post-plugging restoration, before bond or financial security is released, annual disposal wells and after any complaint or violation. We are concerned that an annual inspection for producing wells is not included on this list. We understand a shortage of staffing may result in these inspections not occurring as intended. We also know that generally, operators are drilling multiple wells on a single pad in one rig move. Thus, a site that formerly may have only had activity for a month on/off, may now have continuous activity for months at a time. Such schedules would necessarily make it easier for field staff to be onsite during the critical stages. This is not always reality. While we applaud the Department's initiative on behalf of many of us who live nearby active well pads, and depend on the Department's eco-cops on the beat to ensure their health and safety, we encourage the Department to consider the following. We recommend a re-working of this provision such that it is not open for interpretation, but is plainly worded so that specifically everyone clearly understands what is required, is it one inspection for any of the given twelve stages or is it one inspection per stage? The Department receives advance notice of many stages from the operators, which is an indicator that the Department does want the opportunity to inspect those particular stages perhaps as a priority. (42)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The language in the proposed policy has been edited to clarify that wells are inspected at least once for each of the stages described in the document.

121. **Comment:** Act 13 of 2012 notes some interesting requirements, §3258 a.1 notes that *“The operator may not commence with drilling activities until the Department has conducted an inspection of the unconventional well site after the installation of erosion and sediment control measures.”* §3211(f)(1) requires a that a 24 hour notice of the date drilling will commence to the Department and others. This notice clearly provides the Department with an opportunity for inspections. That notice also pertains to any period where there is a break and drilling resumes. Further, §3211(f)(2) notes that unconventional operators are required to provide a 24 hour notice be provided prior to cementing all casing strings, conducting pressure tests of production casing, stimulation and abandoning or plugging an unconventional well. As noted in § 3211(f)(4) notices pertain to each additional project well, which we are understanding to be each additional well on a multi-well pad. Additionally, §3211(f), §3217 and §3220 provisions provide for notices in regards to operating within the boundaries of an operating coal mine. §3234 indicates notices regarding wells near/within gas storage operations.

Act 13 is pretty clear about the required notifications. We recommend that every stage of the 12 noted stages have an inspection. We recognize the Department has staffing limitations. This is quite a quandary to have such an ambitious enforcement policy and then lack the staff to satisfactorily implement the policy. Obviously, we want the policy implemented as we understand it, 12 stages, and 12 inspections per well (at a minimum, barring compliance issues) and the proper staffing levels to ensure the effectiveness of this policy. However, lacking staffing, we want to be realistic, and therefore, we desire that the 12 stages be prioritized in three categories, 1 being absolutely required, 2 necessarily required, and 3 non-critical inspections. We would strongly recommend that category 1 include the pre-operational inspection and inspections during drilling; for casing cementing and any action related to the casing; stimulating and completion; and finally, complaints and violations. Thus, we note the six inspections we deem most important as being absolutely required, and in the unconventional fields most frequently needed. (42)

Response: The Department agrees that it was the intent of the legislature by providing additional notification requirements in Act 13 for the Department to inspect wells as a result of those notifications. However, only one such inspection was mandated by Act 13 so the legislature necessarily recognized that not every notification would always result in an inspection. The Department recognized this when it specified the stages during which a well should be inspected and feels that the policy appropriately reflects the legislature’s intent. It should be noted that the policy is not intended to limit the number of inspections that may be conducted but instead establishes a minimum number of inspections that should occur.

122. **Comment:** Being adequately prepared for on-site inspections is so critical to enforcement. The world has entered an electronic age. Doctor’s offices routinely employ laptops in exam rooms, routine retail transactions include paperless credit card verifications, and other professionals routinely use tablets, pads and other electronic devices to complete anything from insurance forms to meeting notes and patient updates. We do not know what electronic devices if any inspectors have to use in the field. We see a lag in compliance information entering the system; in file reviews we note a hybrid of

manual/typed inspection reports. We hope our dedicated eco-cops have the ability to utilize electronic devices in the field in order to be more efficient. Should they not have these necessary tools, we strongly recommend that the priority be placed on providing these tools. (42)

Response: DEP inspectors commonly use various types of electronic equipment to carry out their field duties. Most common are GPS technology, lap top computers, digital cameras, and cellular communication devices. It is the Department's intention to continue to provide additional technologies to its inspectors in order to improve efficiency and transparency.

123. **Comment:** More PADEP inspections, not less. (46)

Response: The Department acknowledges this comment.

124. **Comment:** With regard to **paragraph f, Follow-up**, the Department should correct the inconsistent use of terms for “follow-up inspection” in eFACTS and the Guidelines. Both Department staff and the public should have clarity which procedure for such inspections (i.e., on the same day or whenever an inspection is performed) represents the Department's intent. However, we believe that the Department should conduct follow-up inspections as quickly as possible, as time lags between inspections (a current problem with the oil and gas program, as discussed below) could allow violations to remain unresolved and cause damage for prolonged periods. (47)

Response: The guidance document adequately explains the Department's use of follow up inspections at oil and gas well sites. The Department makes every effort to follow up on violations in a timely manner. Violations causing damage are prioritized for additional enforcement as is necessary.

125. **Comment:** With regard to paragraph i, Site Restoration, we object to the proposal to conduct site restoration inspections only *after* operators file restoration reports. This in effect means that the Department is neglecting its responsibility to ensure that site restoration is done properly (as discussed further below with regard to frequency of inspections). In addition, the Department should not wait for well restoration reports to be filed before conducting site restoration inspections. Because site restoration requirements apply to well *sites*, operators may not undertake restoration or file restoration reports until after the last well on a site is completed, which can take years.

In addition, operators have 60 days after a well site has been restored to file reports and, under certain conditions, are allowed to request restoration extensions for up to two years. Such significant time lags mean that soil erosion, runoff, water contamination, and other problems could persist unchecked. In addition, it does not appear that operators submit restoration reports (form OOGM0075) to the Department in a timely manner; recent research shows that many are missing from paper files and that restoration reports are not logged in eFACTS, and therefore are not readily available to either Department staff or the public (47)

Response: The Department disagrees with this comment. This section of the guidance defines what a site restoration inspection is and notes that the inspection “typically” occurs after the site restoration report is received. Section I. A. 2. clearly states that the Department will inspect well sites following the time period in which the operator is required to restore the site – thus ensuring the site is inspected at the appropriate time.

126. **Comment:** With regard to paragraph j, Complaint, the Department indicates that staff should follow protocols established in Standard Operating Procedure for Complaint Response Management, Document No. OPI 2012-01. However, Department staff have confirmed that this document is an internal workflow policy, and not publicly available, on the Department’s website—making it impossible for the public to assess those protocols and, in turn, whether they provide an adequate basis for the Guidelines and to ensure that the Department effectively uses complaints to identify violations. The Department should not finalize the proposed Guidelines until this document has been made available to the public. (47)

Response: The document mentioned above has Department wide application and is commonly used by many programs including Oil & Gas. Timely response to all complaints will continue to be a priority for the Oil & Gas program.

127. **Comment:** Nor does the internal workflow policy (provided to us by Department staff) include guidance on specific, widespread problems related to oil and gas complaints. We can only assume that the Department’s older complaints manual, which was recently provided through a Right to Know Law request, is still in effect. With regard to odors, the manual instructs Department employees that, “[t]he odors must be occurring at the time of the call... If the odors are not present at time of call, then instruct the caller to contact the Department the next time they detect the odors... Do not register the complaint.” (47)

Response: The referenced complaints manual is no longer in effect. All environmental complaints reported to the Department should be recorded and acted upon appropriately by program staff. Odor investigations are commonly carried out by the Department’s Air Quality Program. The Oil & Gas Program does coordinate and participate in investigating odor complaints when the source of the odor is located on a well site.

128. **Comment:** Depending on the priority level assigned to a complaint, the Department has from several days to more than a month to respond to most complaints. A time lag between complaints and inspections could decrease the opportunity to use complaints as a way to identify a violation and abate a pollution event, since odors, visible air emissions or substances in water, and noise may dissipate with time—yet they are often the result of equipment malfunction, safety problems, and serious pollution issues. (47)

Response: The Department strives to respond promptly to all complaints and this guidance document establishes strict deadlines for complying with water supply complaints.

129. **Comment:** The Department should clarify whether the older complaints response manual is still in effect—and if not, whether the internal workflow document on which the Guidelines rest will be expanded to include response to common complaints and correct problems that prevent the comprehensive, consistent tracking of and response to resident complaints. (47)

Response: The referenced complaints manual is no longer in effect and the Department is working to ensure the Standard Operating Procedure is robust and is followed by staff in a consistent manner. It is not the intention of this policy to lessen the response to complaints filed with the Department. Each complaint received by the Department is investigated based on the merits of the complaint.

130. **Comment:** It is illogical for the Department to propose a weaker inspection policy now than what was put in place long before shale gas development even existed. In addition, the Guidelines omit certain aspects of inspections currently specified in the Pennsylvania Code—raising the possibility that the proposed policy conflicts with established regulations.(47)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13’s notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

131. **Comment:** Weakening rather than strengthening inspection protocols is particularly irresponsible because of current gaps in industry oversight. According to Department data, in 2013, 13,367 wells were inspected; while a notable increase over previous years, because of the growth in drilling and production, more than 66,000 active wells, or 83%, were still left uninspected. (47)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13’s notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

132. **Comment:** Regular inspections help ensure that problems such as spills, leaks, equipment failures, erosion, excessive emissions, and other problems that occur at well sites are detected, especially since some environmental impacts can take time to become evident and others can come and go. The Department states in its 2013 Oil and Gas Annual Report that it conducts “regular inspections to ensure that well sites are operated in a manner that is safe for Pennsylvania’s citizens and protective of the environment.” Unfortunately, the

inspection schedule proposed in the Guidelines will undermine this goal and violate the public's right to have regular and unscheduled inspections performed for all aspects of oil and gas operations. The Department should commit to an inspection policy based on all phases of development during the many years that wells are operational and until they are safely plugged and sites are fully restored. The Department should not limit the occurrence of inspections to "at least once," as currently proposed, which is an insufficient requirement that sets the bar of oversight far too low. (47)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development that each District Office should ensure are inspected. This inspection frequency comports with Act 13's notification requirements and in conjunction with recently hired additional staff, will result in a greater number of inspections on a per well basis.

133. **Comment:** Inspections should occur during the Department's permit review to verify the information provided by applicants and during the siting of wells, particularly if an applicant has requested a permit exception (e.g., for setbacks) or proposed to construct a well in a Special Protection Watershed or other sensitive area. (47)

Response: Inspections do occur when needed at proposed locations during the permitting phase of a project when Department permitting staff may have concerns or desire clarifying information in order to make a permitting decision.

134. **Comment:** Inspections should occur to oversee onsite storage, treatment, and disposal of liquid and solid waste, particularly to ensure that equipment (e.g., tanks and production pit liners) are functioning properly, that waste management practices meet statutory requirements, and that any waste left onsite is properly solidified and will be permanently contained. Inspections are particularly necessary when the Department allows operators to use "alternative" waste management methods, in order to ensure that they meet the statutory requirement of providing "equivalent or superior protection" to established regulations. (47)

Response: The Department acknowledges this comment. The Department currently have staff in each District office that focus specifically on the issues raised above including the Requests for Alternative Waste Management Practices.

135. **Comment:** Inspections should be conducted regularly after a well is drilled or plugged/abandoned to ensure that operators are adhering to required site restoration deadlines and Best Management Practices (e.g., site stabilization, re-vegetation, and leak prevention). The Department should therefore replace the generic use in the Guidelines of "following" (inspection d) and "after" (inspection h) with specific inspection timeframes. (47)

Response: The guidance has been revised to reflect that inspections are expected to occur at each enumerated event.

136. **Comment:** The Department should replace the generic use in the Guidelines of “following” (inspection k) with specific timeframes within which inspections related to violations are conducted, since violations that are left uncorrected for any period of time can cause or exacerbate environmental damage. (47)

Response: The guidance has been revised to reflect that inspections are expected to occur at each enumerated event.

137. **Comment:** Clarify whether complaint inspections (inspection l) would occur following each single complaint. Inspections should be conducted in response to every complaint made about any potential problem that has either not already been inspected on-site by the Department or appears to be ongoing, or which has already been confirmatively resolved by an operator. The Department should respond quickly and consistently to complaints, which are a critical part of enforcement; for example, between 2007 and 2011, the Department found violations as a result of more than 700 complaint-driven inspections. (47)

Response: The Department investigates each complaint it receives in a timely manner as resources allow.

138. **Comment:** Clarify whether inspections will occur for wells serving a gas storage reservoir, which is specified in the 1989 Inspection Policy. (47)

Response: The Department intends to continue to inspect wells located in gas storage reservoirs twice a year.

139. **Comment:** The Department should make review of all resources a requirement for inspectors preparing for fieldwork, rather than simply recommending them as options. (47)

Response: The Department believes the guidance is worded appropriately.

140. **Comment:** With regard to paragraph b, Electronic Notices, the Department should clarify which of the “several critical phases of the drilling process” are subject to electronic notification. If any phases are *not* subject to electronic notification, the Department should clarify how inspectors will otherwise be made aware that they are occurring. (47)

Response: This comment is beyond the scope of this guidance document.

141. **Comment:** With regard to paragraph f, Enforcement/Compliance History, and paragraph g, Complaint Records, the Department should specify which aspects inspectors are authorized to consider when assessing conditions at a well site, an operator’s willingness to comply, and other issues encountered during fieldwork. Inspectors should be able to consistently integrate compliance history and patterns of resident complaints into inspection reports and issuance of violations, particularly because preventing “repeat offenders” and “bad neighbors” should be a key part of the Department’s enforcement work. (47)

Response: The Department considers all aspects of an operator’s compliance history when inspecting and taking enforcement actions, as provided in relevant statutes.

142. **Comment:** With regard to paragraph b, Procedure and Notifications, the Department should specify when inspectors are advised to conduct unannounced inspections. Inspections should be unannounced when they are intended to follow up on violations or in response to resident complaints, in order to prevent operators from shutting down certain operations or cleaning up sites solely because an inspection is pending. (47)

Response: The vast majority of Oil & Gas related inspections conducted by the Department are unannounced. When a Department inspector requires information from an operator that can only be supplied by the operator at the location during an inspection, they may coordinate an inspection with that party.

143. **Comment:** With regard to paragraph c, Recording on-site Inspections, we believe (as discussed above) that NOVs should be issued for every violation. As written, this section allows significant discretion on the part of the inspector to craft the “mutually agreeable” time period to cure a violation. Such discretion can lead to inconsistency in enforcement and allow operators unacceptably long time periods for correction—during which impacts on the environment and health may persist. The Department should provide inspectors with more definitive guidance and maximum allowable timeframes to ensure that violations are resolved swiftly and consistently. In addition, the Department should ensure consistency in entries included in both eFACTS and the Oil and Gas Compliance database. (47) (81)

Response: This section is meant to capture the specifics of an operator’s commitment to correct violations at a site. Follow up inspections will need to be conducted to determine adherence to this commitment. The benchmark used by the Department for correcting violations is a maximum of 180 days, as described elsewhere in the Policy.

144. **Comment:** Inspections are when problems such as deteriorating equipment, waste pit liner tears, site erosion, and excessive emission releases are often discovered. DEP should commit to an inspection policy based on all phases of development during the many years that wells are operational and until they are safely plugged and sites are fully restored. (43) (51) (54) (106 - 321)

Response: The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The Department has also implemented a well integrity assessment program whereby operators are expected to inspect their wells on a quarterly basis and report and remedy any integrity problems immediately.

145. **Comment:** DEP should not limit required inspections to “at least once” during phases of production—but as necessary before, during, and after production. DEP should make clear

in its proposed guidelines that inspections will occur before permitting to make sure sites won't harm water supplies and land; during site construction; for onsite storage, treatment, and disposal of liquid and solid waste activities; throughout the site restoration process so that operators meet required deadlines; and after wells are plugged and abandoned. (48) (51) (54) (106 - 321)

Response: The guidance has been revised to reflect that inspections are expected to occur at each enumerated event. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

146. **Comment:** We need more inspections, not less: Despite Pennsylvania Department of Environmental Protection's (DEP) acknowledgement of its responsibility to oversee gas and oil development to provide safety and protect the environment, DEP's proposed inspection policy scales back on inspections from what is currently recommended in Pennsylvania law. This, in the face of criticism for poor inspection performance that leaves communities and the environment vulnerable to pollution and degradation. (52) (73) (85) (86) (88) (89)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

147. **Comment:** The proposed well site should definitely be physically inspected by both DEP and EPA before any permit or further action is taken by any drilling company. (Both injection and Marcellus). This is as important as any regulation in assuring the safety of nearby residents and their life sustaining water supplies. Any injection or Marcellus well drilled on elevated terrain puts those at risk who are located on lower elevations around the site. Accidents, spills, leaking trucks, operator error, and equipment failures are all magnified when a well is located in a position contrary to good judgment and common sense. (63)

Response: DEP currently inspects all well sites before drilling commences.

148. **Comment:** I support fully the thirteen types of inspections that are detailed, such as Drilling/Alteration and Compliance Evaluation and the frequency schedule listed. I realize that much more DEP staffing is needed to effectively carry out the inspections, however it is important to the thousands of people that live in the Marcellus Shale Region to be protected from environmental dangers that could result from poor drilling practices. Perhaps these or inspections could be charged to the operator as an Inspection Fee- the fee could be set to offset the additional headcount that will be required. Just like a Permit Fee, the Inspection fee can be part of the permitting process- the cost of doing business; much like a building permit fee and inspection fee required by local municipalities for residential

or commercial construction. The DEP must staff to be able to provide quality inspections. (66)

Response: The Department factors the cost of inspections into the price of the well permit fee for oil and gas wells. In 2014, DEP increased the unconventional well permit fee through a regulatory change to Chapter 78. From that fee increase, the Department has recently initiated a staffing increase that will add up to 36 more people to the Oil and Gas Management Program, including additional inspectors.

149. **Comment:** Inspections should be completely by-the-book. There should be no use of any “weasel clauses” such as “inspections will be performed as personnel and finances permit”. (67)

Response: The Department believes it has established reasonable inspection goals in the guidance document.

150. **Comment:** Inspections must be performed prior to spudding of each well and at each of the dozen critical steps during subsequent operations. (67)

Response: The Department has identified the critical stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

151. **Comment:** An inspector should be on site during and after cementing operations. The time for curing of the cement is critical and the wait time should be fully documented. Subsequent operations should not proceed until the DEP inspector signs off that the cementing stage was completed by the book. (67)

Response: The Department agrees that cementing operations are a critical stage in the well construction process. Wait on cement times are documented in the driller’s log and reviewed during an inspection. The Department does not agree that drilling operations should be halted until a review of the cementing operations occurs. The Department is satisfied that its current practice provides for appropriate protection against impacts. Moreover, Act 13 only required one mandatory inspection and that is after site construction and before well drilling.

152. **Comment:** Sections III and IV are unrelated to discussion of the “Standards and Guidelines for Identifying, Tracking, and Resolving Oil and Gas Violations”, and the commentator recommends that the DEP remove them from this document. Even though Section III is specifically titled “Identifying a Violation,” the content of Section III really just lays out various DEP inspection guidelines and procedures, and certain operator reporting requirements. The commentator agrees that both of these Sections address important transparent components of the DEP’s and/or operators’ responsibilities; however, they should be stand-alone documents and not incorporated into this specific Guidelines document. However, if these sections are retained, the commentator provides the corresponding comments below. (68)

Response: The Department disagrees with this comment.

153. **Comment:** Section III.A.1.d, Page 9. The Guidelines state that the Drilling/Alteration Inspection is used “during the drilling or alteration” of a well, but then goes on to say this type of inspection would be used from “pre-permit” until after the well is stimulated and operational. Since drilling cannot begin until a permit is received, it doesn’t seem correct to state that this type of inspection would be used from the “pre-permit” stage. The commentator recommends that the wording “from pre-permit until” be replaced with “from initiation of drilling or alteration until.” (68)

Response: The Department acknowledges this comment. This language is used because there may be circumstances that require an inspection prior to permit issuance.

154. **Comment:** Section III.A.1.j, Page 10. The Guidelines state that Complaint Inspections are conducted in response to either a complaint or a referral. Since not all referrals necessarily involve a “complaint,” the commentator recommends that this inspection type be renamed “Complaint/Referral.” (68)

Response: The Department disagrees with this comment. Complaint Inspections are by definition an inspection resulting from a referral.

155. **Comment:** Section III.A.1.k, Page 10. The Guidelines state that the Incident-Response Inspection type is used for “large spills,” which seems appropriate, but there is no clear guidance on which inspection type would be used for responding to a small spill, when the agency chooses to do so. The commentator recommends clarifying what inspection type should be used. (68)

Response: These would be routine or complaint inspections.

156. **Comment:** Section III.A.2, Page 10. This section is titled “Frequency of Well Inspections” but it includes inspections that begin before the wells are drilled. The commentator recommends that this section 2 be re-titled “Frequency of Well Site Inspections” (68)

Response: The section has been reworded to “Frequency of Inspections”.

157. **Comment:** Section III.A.3.a., Page 11. This section deals with pre-inspection preparations related to equipment and PPE. Since this is during the preparation stage, the wording “(PPE) should also be used” and should be changed to “(PPE) should also be obtained for use” (68)

Response: This section of the guidance document has been deleted because it is not in keeping with the intended scope of the document.

158. **Comment:** I hear of the new proposal that would allow site inspections to be just once per well for all 12 stages of the well. The current regulation suggests over 9 site visits. I think the DEP average is 3 currently. To go to one is unthinkable. I would strongly suggest that DEP hire enough people and train them to get them up to speed to give at least 9 site visits per well. Pass on the expense of new hires in the form of tax to the drilling companies and by all means - don't announce site visits - they must be surprise visits! (70)

Response: The draft policy was not intended to limit the number of inspections to one time per well. It was intended to direct all Oil and Gas Districts to inspect at least once during each of the critical stages of development that were identified. The language has been revised for clarity. The vast majority of Oil & Gas inspections conducted in Pennsylvania are unannounced. Occasionally there are circumstances where coordination with an operator must take place prior to a site inspection.

159. **Comment:** Improve routine inspections. New protocols must improve ways to establish the status of a work site observed in routine inspections. Both engineering science and law must be used to detail how inspectors must collect information that scientifically verifies conditions and evidence that will hold up under legal challenge. Of course this is burdensome, but these burdens are the cost of doing business in a dangerous industry and the cost of inspecting dangerous businesses. The industry must be made to pay more to the state to cover such costs. In the long run, this will expose the worst companies and hopefully prevent more of the most costly accidents. Inspectors will have more standing in the public eye and elicit more compliance by the industry if observation protocols are more specified. It is too easy for an inspector who is underpaid and over-worked to be persuaded to simplify an inspection or accept the operators' information. One way to avoid debates about some observations is to use more digital recording through video and photos. This may help to substantiate the inspectors' observations in some cases. (71)

Response: The Department acknowledges this comment.

160. **Comment:** Under the proposed new guidelines, section III.A.2. states that "Each District Office should ensure that all wells are inspected at least once in accordance with the following schedule..." This statement is followed by 12 phases/steps in the unconventional well development process. It is unclear from the guidance language whether an inspection must occur during each of the enumerated phases or whether an inspection must occur only once during any of the phases listed. If the Department's intent is the latter, then this guidance falls far short of ensuring compliance of permit provisions and protecting Pennsylvania's natural resources. Inspections and enforcement of permit violations are core functions of providing oversight to the unconventional natural gas industry and these are critical to the overall mission of the Department. One of the Department's stated purposes of updating this guidance document is to "bring about compliance." However, without inspecting every unconventional well in a frequent and consistent manner, the Department cannot achieve the guidance document's intended purpose—making the entire document, including its productive tracking and enforcement provisions, null. (75)

Response: The Department has increased inspection staff in the last several years and continues to improve its efficiency when conducting inspections during critical

drilling operations and entering the inspection data into the eFACTS database in a timely manner. The language in this section of the proposed policy has been edited to clarify that inspections are expected for each of these critical phases.

161. **Comment:** The CDJ location in Wilmot Township, Bradford County is a good example of why inspections are important on producing wells. It is noted that (015-22578) elevated conductivity and surface crystallization was found at the site, the location of six producing wells. This was a follow-up inspection. The conductivity was noted as being highest near the methanol units. It was further noted that there was elevated conductivity, elevated strontium and barium near the wellhead pad and between the wellheads and the production unit. Violations were noted (695453, 695455, 695456, 698976) and NOV was issued (310907, 312467). We are also concerned about opportunities for (flowback) sand blasting well heads possibly creating dangerous situations and gas perhaps leaking through annular space that may not be necessarily promptly monitored or acted upon by operators. Thus, we are concerned that the requirement of an annual inspection has not been included for producing wells. (42)

Response: The Department acknowledges that violations have been documented at well sites that are currently in production and will continue to inspect these well sites as resources allow. However, the Department does not believe it is an appropriate use of resources to hire hundreds of additional inspectors to inspect all active wells annually. Instead, the Department has implemented an integrity assessment program where operators inspect their wells quarterly and report and remedy any integrity defect immediately.

162. **Comment:** This particular section of the policy has been interpreted by some with understanding that each 12 events will have at least one inspection and by others that there will be only one required inspection that may occur at any one of those events. Clearly, the seriousness of each activity merits one inspection at each of the 12 events - before & during drilling, during casing & cementing, following well stimulation and completion, after post-drilling restoration, alteration and repairs or casing replacement, verifying inactive status, during plugging, after post-plugging restoration, before bond or financial security is released, annual disposal wells and after any complaint or violation. We are concerned that an annual inspection for producing wells is not included on this list. We understand a shortage of staffing may result in these inspections not occurring as intended. We also know that generally, operators are drilling multiple wells on a single pad in one rig move. Thus, a site that formerly may have only had activity for a month on/off, may now have continuous activity for months at a time. Such schedules would necessarily make it easier for field staff to be onsite during the critical stages. This is not always reality. While we applaud the Department's initiative on behalf of many of us who live nearby active well pads, and depend on the Department's eco-cops on the beat to ensure their health and safety, we encourage the Department to consider the following. We recommend a re-working of this provision such that it is not open for interpretation, but is plainly worded so that specifically everyone clearly understands what is required, is it one inspection for any of the given twelve stages or is it one inspection per stage? The Department receives advance notice of many stages from the operators, which is an indicator that the

Department does want the opportunity to inspect those particular stages perhaps as a priority. (42)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The language in the proposed policy has been edited to clarify that wells are inspected at least once for each of the stages described in the document.

163. **Comment:** During the STRONGER review process, the Department proudly stated that it was able to expand its staff from 65 to 202, as a result of revenue generated by increased permit fees in 2009. In June 2014, another increase in permit fees for unconventional gas well permits, from \$3,200 to \$5,000, went into effect. During the STRONGER review, the Department reported that it intended to use the additional revenue from the permit fee increase to once again hire additional staff to implement inspection responsibilities. Rather than hiring additional staff however, the proposed guidance document suggests that the Department intends to scale back the number of inspections per well or keep the frequency stagnant at one per well over the life of the well.

The commentator strongly recommends that this guidance document be revised to reflect more frequent and more consistent inspections during critical phases of unconventional well development, such as prior to commencement of drilling on a new well pad and during drilling, casing and cementing operations. The commentator organization urges the Department to take immediate steps to direct revenue resulting from permit fee increases toward new inspection staff. If, after additional inspection staff are hired, the Department finds that it still lacks the manpower to provide adequate oversight, inspections and enforcement for unconventional well development, then the Department should seek other remedies to ensure that it can fulfill both the intent of the guidance document and its mission to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment. (75)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The language in the proposed policy has been edited to clarify that wells should inspected at least once for each of the stages described in the document. The end result is that wells and well sites will be inspected more frequently as a result of the guidance document.

164. **Comment:** Page 10, Frequency of Well Inspections: Every well should be inspected at least once per stage/event. This section begins with the following instruction: "Each District Office should ensure that all wells are inspected at least once in accordance with the following schedule:" followed by a list a)-l) of stages or events in the history of a well. As drafted this could be read as accepting that a well need only be inspected once in the

entire history of the well. This is completely unacceptable. Each well must be inspected at *every* stage, and every event (such as a complaint or “incident”). (79)

Response: The draft policy was not intended to limit the number of inspections to one time per well. It was intended that all Oil and Gas Districts should inspect at least once during each of the critical stages of development that were identified. The language has been revised for clarity.

165. **Comment:** Page 14: Coordination with other Department or Agency Programs: Specific mention must be made of coordination with BAQ regarding compliance with 40 CFR Part 60, Subpart OOOO. (79)

Response: The Department acknowledges this comment. As part of the 2014-2015 staffing increase, additional air quality inspectors were hired for this purpose.

166. **Comment:** It is confounding that the proposed Standards and Guidelines actually amount to fewer inspections of unconventional well sites. State Impact reports that from January of 2009 to August of 2014 there have been 3,880 violations on 7109 active wells. Clearly, here should be more inspections not less. We know that due to the nature of cement six percent of well casings fail immediately allowing for methane and potential chemical leakage. This, in and of itself, should signal the need for additional DEP personnel. We also know from the amount and nature of the violations that there are “bad actors” among the gas companies. It would be naive to think they do not need to be closely watched.

And there should be additional, comprehensive monitoring for the release of chemicals known to cause cancer in humans, ie benzene. (80)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, including during drilling, casing, and cementing operations. This policy does not limit to the number of times a well should be inspected.

167. **Comment:** What is the definition of ‘compliance’ and how much weight should an inspector give to each of the factors that determine compliance? (81)

Response: The Department believes an operation is in compliance when the standards set in all applicable laws and regulations are being met.

168. **Comment:** Under the section “Preparing for On-site Inspections” inspectors are told to check the battery and charge levels on their equipment, but where in the document are there details about how to weigh the various factors that determine whether or not an inspector issues a violation? Is the public to assume that inspectors know how to spot a violation based on training and instinct, yet still need to be reminded to check their batteries and dress professionally? What is the true purpose of this document, if such detailed guidance is not included? (81)

Response: The preparing for on-site inspection section has been removed from the guidance document.

169. **Comment:** The document states that an inspector can choose between an unannounced or scheduled appointment. When are unannounced inspections conducted by inspectors and how often? (81)

Response: The vast majority of Department inspections are unannounced. Announced inspections occur when information or testing is required for the inspection.

170. **Comment:** What methodologies, timetables and/or formulas does an inspector use to negotiate a “mutually agreeable period” for a company to fix violations? (81)

Response: This timeframe would depend on the circumstances surrounding the individual situation and the nature of the violations that have been documented.

171. **Comment:** A disclaimer at the beginning of the document states it’s “intended to supplement existing requirements,” but does it supplement other documents, perhaps internal department documents, that do outline what specific procedures and formulas are used by inspectors for making determinations about inspections, violations and enforcement issues along the path to compliance? If such documents do exist, then DEP would better serve the department, industry, legislators and the public by making the specific procedures and formulas for compliance available for public review as well. If such documents detailing the department’s methodology do not exist, then specificity is certainly called for and this guiding document should be republished after specifics are included. (81)

Response: The regulations and statutes administered by the Department specify whether an activity conforms with the law or not. This document clearly notes that all violations are to be noted on the inspection form.

172. **Comment:** While it’s true that “there is no precise formula of enforcement action that is appropriate for every situation,” the methodologies, timetables and policies at play within that formula should be detailed and made available for public review. (81)

Response: This policy outlines the processes and course of action that the Oil and Gas Management staff should take for conducting inspections and carrying out enforcement actions on violators. The ultimate goal of this policy and the Department is achieving compliance with all laws and regulations in an expeditious manner.

173. **Comment:** I have spent substantial time visiting fracking-impacted people and communities in Bradford, Susquehanna, Lycoming, Washington, Fayette, and Butler Counties in particular, and have met people impacted by the shale gas industry from over a dozen other counties over the past 5 years. I have been absolutely horrified by what I heard

and saw, as well as by the vast amount of research that reputable scientists, veterinarians, physicians and public health professionals have learned about the cumulative impact of fracking on animal and human health.

The examples are literally too numerous to attempt to describe in this letter.

Therefore I feel it is of the utmost importance that PA DEP not scale back on its inspections, but rather increase inspections. If it were possible inspections should be increased 7000-fold, because violations are occurring so frequently at the thousands of Marcellus Shale gas drilling operations and other aspects of shale gas extraction, processing, transportation and distribution that even a staff of 7000 inspectors would not be enough.

Public health matters. At the absolute least, you MUST increase and not decrease inspections. (82)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected. The language in the proposed policy has been edited to clarify that wells should be inspected at least once for each of the stages described in the document. The end result is that wells and well sites will be inspected more frequently as a result of the guidance document.

174. **Comment:** Section III.A.4.b.3 Guidelines for Conducting On-Site Inspections: The commentator respectfully requests that this section be revised to note that Department inspectors will complete on-site safety orientations as part of their inspection process. The commentator's organization holds safety of our employees, contractors, visitors and communities as a core metric in our operations. As each site has unique characteristics, we require all visitors to the site to complete a site safety orientation which provides details regarding the operations on the site, appropriate exit strategies and muster locations in case of an emergency. (77)

Response: The Department acknowledges this comment. Department staff will continue to participate in the appropriate safety orientations and trainings with operators in an effort to promote and maintain safe site operations. However, because the majority of Department inspections are unannounced and our inspectors receive appropriate safety training, the Department will not make participation in an operator conducted safety training a contingency of well site inspection.

175. **Comment:** Section III, B. Data Reported to the Department, Page 14, 3. Notifications - Several notification requirements are missing from the list including: Complaint notification [25 Pa Code §78.51(h)], Spill notification [25 Pa Code 78.66(b)], Defective casing or cementing notification [25 Pa Code 78.86]. Similarly, Page 15, under the Plans section, the casing and cementing plan [25 Pa code 78.83(a)] was omitted from the list.

The commentator recommends the DEP add these notifications to the appropriate lists. (74)

Response: The Department acknowledges this comment.

176. **Comment:** Well pads change daily; the activity level at a drilling site with multiple wells is comparable to a small city. More frequent inspections are urgently needed. (84)

Response: The Department acknowledges this comment.

177. **Comment:** DEP must allocate the necessary financial resources to hire additional inspectors. This money should come from the industry. DEP should implement an inspection policy that outlines explicitly the requirements for timely and frequent inspections.

There should be at least one inspection prior to drilling and a clearly-mandated minimum total of at least six inspections per well. The ability of DEP to inspect wells must not be overwhelmed by the number of permits issued.

Using a 25-year-old policy on the frequency of inspections that only requires DEP to conduct inspections as it has the financial and human resources to do so, is outdated and cannot continue to exist with the highly polluting hydraulic fracturing process now active in the state. (97)

Response: The Department factors the cost of inspections into the price of the well permit fee for oil and gas wells. In 2014, DEP increased the unconventional well permit fee through a regulatory change. From that fee increase, the Department has recently initiated a staffing increase that will add up to 36 more people to the Oil and Gas Management Program, including additional inspectors.

178. **Comment:** Equal and, in fact, exceed current PA state law recommendations on the frequency of inspections. This should include a substantial proportion of unannounced, comprehensive inspections to encourage day-to-day compliance with safe practices. (99)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, including during drilling, casing, and cementing operations. The vast majority of Oil & Gas inspections conducted in Pennsylvania are unannounced. Occasionally there are circumstances where coordination with an operator must take place prior to a site inspection.

179. **Comment:** In the “Identifying a Violation” section, within the “On-Site Inspections” subsection, there are thirteen (13) different types of inspections detailed in the narrative. In the Workload Reports generated by the Department staff members, only three (3) are listed (conventional, unconventional and client/site) – none of which match any of the types of inspections listed in the Draft Policy. For consistency alone, this must be clarified. In addition, PADEP utilizes Oil/Gas Inspectors, Water Quality Specialists and other staff

member classifications, who could potentially inspect oil and gas facilities. Which staff members are responsible for which types of inspections? This matching failure ensures inconsistent understandings of where responsibility falls within the Department. The many milestones in both law and regulation that require notice to the Department can result in inspections specific to a particular milestone. The types of inspections should be identified specific to the milestones to, once again, ensure consistency across the regional offices and provide real guidance to PADEP staff and the regulated community. Similarly, the “Frequency of Well Inspections” section should be updated to reflect these milestone-type inspections. (78)

Response: The Department generates the workload report referenced above for a different purpose. The workload report is designed to provide quick information at a high level concerning the types of inspections mentioned above. The Department does not see value in assigning a staff member classification to an inspection type as many inspection types may be carried out by multiple classifications depending on the circumstances.

180. **Comment:** The commentator also recommends that the PADEP inspection report include a checklist for inspectors to complete regarding their preparation for the inspection. The operator and the public should be confident that inspections are conducted professionally and in accordance with industry standards. Also, to the extent that violations are noted based upon documents reviewed prior to the inspection, it is critical that the operator be provided with, at a minimum, a reference to the documents, but preferably the documents themselves, so the operator has an opportunity to quickly resolve any alleged violation related issues. (78)

Response: The preparedness section of the guidance document has been deleted. The Department agrees that records forming the basis of an inspection/compliance action should be referenced in any enforcement action.

181. **Comment:** The guidance in this paragraph starts with “When appropriate”. The commentator organization believes this language is too vague and leaves too much interpretation of the individual reading the guidance document. In instances where there has been or likely will be damage or losses to environmental resources entrusted to the PFBC, we respectfully request the opportunity to enter into joint enforcement efforts. This section should be expanded to identify instances when inter-agency coordination is relevant to guide staff to the agencies with which to coordinate. (322)

Response: The Department acknowledges this comment and will continue to partner with the Pennsylvania Fish and Boat Commission and pursue joint enforcement efforts when appropriate.

TRACKING AND RECORDS MANAGEMENT

182. **Comment:** Letters are a better means of communication than phone calls, and formal violation notices should be recorded in the DEP online compliance databases so that the public can easily learn of them. Of course it is essential to provide a follow up of each violation, with a clear summary of past and ongoing investigations. (26)

Response: Formal Notices of Violation are entered into eFacts and are accessible on the public version of this database. The Department will continue to make improvements to eFACTS, eFACTS on the web, and the Oil and Gas Mapping Tool to offer greater transparency and explanation to the public.

183. **Comment:** Spills that the operator reports but have cleaned up by the time the inspector arrives are listed in compliance reports as “In Compliance With Policy”. Where is the NOV on this? Just because it was cleaned up doesn’t mean it didn’t happen and shouldn’t be documented.

Only inspection reports with an NOV show up on eFACTS but then this site in itself is a disaster to try to navigate. Is this intended to discourage the general public from being “informed?” (33)

Response: The guidance document is clear that all inspections that note a violation should be documented in an inspection report. The Department will continue to make improvements to eFACTS, eFACTS on the web, and the Oil and Gas Mapping Tool to offer greater transparency and explanation to the public.

184. **Comment:** CACP documents (Consent Assessment of Civil Penalty) should be listed on eFacts for public access in a database. (34)

Response: CACP documents are currently available if requested through a file review request at the appropriate office and through the Right to Know Law request process.

185. **Comment:** Notifications by a well operator of any change in status to a well posted on eFacts. (34) (35)

Response: The Department acknowledges this comment.

186. **Comment:** Make sure every gas well site, compressor station and O&G facility has GPS coordinates listed on eFacts, since many locations are now blank or marked N/A. (34)

Response: The Department has begun to offer more information pertaining to a specific well through the Oil and Gas Mapping Tool and will continue to make improvements offering greater transparency and explanation to the public.

187. **Comment:** Establish an electronic database on eFacts with PDFs of all Pa DEP documents. (34)

Response: The Department has begun to offer more information pertaining to a specific well through the Oil and Gas Mapping Tool and will continue to make improvements offering greater transparency and explanation to the public.

188. **Comment:** A huge variety of problems for which no Notice of Violation (NOV) is written when it should be, including leaking wells and cementing failures. Many of these problems are written up as Comments in Inspection Reports, even though there should be an NOV. (35) (58) (59) (61)

Response: If a violation is found during a Department inspection, it should be documented as a violation in the appropriate inspection report.

189. **Comment:** Spills that the operator reports and have supposedly been cleaned up by the time the inspector arrives are listed in compliance reports as “In Compliance With Policy” -- no NOV! (Anyone searching for violations only will come up empty on these cases.) (35) (58) (59)

Response: Consistent with small spills that may be caused by any other industry and are reported in a timely manner and cleaned up quickly, a formal NOV may not be sent to the operator.

190. **Comment:** Only inspection reports with an NOV show up on the main DEP site for records, called eFACTS. (35) (53) (58) (59) (61)

Response: The Department has made additions to the Oil and Gas Mapping Tool which contains information related to inspections that were conducted with no violations found.

191. **Comment:** CACP documents (Consent Assessment of Civil Penalty) are not published on the DEP’s web site. These are important public documents, and should be available on-line to the public. (35) (53) (59) (61) (71)

Response: CACP documents are currently available if requested through a file review request at the appropriate office and through the Right to Know Law request process.

192. **Comment:** Make Information about complaints, violations, enforcements, and resolution of problems easily accessible to the public, through on-line platforms that are readily available and would help inform the public about what is happening. (37) (46) (52) (60) (85) (86) (87) (88) (89) (90 - 95) (99)

Response: The Department agrees and will continue to make improvements to its various data systems to offer greater transparency and explanation to the public.

193. **Comment:** Report ALL findings and make them searchable on-line. Every violation should be visible online. (38)

Response: The Department agrees and will continue to make improvements to eFACTS, eFACTS on the Web, and the Oil and Gas Mapping Tool to offer greater transparency and explanation to the public.

194. **Comment:** DEP must begin to develop processes to identify and track spikes of air pollution which put residents' health and safety at risk. (38)

Response: The Department acknowledges this comment.

195. **Comment:** Establish ongoing monitoring of wells that were reported through the DEP complaint system. (46)

Response: Ongoing well monitoring is based on the violations noted during the complaint investigation.

196. **Comment:** A violation should not be administratively closed in eFACTS until the violation and its impacts to the environment are thoroughly resolved, i.e., when the pollution or other problem has been abated—not just when operators pay penalties. This information should be publicly accessible via eFACTS and the Department's Oil and Gas Compliance database. (47)

Response: The Department agrees and acknowledges this comment.

197. **Comment:** Having done many file reviews on gas wells in my region, it is clear that some problems are being written up only in the comment section of an inspection when many of these incidents should have received a NOV. Often times spills are not recorded, particularly when inspectors arrive after the spill has been cleaned up. Any spill should be recorded as a violation. (53)

Response: As outlined in the guidance, program staff will update eFACTS when the violation is resolved. Such information will be available through eFACTS and the Oil and Gas Mapping Tool.

198. **Comment:** Notifications by a well operator of change in status to a well (e.g. cementing, pressure tests, fracking, completion etc.) should be *published* on a DEP web site. (32) (53) (58) (59)

Response: The Department acknowledges this comment.

199. **Comment:** NOV's are not filed in one particular place at the DEP office, making it impossible during file reviews for even the file clerk to locate a particular NOV. (61)

Response: The NOV is filed with the appropriate authorization (i.e. well permit, ESCGP, Chapter 105 Permit etc.)

200. **Comment:** All municipalities and surrounding municipalities should be notified of NOV's within 30 days of issuance. (61)

Response: The Department's eFACTS database is publically available and provides this information.

201. **Comment:** DEP's site on violations was a start, but it's really not up to the task of informing the public about the violations. Access to information is key. (62)

Response: The Department will continue to evaluate and make improvements to its various data systems to offer greater transparency and explanation to the public.

202. **Comment:** Field inspectors should not be able to freely interpret and enforce the law. There's too much camaraderie with the industry. This is not a parking ticket. Violations need to be taken seriously, It's time for some accountability. (62)

Response: The Department disagrees with this assertion.

203. **Comment:** What is DEP's reason for not having complete transparency? Why is it necessary to file a right to know? Why shouldn't complete and transparent access be the law as DEP is an institution PA taxpayers are paying for to protect the PA environment. What is your opposition to internet access to DEP records? (65)

Response: The Department recognizes this concern and is working to improve access to necessary information. The Department will continue to evaluate and make improvements to its various data systems to offer greater transparency and explanation to the public.

204. **Comment:** The Complaint Tracking System must be efficient, timely and accurate. The complaints about air and water quality must be responded to as soon as possible. If industry has a guarantee of permit issuance within a certain time-frame, the public deserves no less service. (67)

Response: The Department agrees that timely complaint response and investigation is an extremely important part of the Departments' responsibility.

205. **Comment:** The Guidelines lay out timeframes for notifying operators of violations, and for the DEP to enter violations/corrections into eFacts. This appears to be good on the surface but eFacts itself still is less than functional. The DEP has not been able to upload the resolutions of operator violations in accordance with Act 13, Section 3262(2). The commentator suggests the DEP lay out a timeframe for when this information will be available on eFacts. (68)

Response: The Department is committed to transparency in its operations and is diligently pursuing its ability to make operator responses to available on its website.

206. **Comment:** This section regarding the resolution notification of a NOV states in the second sentence that the operator will be notified when a violation is closed out. However, the policy doesn't detail how that notification will be made. The commentator recommends that the DEP state how this notification will be made and that since the DEP is required, per the Pennsylvania Oil and Gas Act (Act 13), to post all resolutions to NOV's on eFacts when they are "closed out," that this information be posted on eFacts. (68)

Response: The Department is committed to transparency in its operations and is diligently pursuing its ability to make operator responses to available on its website.

207. **Comment:** Section III.B.1.a, Page 14. The regulatory citation for a Well Permit, "25 Pa. Code § 78.15" should be included in the brackets, in addition to 58 P.S. § 3211 which already appears there.(68)

Response: The Department agrees with the comment.

208. **Comment:** Section III.B.1.e, Page 14. This refers to an "ESCGP Transfer" but the initial "ESCGP Application" requirements are not listed, and should be added either to e) or as a separate line item. (68)

Response: The Department agrees with the comment.

209. **Comment:** Section III.B.3, Page 14. Under the Notifications section several notification requirements are missing from the list including: Complaint notification [25 Pa Code §78.51(h)], Spill notification [25 Pa Code 78.66(b), Defective casing or cementing notification [25 Pa Code 78.86]. Similarly, Page 15, under the Plans section, the casing and cementing plan [25 Pa code 78.83a(a) was left off the list. The commentator recommends the DEP add these notifications to the appropriate lists. (68)

Response: The Department agrees with the comment.

210. **Comment:** Section III.B.4.a, Page 15. The commentator believes that the current wording in a) "911 Emergency Response Data" should be clarified to refer to "911 Emergency Response Address Data" and that the regulatory citation in the brackets should more fully read "25 Pa. Code 78.55(f)(3)." Also, since these address requirements are not really a "Plan," but rather a "Registration," the commentator recommends that the title of this Section be renamed "Plans/Registrations" (68)

Response: The Department agrees with the comment.

211. **Comment:** Section III.B, Pages 14-15. All of the citations should be in brackets for all of the listed requirements, not just some of them as in the current draft. If some of those

requirements are in permit conditions, rather than in the statute or regulations, then that should be clearly noted. (68)

Response: The Department agrees with the comment.

212. **Comment:** Section III.C, Page 16. The DEP’s review of reported data, states that “if warranted,” an NOV will be issued for failure to submit complete and/or accurate data, but it leaves entirely unclear what criteria or decision making process would be used to determine if an NOV was “warranted.” The commentator agrees that DEP should have some discretion on whether or not to issue an NOV, but since there is no discussion in this section regarding what would “warrant” an NOV, it may be better to replace the sentence which begins, “If warranted, an NOV will be issued” with “An NOV may be issued to an operator that fails to submit complete and/or accurate data, depending upon the specific circumstances and whether or not the records a formal enforcement action is deemed necessary to have the records corrected.” (68)

Response: The Department will use available statutes and regulations along with discretion to make any decisions about additional enforcement that may be appropriate.

213. **Comment:** Section IV.B.1.e & f, Page 17: These two items instruct the DEP district staff to ask the landowner for a brief description of the alleged issue and the date when the alleged issue was first noticed. These items should not be recorded as “facts” in the investigator’s report within the water supply investigation tracking system referred to in B.2., but rather, should be simply recorded as statements or allegations of the person interviewed. The commentator recommends that the Guidelines also make clear that the start date for investigation is when the landowner first contacted the operator and/or DEP to file a complaint, per 58 P.S. § 3218(b), and not the date that the landowner provides under 1.f) as the date when the problem was first noticed. (68)

214. **Response: The Department considers the start date for an investigation to be the date the complaint is reported to the Department.**

215. **Comment:** Any DEP infractions must be a matter of public record as well as any corrects done to become compliant again. (70)

Response: The Department will continue to make evaluate and improvements to eFACTS, eFACTS on the Web, and the Oil and Gas Mapping Tool to offer greater transparency and explanation to the public.

216. **Comment:** Improve digital public access. Digital access to records in a timely manner must be enhanced. Such access to records is essential. The records must be in common formats (e.g., Excel) and open to search terms to locate information needed by a wide range of citizens. We need this for many reasons:
- a. Integrity - Public agencies are duty bound to serve the public, not protect private industry from being exposed when they make mistakes.

b. Safety -

- (1) Violations are often indicators of patterns of problems in a complex industry. Academics such as myself can study violation patterns and form predictive models, emergency response professionals can map out risks and options, citizens can see where hazards might occur, business professionals can make more informed decisions.
- (2) Accidents with major impacts can happen close to people and essential resources, such as drinking water or dairy cattle.

The DEP cannot be everywhere, but when data are fully available, the DEP can have many partners in environmental protection. (71)

Response: The Department recognizes this concern and is working to improve access to necessary information.

217. **Comment:** Improve reporting for notice of violations (NOV). Records must be coded in standardized ways to properly reflect conditions and make those records open to the public. The list of observations that are reported in a notice of violation (NOV) must be expanded and better specified. For example, when a well-head is leaking, inspectors should not be at liberty to record the phenomenon in a comment in some cases (a non-violation that is often not noted by the public) and in other cases reported to the public as a coded NOV listed on public notices. (71)

Response: The violation codes within eFACTs, the Department's data management system, have been updated to enhance staff's ability to specific and correctly identify violations while concurrently offering greater transparency and explanation to the public.

218. **Comment:** Records of industry actions should be made available to the public. If the actions are part of the permit, then they are already open to review by competitors, so no trade secrets are being revealed. This allows more supervision for this complex industry and improves safety, something both the industry and public value. For example, there should be notifications by a well operator of change in status to a well (e.g., cementing, pressure tests, fracking, completion etc.) should be published on a DEP web site. Similar reporting should occur for actions associated with pipelines, compressors, condensers, etc. (71)

Response: The Department recognizes this concern and is working to improve access to necessary information.

219. **Comment:** Improve documentation of accidents. New protocols must improve records of accidents at the time of the event and in follow up visits. Much more detailed protocols must be in place for the DEP to document conditions and take samples immediately and at scientifically meaningful intervals after a spill. In addition, there must be improved protocols for interaction between the DEP, other agencies, such as a drinking water municipal authority, and the various operators on a site. For example, I know of one spill when a visual observation and a few samples collected by one of several operators at a site were accepted at first as the only evidence of the event. The operator clearly had reason to

minimize his estimate and collect limited samples. Even if they intended to be honest, these workers were not likely to have had the scientific background for proper sample collection. Finally, the sub-contractor present on the day of the spill might have had limited liability for accurate spill recording, give the legally complex nature of operators. Only later, the DEP and other parties had to return to make further collections, all of which increased the cost and decreased public confidence regarding records of the spill. There appeared to be no specified protocol for follow up observations or sampling. In contrast, I have read protocols developed in other states for accident notification to be sent to multiple parties, recordings of multiple environmental conditions, sample collection at non-impacted and impacted sites, sub-sampling tested by independent professionals, follow-up testing, etc.

As with the inspections of routine operations in the previous section, all these steps cost more money, but there should be no doubt that all costs for DEP efforts regarding a spill should be borne by the operators. Uncertainty about the immediate and lasting effects after a spill have many economic costs currently born by the public including lower property values and impaired business development when soil or water quality is uncertain. (71)

Response: The Department is committed to conducting thorough investigations when accidents occur. Detailed documentation of this work is critical to the success of any case. The Oil & gas program routinely partners with other DEP programs when following up on spills or releases that may require long term monitoring or special sampling of various media.

220. **Comment:** Page 3 Section A Paragraph 3: Operator-reported issues must be included.

This paragraph begins with the following sentence:

“All violations identified *during an inspection* will be documented in writing in the inspection report on the date of the inspection and should be presented to the facility before concluding the inspection, if possible.” [Emphasis added.] This should be amended to read: “All violations identified during an inspection, or identified from communications by an operator prior to an inspection, will be documented in writing in the inspection report on the date of the inspection and should be presented to the facility before concluding the inspection, if possible.” (79)

Response: The Department already has such a policy in place, *Policy to Encourage Voluntary Compliance by Means of Environmental Compliance Audits and Implementation of Compliance Management Systems* (DEP ID #: 012-0840-001), for addressing violations discovered as part of environmental audits. It is a Department-wide policy and has been used in the appropriate circumstances.

221. **Comment:** Page 6: CACP documents must be published on DEP’s web site. Consent Assessment of Civil Penalty (CACP) documents are important public documents. They must be published in a prominent place on DEP’s web site, in such a way that they can be searched, especially by operator. The public needs to be able to see exactly what the operator agreed to. It is not reasonable to require of the public that we infer a CACP has been agreed to and then file a Right To Know request to be able to obtain the text.

Likewise for all other forms of negotiated settlement. Likewise, CEP (Community Enforcement Project) documents and Negotiated Agreements must also be published. It is evident in this regard that DEP does not have a proper Internet-available docket system. This should be remedied, and all agreements that are part of an enforcement should be entered via the docket system. (79)

Response: CACP documents are currently available if requested through a file review request at the appropriate office and through the Right to Know Law request process.

222. **Comment:** Page 14: Coordination with other Department or Agency Programs: Specific mention must be made of coordination with the Bureau of Waste Management (BWM). There are numerous problems in eFACTS regarding the interaction of OOGM and BWM — from both ends:
- The eFACTS records for wells / well sites have no links to the facilities receiving waste for that well or well site.
 - The eFACTS records for Form U submissions do not contain a Generator ID, or other form of link to well operators. (79)

Response: The Department believes this section of the guidance document is appropriate. Waste tracking is accomplished through the Department's online Oil and Gas Electronic Reporting system.

223. **Comment:** Page 14: Notifications: Notifications as listed in section B3 of Standards must be published. The state that a well is in is public information and should also be published information. This could be accomplished via eNOTICE or through a column in a report listed on the Oil & Gas Reports web page query-able by date range. (79)

Response: The Department acknowledges this comment.

224. **Comment:** All complaint records should be made available for public review. Public Herald has collected complaints where and when they are made available by the department. Complaint files now available have had the person or entity filing the complaint and the specific location redacted. Redacting all complaints and including them in larger files would ensure that DEP staff are not missing critical information when making decisions about compliance. (81)

Response: The Department has made improvements to its Complaint Tracking System. In addition, the Department maintains its records in conformance with the Department's records management guidelines, and responds to Right To Know Law Requests according to legal requirements.

225. **Comment:** I have spent substantial time visiting fracking-impacted people and communities in Bradford, Susquehanna, Lycoming, Washington, Fayette, and Butler Counties in particular, and have met people impacted by the shale gas industry from over a dozen other counties over the past 5 years. I have been absolutely horrified by what I heard

and saw, as well as by the vast amount of research that reputable scientists, veterinarians, physicians and public health professionals have learned about the cumulative impact of fracking on animal and human health.

The examples are literally too numerous to attempt to describe in this letter.

Therefore I feel it is of the utmost importance that PA DEP not scale back on its inspections, but rather increase inspections. If it were possible inspections should be increased 7000-fold, because violations are occurring so frequently at the thousands of Marcellus Shale gas drilling operations and other aspects of shale gas extraction, processing, transportation and distribution that even a staff of 7000 inspectors would not be enough.

Public health matters. At the absolute least, you **MUST** increase and not decrease inspections. (83)

Response: It is not the intention of this policy to lessen the frequency of inspections or enforcement actions of the DEP Oil and Gas Management Program. The Department has identified the stages of development that each District Office should ensure all wells are inspected, but it is not a limit to the number of times a well should be inspected.

226. **Comment:** Page 12: onsite inspections: This level of awareness/oversight is not sufficient. b) Electronic Notices: Several critical phases of the drilling process now trigger the requirement for electronic notification to the Department. These notices may be the first time a program inspector becomes aware that a well site has been constructed and that drilling is about to commence. This is especially true of conventional well site locations because an Erosion and Sedimentation Control General Permit (ESCGP) may not have been required for site preparation. We recently provided information listed on eFacts to residents in our township. Several people contacted our township supervisors and said the information was inaccurate or outdated. (83)

Response: The Department acknowledges this comment.

227. **Comment:** PA DEP, one of the most disturbing things I've heard literally scores of times over the past 5 years from individuals telling me one on one: they feel that the investigation into their own complaint, once the gas drilling industry arrives on their doorstep, is kept mystified even to them, let alone to the general public.

Stephanie Hallowich and Ron Gulla were among the first to bring this issue up, but they've been far from the last.

Most recently it's horrible to find myself, a non-expert, desperately fielding phone calls from impacted residents such as Don Ludwig of Center County, who experienced a toxic substance in his shower; impacts on his health from breathing in mist from his dishwasher;

his water well blowing out and his water pump covered with a dark gray substance that sounded related to gas drilling and/or fracturing.

If PA DEP was more responsive, accessible, and made such investigations publicly available, it would help enormously. Instead, PA DEP acts like it is an adversary of impacted citizens while a great friend to the gas industry. This must change!

PA DEP must let the public know. Information about complaints, violations, enforcements should be easily accessible, not hidden or mystified. (82)

Response: The Department acknowledges this concern and is working to improve access to necessary information.

228. **Comment:** It is recommended that the Department articulate a process/policy for rescinding NOV's issued due to administrative errors or mistakes of fact. (77)

Response: The Department acknowledges this comment. The Department addresses these issues with operators on a case by case basis.

229. **Comment:** Section III, B. Data Reported to the Department, Pages 14-15, should include citations in brackets for all of the listed requirements, not just some of them as in the current draft. If some of those requirements are in permit conditions, rather than in the statute or regulations, then that should be clearly noted. (74)

Response: The Department believes it has correctly captured this information.

230. **Comment:** I maintain a paid subscription to the marcellusgas.com web site because information is so hard to come by via DEP. This is not the way democracy should work. DEP should use available technology to allow citizen access to all records without the tedious process of filing RTK requests. (84)

Response: The Department agrees and is always working toward becoming more transparent with public stakeholders. The Department continues to work to improve the quality and quantity of information available electronically to citizens of the Commonwealth.

231. **Comment:** When an enforcement action is initiated by a complaint or referral by a citizen, organization of government agency ("Complainant"), the Complainant should be included in the process for investigation, identification of violations and resolution of violations that takes place following the complaint or referral. This should include participation in all inspections, listing of violations in an NOV, and resolution of the violations by any of the procedures listed in this enforcement policy document to the maximum extent permitted by law. An individual citizen who has filed a complaint or referral should be allowed, if he or she so chooses, to designate a representative to participate on that individual's behalf in the inspection and enforcement process. The initial meeting(s) between a citizen complainant and DEP inspectors should take place without any participation by the operator who is the

subject of the complaint. Participation by or on behalf of the Complainant should continue through final resolution of all violations included in an NOV. Damascus Citizens for Sustainability (“DCS”) has personally experienced the situation where its complaint regarding violations of DEP regulations at the Robson well site in Berlin Township in Wayne County was resolved by issuance of an NOV and assessment of a fine against the operator without any knowledge by DCS. DCS only learned indirectly and belatedly about this resolution of its complaint. DCS should have had the opportunity to participate in the enforcement process and resolution of this matter, regardless of whether the resolution of the matter was satisfactory to DCS. (96)

Response: The Department does keep complainants informed of the Department’s progress in investigating their complaints. The Department disagrees with the recommendation that the complainant must be included in any investigation if the complainant chooses. The Department treats oil and gas complaint investigations the same as it does complaint investigations into any other regulated activity.

232. **Comment:** DEP must develop better controls over how complaints are received, tracked, investigated, and resolved. Auditors reported that DEP did a poor job in communicating its investigation results to citizens who registered complaints with the department. The agency was not always timely in meeting statutory time frames for response to complaints it did receive.

“For example, of the water-related complaints reviewed by auditors, the DEP Williamsport regional office responded to complaints within 10 days, 100 percent of the time, while the DEP Pittsburgh regional office responded to the complaints within the 10-day time period only 64 percent of the time.” (97)

Response: The guidance document addresses this issue with respect to water supply complaints.

233. **Comment:** DEP should invest resources into replacing, or significantly upgrading, its complaint management system. Auditors noted that DEP’s complaint tracking system, which is used to monitor all environmental complaints, including those that are oil and gas related, was ineffective as it did not provide management with reliable information to effectively manage the program.

“We could not determine whether all complaints received by DEP actually were entered into the system. What’s more, because of how DEP grouped related complaints, it is difficult to figure out exactly how many complaints were received, investigated, and resolved by DEP,” DePasquale said. “While DEP did issue a new policy related to complaint handling, for most of our audit period the existing policy was woefully inadequate. DEP must get that complaint system working.” (97)

Response: The Department acknowledges this comment.

234. **Comment:** DEP must reconfigure the agency website and provide complete information in a clear and easily understandable manner. Data is missing and impossible to locate. I could not locate violations that appeared in the local newspaper. Dr. Ingraffea of Cornell,

had to dismiss hundreds of entries on well casings data because the information on the DEP site was incorrect, contradicting itself.

“When the data was tested for accuracy, the auditors found errors of more than 25 % in key data fields, and that as many as 76% of inspectors’ comments were omitted from the online inspection reporting.

Until DEP updates its out-of-date inspection policies, to include mandated inspections at specific critical drilling stages and during the life of the well, it will be nearly impossible to measure DEP’s performance in conducting this very basic responsibility to protect the environment.”

Worse, auditors found that DEP does not post to its website all statutorily required inspection information.

The information that was presented on its decades-old eFACTS database was often incomplete—requiring a physical review of hard-copy files at distant offices to verify the actual information. (97)

Response: Through this guidance document, the Department has identified the critical stages of well and well site development during which an inspection is appropriate. The Department continues to improve its transparency by making more information available on its website. See also, the response to Comment No. 223.

235. **Comment:** DEP should create a true manifest system to track shale gas waste and be more aggressive in ensuring that the waste data it collects is verified and reliable. Reliance on self-reporting does not provide acceptable protection of public water and safety. (97)

Response: The Department acknowledges this comment.

236. **Comment:** DEP should invest in information technology resources and develop an IT structure that will ensure its oil and gas program has a strong foundation for the ongoing demands placed upon it. (97) (106 - 321)

Response: The Department acknowledges this comment.

237. **Comment:** DEP should develop an all-electronic inspection process so that inspection information is accurate and timely to DEP—and more importantly—public stakeholders. (97)

Response: The Department agrees and is always working toward becoming more transparent with public stakeholders. Developing an electronic inspection process would be one avenue to aid in that goal.

238. **Comment:** Since water pollution may occur through routes which are not readily apparent or immediate, establish a standard for ongoing monitoring of an adequate sample of all water wells and nearby water ways or bodies of water, and of *all* such water reservoirs reported through the DEP complaint system or to the operators as being possibly contaminated due to their operations, that occur in the vicinity of oil and gas drilling activities. Require that industry also report all water, air, light, and noise pollution

complaints which they receive and which are ascribed to or potentially related to their operations. (99)

Response: The Department acknowledges this complaint.

239. **Comment:** While in several locations the revised guidance provides instructions to Department staff on entering violations into the appropriate PADEP database, it does not provide clear and concise instructions on entering the documents provided by the oil/gas operator in response, explanation or satisfaction of the violation. The Pennsylvania General Assembly included these requirements in the reenacted Oil and Gas Act – Act 13, *new* Section 3262, subsections (2) and (4) – and the Department has the legal obligation to put these new requirements into practice. The Draft Policy must be revised accordingly (78)

Response: The Department is committed to transparency in its operations and is diligently pursuing its ability to make operator responses to available on its website.

240. **Comment:** Consent Assessment of Civil Penalty documents are not published on the DEP's web site. Why not? (33)

Response: CACP documents are currently available if requested through a file review request at the appropriate office and through the Right to Know Law request process.

241. **Comment:** Notice of Violations (NOV) should be issued for every accident and spill, and made available to the public on eFacts in a database. (34)

Response: The Department acknowledges this comment.

242. **Comment:** There are many problems with oil/gas drilling that escape having a NOV report written up. Leaking wells and cement failure are two examples. We citizens don't need Comments but instead an NOV should be issued for each and every violation found. Only then will drillers attempt to comply to set regulations. Even at their very best, we don't know how if current regulations will fail us ten or fifteen years down the road so why permit non-compliance from the very start? (33)

Response: If a violation is found during a Department inspection, it should be documented as a violation in the appropriate inspection report.

ENFORCEMENT

243. **Comment:** If Pennsylvania took the position and made it clear to this industry that if you cannot follow our rules and guidelines, then you will not be permitted to operate in our state. No more approved fracking sites, and those in operation can be shut down to protect

the population from the risks from shoddy operations. If we followed through with a policy like that, I expect there would be a lot less problems. Either that, or we must not be so lenient and also more prompt in penalizing this industry when violations occur. The fines need to be large enough to hurt, not just an expense of the operation.

I have several friends who welcomed this industry by quickly signing leases with them and they have been sorry ever since. I myself was open to it at first, but have learned from the experiences of others, that this is an industry who does not value the welfare of the public, and will do and say whatever necessary to get what they want. I have personally experienced this. Pennsylvania needs to get tough with this industry or they will continue walking all over us. (2)

Response: Please see the response to Comment No. 39.

244. **Comment:** If damage to the environment occurs the industry MUST be held immediately accountable and required to mitigate any and all such damage, and pay heavy additional penalties. The penalties must be strong enough to ensure the industry does not make similar errors in the future. DEP field offices should have authority to act upon violations. (7)

Response: Please see the response to Comment No. 39.

245. **Comment:** Section II Enforcement Actions – Subpart D. Consent Assessment of Civil Penalty (CAP) This section is troublesome as it has the power to allow the Department to force an operator into an admission of guilt without due process. The Department has in the past and continues to do so today to withhold permits or impose permit blocks for outstanding alleged violations. Permits are absolutely essential for the continued operation of an oil and gas business and there have been incidents in the past where an operator has agreed to undertake an investigation and remedial activity to avoid a permit block. Under this section of the guidance a CACP is a “negotiated settlement that includes a confession of judgment or admission of guilt”. This has the potential to take away an operator’s ability to continue to obtain permits unless admitting to guilt. There needs to be a way for an operator to voluntarily undertake an activity desired by the Department without an admission of guilt. (14)

Response: The Department believes the guidance document appropriately addresses the situation. The Department has a long-standing practice of using this provision in settlement agreements across all programs administered by the Department. Operators are not forced to agree to negotiated settlements.

246. **Comment:** Section II Enforcement Actions – Subpart E. Suspension or Revocation of Permit or Regulation. This section specifies that a “revoked permit cannot be reinstated”. In a situation where a permittee is able to demonstrate that the Department revoked a permit inappropriately – such as when an alleged violation is proven to be incorrect – then the Department should be required to reissue the permit without penalty both in terms of fees charged and permit duration. (14)

Response: Permit revocation is an extremely important matter. The document provides ample time for an operator to respond to any violations or NOVs issued by the Department.

247. **Comment:** Section II Enforcement Actions – Subpart F. Civil Penalties. It has become the Departments policy (at least the Meadville Regional Office) to levee fines without specifying the exact circumstance for which a fine is issued or to separate or clarify the determination of a fine amount for individual violations where multiple violations are alleged. Further, it has become the Departments policy to withhold information on how fines are calculated. This is a gross violation of fairness and this guidance should address this issue and mandate that the Department completely specify all alleged violations and provide calculations on how fines are determined. (14)

Response: The Department disagrees and does provide information on violations beginning with the inspection report provided to the operator. The blank penalty calculation worksheet is publically available as well as is information on statutory limits of potential fines and penalties provided in various statutes.

248. **Comment:** Section II Enforcement Actions – Subpart G. Community Environmental Project in Lieu of Paying Civil Penalty. This is a valuable and useful section and the Department is to be encouraged to use this alternative when possible and appropriate. (14)

Response: The Community Environmental Project (CEP) mechanism is used by the Department when appropriate.

249. **Comment:** Section J. Equity Actions. Subpart Lien: This section should specify that Section 3256 is part of the Oil and Gas Act of 2012 or Act 13. Further, the quoted language is not consistent with the version of Act 13 accessible on the DEP web page under the Office of Oil and Gas Management, Laws, Regulations and Guidelines. (14)

Response: The Department acknowledges this comment. This section of the proposed document has been edited.

250. **Comment:** I am asking you to ensure that observed violations are corrected at the end of inspections and that subsequent NOV's are thoroughly followed up. Violation negotiations should be resolved within 180 days of notice in the manner that is outlined in your policy document. Important also is the provision in your policy that DEP meet a two-day requirement for a site visit to a water supply issue. Enforcement actions should be timely and suitably corrective. (19)

Response: The Department acknowledges this comment.

251. **Comment:** DEP proposes to suspend or revoke permits as an enforcement tool but too much is left to DEP's discretion, not set in standards. Also, they should prohibit future permits to operators who are repeat violators and use criminal investigation and prosecution for intentional violations or refusal to carry out corrective action. (37) (46) (52) (60) (73) (85) (86) (87) (89) (90 - 95) (99)

Response: The Department acknowledges this comment.

252. **Comment:** Repeat violators should not be able to get subsequent permits for drilling. They should be ejected from the commonwealth. (38)

Response: The Department acknowledges this comment.

253. **Comment:** If rules are broken, Notices of Violation MUST be issued. Too much discretion is given to individual inspectors and therefore the process is inconsistent and untrustworthy (as the auditor general asserted.) (38)

Response: The Department acknowledges this comment.

254. **Comment:** It's our drinking water. Hold violators to a strict standard with consequences when laws are broken. (40)

Response: The Department acknowledges this comment.

255. **Comment:** We whole-heartedly support the renewed emphasis on the issuance of NOV's for any alleged violation that is unable to be remedied during an inspection and for fully resolving violation negotiations within 180 days of notice. Violations generally are the result of non-compliance with the Commonwealth's environmental protection regulations such as the Clean Streams Law. These matters must not be taken lightly, as they are often serious issues that may affect waters of the Commonwealth or even a private water supply. Public health and safety issues are of premier priority in our Region. While we are supportive of the gas industry, it is important to note that it is not unusual for operations to be taking place within hundreds of feet of water supplies, homes, schools or even local hospitals. Thus, the public must be assured their safety is of premier concern and one way to do this is through swift resolution of compliance issues. (42)

Response: The Department acknowledges this comment.

256. **Comment:** B. Enforcement Process - We support this section in its entirety, particularly civil and criminal penalties and bond forfeitures that are punitive and progressive enforcement. As a deterrent, we certainly want to see a progressive enforcement system. (42)

Response: The Department thanks the commentator for their support.

257. **Comment:** C. Enforcement Priorities - We support these priorities in recognition of need for attention paid to public health and safety as determined by the seriousness of the event. (42)

Response: The Department thanks the commentator for their support.

258. **Comment:** During the last seven years, the Department has suffered growing pains from a boom of unconventional gas drilling coupled with an antiquated IT/website that has made it very difficult for the public to obtain very basic information lacking a file review. The many improvements that have been made such as the extended notification zone and interactive reports are very beneficial to those who live near well pads and are concerned about the on-going operations and activity. We are really pleased with the new mapping system and the continual upgrade of information available. This is a huge step forward from what we started with in 2007. However, the information on eFACTS continues to be elusive at times. The information on the compliance reports is much better, but these two systems become confusing especially when eFACTS issues the inspection report number with lacking, too little or vague details. We look forward to the day when inspection reports are readily available online. Public access regarding a matter of concern on the well pad nearby one's home is very important information to many. The compliance reports are helpful, but there continues to be a gap with information regarding sites and gathering lines. (42)

Response: The Department acknowledges this comment and will continue to make improvements to eFACTS, the Department's data management system. Most recently the number of violation codes available to inspection staff was significantly increased to provide greater clarity on the violation type in the database.

259. **Comment:** Notice of Violation (NOV) The fourteen day rule may be another deadline to be met in the realm of enforcement on the end of the inspectors and other personnel, but it is important for the follow-through especially when samples are pulled due to possible environmental impact and public health and safety may be involved. We support all violations being documented on the inspection report even when they are resolved before the end of the inspection. Such cases indicate not only a spirit of cooperation but also the details of items that are may be routinely overlooked by the operator and easily corrected. (42)

Response: The Department acknowledges this comment.

260. **Comment:** We support creating deadlines for corrective actions. This is very important when water supplies are affected. (42)

Response: The Department acknowledges this comment.

261. **Comment:** Consent of Assessment of Civil Penalty (CACP) - We recommend the maximum assessment by law be levied in every case. Operators need to understand it is a privilege to operate in our great Commonwealth and when the progressive enforcement has come to this end, we expect firmness in levying the penalty. (42)

Response: The Department acknowledges this comment.

262. **Comment:** Suspension or Revocation of Permit or Registration - There are occasions when this type of action may be necessary. Placing water supplies at risk, not correcting

the problem in a timely and satisfactory manner are reasons worthy of suspension or revocation. Such examples are private water impacts in Dimock Township, Susquehanna County and Wilmot Township, Bradford County. Therefore, we support this provision. (42)

Response: The Department acknowledges this comment.

263. **Comment:** Bond Forfeiture - There are unfortunate cases where this may be necessary. We fully support the Department having this authority. (42)

Response: The Department acknowledges this comment.

264. **Comment:** Criminal Action - There are unfortunate cases where this may be necessary. We fully support the Department having this authority. (42)

Response: The Department acknowledges this comment.

265. **Comment:** Set measurable standards for suspending or revoking permits as an enforcement tool for law offenders. These consequences are currently too vague. (46)

Response: The Department acknowledges this comment.

266. **Comment:** If rules are broken, Notices of Violation MUST be issued. (46)(86)

Response: The Department acknowledges this comment.

267. **Comment:** We disagree with the Department's position that a Notice of Violation (NOV) may not be necessary if the violation is noted on an inspection report. A written NOV should be issued for every violation that occurs. The necessity of a NOV should not be left to the discretion of individual inspectors, whose experience and approach can vary. By removing the discretionary element, the Department will improve consistency in its enforcement protocols and ensure that all violations are recorded in one place in a timely manner (i.e., recorded in the compliance database rather than on paper inspection reports, the logging of which is often delayed). Consistent, timely issuance of NOVs is also essential to ensure that the public is adequately informed about problems at sites that may affect their air, water, and health and how the Department has responded. (47)

Response: An additional written NOV is not necessary every time, as the Department's inspection report itself often serves the same function. The Department continues to provide training and guidance to staff in order to maintain and improve consistency and timeliness.

268. **Comment:** The commentator disagrees that penalties "may be" assessed where the violation results in an actual threat to public health and safety, pollution, or environmental damage; for repeat occurrences; or where the violator acts negligently, recklessly, or

willfully. The Standards and Guidelines should read that penalties “shall be assessed” in these instances. (47)

Response: The Department acknowledges this comment.

269. **Comment:** The Department should include in the Enforcement Process section a clarification of the “correct on site” enforcement process and when and why this would be used. In our reviews of well and facility files, it has become clear that inspectors often opt to work with operators to fix a problem, rather than issuing an NOV or taking the other enforcement actions specified in the Guidelines. Department staff have indicated this is done to reduce its administrative burden and to encourage operators to report problems. However, this approach weakens the deterrent effect of having consequences for committing a violation and can risk that seemingly minor problems become worse over time. (47)

Response: The Department acknowledges this comment.

270. **Comment:** The language in the Enforcement Priorities section should read “[e]nforcement actions shall be taken on each violation until compliance is achieved.” As discussed above, it should not be left to the Department’s discretion to take enforcement actions for continuing violations. The need to restore or replace an adversely affected water supply must be a top priority for the Department, as the degradation of a water supply is usually the result of an actual release of gas or pollutants that endanger the environment or public health and safety. Because of this, the Department’s delineation of enforcement priorities 1 and 2 are inherently interconnected. Impacts to water sources have significant deleterious effects on the well-being, quality of life, and property values of Pennsylvanians. It is imperative for the Department to take swift action to ensure that the responsible party mitigates impacts to water supplies as quickly as possible. In addition, the Department should revise priority 3 to encompass air pollution so that it reads, “Violations that result in the discharge of pollutants to surface or ground water, such as spills or releases, and to the air, such as releases of emissions due to faulty equipment or operator neglect.” (47)

Response: The Department acknowledges this comment.

271. **Comment:** As indicated above, we disagree with the Department’s view that NOV’s do not have to be issued every time a violation occurs. The problem with this approach is further highlighted in this section, which indicates that the Environment Facility Application Compliance Tracking System (eFACTS) system will be updated “within 10 business days of the issuance of the NOV.”

If the Department does not issue NOV’s for certain violations, it would be logical to assume that the Department would not update eFACTS to include those violations—depriving the public of a key source of information on violations and how the Department handles them. Currently, because the Department doesn’t issue citations for all events that are violations of state oil and gas regulations, the number of problems that occur at well sites is likely much larger than implied by the official count of violations in eFACTS. (47)

Response: The individual violations documented during the inspection and recorded in the inspection report are entered into eFACTS, the Department's data management system.

272. **Comment:** In addition, by excluding the requirement to enter and track material obligations related to a violation for which an NOV was not issued, the Department is compromising tracking, reporting, and transparency. This section should be changed to clarify that violation information and penalties will be included in eFACTS for *all* violations. The Determination of violation and completion of the inspection report should be done within 14 calendar days after receiving necessary further information, and alternate timeframes should not be allowed. The Department should also make clear in this section that staff will enter and track the corrective measures, if any, requested to be taken with a NOV, deadlines for them, and the operator's response. (47)

Response: The Department acknowledges this comment.

273. **Comment:** The proposed time limit of 180 days to negotiate a resolution before the Department would take the applicable enforcement action would potentially allow a violation to remain unresolved too long before any significant action is taken—risking air or water quality and the health and well-being of nearby residents. While cooperation through settlement is an understandable goal, six months for negotiations encourages operators to delay resolution of the problem(s) related to violations. To encourage quick and complete resolution of the violation, the Department should have a negotiation period of no more than 60 days. This section should also specify that the negotiation period is not the same as the period operators have to respond to violations, which must be resolved *immediately* to prevent harm to the environment and residents. (47)

Response: The benchmark used by the Department for correcting violations is a maximum of 180 days, as described elsewhere in the Policy.

274. **Comment:** If a serious public health or environmental hazard exists, issuance of a field order should not be delayed by the requirement of concurrence by a supervisor. Requiring concurrence by a supervisor would delay the issuance of an Administrative Order, even in instances where there is an existing or imminent danger to public health or safety, or pollution or other environmental damage exists. Such a delay would result in continuation of a dangerous condition; the Department's Guidelines should not allow for such a condition to continue once an inspector has identified a violation. (47)

Response: The Department does not agree with this proposed approach. Concurrence with the appropriate supervisor is a sound business practice and provides important assistance and guidance in the issuance of an Order.

275. **Comment:** Allowing 60 days to negotiate with an operator after the Department has determined that the operator has committed a violation constitutes an unreasonable delay in violation resolution. This section should specify that the negotiation period is not the same as the period operators have to respond to violations, which must be resolved immediately.

In addition, an extension of the timeframe for negotiations should not be allowed under any circumstances (including at the discretion of the Deputy Secretary or Bureau Director) as long as the violator is not in compliance with the terms of enforcement; doing so in effect rewards operators for non-compliance. (47)

Response: The Department acknowledges this comment.

276. **Comment:** We strongly support the use of suspension or revocation of a permit as an enforcement tool. However, this section should specify the purpose, process, and timeframe of the “conference” that could occur, and clarify that only the full resolution of the problems at hand (e.g., polluting activities or non-compliance with the terms of an enforcement action) would be sufficient to prevent permit suspension or revocation. (47)

Response: Section 3251 of the 2012 Oil & Gas Act specify the requirements for a conference.

277. **Comment:** We recommend eliminating the provision for instances of “last resort;” the Department is not required by statute to consider alternative enforcement under any circumstances and such a limitation places greater priority on continued production and operations than on ending detrimental impacts that may occur. Even if the Department keeps such exceptions, we disagree that the only instances of “last resort” are malfunctioning facilities, false/deficient information from an operator, or lack of intent/ability to comply with the law. The Department should specify that permit suspension or revocation may occur in instances in which continued operation of a well or facility poses a risk to the environment, health, safety, or property. (47)

Response: The Department acknowledges this comment.

278. **Comment:** In addition, the Department should specify what it would consider to be evidence that an operator has a “lack of intent or ability to comply,” in order to ensure that this enforcement action is implemented in such a way as to prevent prolonged and future instances of non-compliance. Finally, when an inspector or other agent of the Department finds a “lack of intent or ability to comply,” suspension of a permit should be immediate and non-discretionary, at least until the time that the operator meets the conditions of full compliance. A lack of intent to comply should also result in the operator’s inability to receive new permits from DEP until full compliance is achieved on all outstanding violations; a repeated pattern of inability or unwillingness to comply should result in permanent non-issuance of permits by the Department. (47)

Response: The Department acknowledges this comment.

279. **Comment:** This section and the Section II-D above regarding CACP continue to promote the Department’s use of Technical Guidance Document, Civil Penalty Assessments in the Oil and Gas Management Program (Document ID No. 550-4180-00) to guide penalty calculation. We disagree that this document should serve as guidance, as the very penalty calculation formula is flawed and must be changed. (47)

Response: The Department acknowledges this comment.

280. **Comment:** We strongly recommend removing the provision allowing for percentage deductions for operators who demonstrate “good faith” and cooperation in clean-up, abatement, and restoration should be removed from the penalty calculation formula. Companies that violate Pennsylvania’s oil and gas and environmental laws by causing pollution should not under any circumstances be rewarded for their actions by receiving discounts on enforcement actions. (47)

Response: The Department acknowledges this comment.

281. **Comment:** The Department should use monetary penalties as punishments and deterrents that provoke change in the way companies operate and help to prevent further polluting actions. With this in mind, the minimum expectation that the Department should have is for operators to thoroughly clean-up and abate the contamination they cause and restore the site or water supply to its previous condition or better. (47)

Response: The Department acknowledges this comment.

282. **Comment:** As currently described in the Guidelines, the CEP mechanism could be easily exploited in settlement negotiations to avoid paying monetary fines for the actual, specific damage to water, air, or soil that has occurred—and which may continue to require attention from the Department for months or years to come. Restoration of water resources and habitats should be the sole criterion for approved CEPs. With this in mind, the Department should not allow entire penalty amounts to be offset by CEPs. This is particularly important because the Department does not have a set of requirements in place to define acceptable CEPs, e.g., to ensure that they remedy the actual damage caused by an operator or compensate affected residents. As a result, operators may use CEPs to offset violations without fully correcting the violations. (47)

Response: The CEP mechanism is heavily scrutinized by the Department when proposed as part of settlement negotiations and is used infrequently.

283. **Comment:** Allowing CEPs to take the place of civil penalties will only exacerbate the Department’s problem of inadequate funding. For this reason, CEPs should rarely, if ever, be used. In addition, we disagree with the Department’s proposal to allow operators facing violations for improper drilling and plugging activities to be eligible to offset the fines from their violations by plugging abandoned wells. It is environmentally risky to allow operators that have clearly demonstrated an inability to safely and completely plug wells to offset their fines by plugging other abandoned wells. (47)

Response: The CEP mechanism is heavily scrutinized by the Department when proposed as part of settlement negotiations and is used infrequently.

284. **Comment:** We fully support the Department’s use of a court injunction as an enforcement action. However, this section should be more specific so that the Guidelines can be used by the Department to ensure the effective, consistent use of injunctions. Specifically, the Department should provide examples of what is meant by “severe problems” that would result from delay (e.g., pollution or safety risks from operations) and specify what would constitute “immediate and irreparable harm” (e.g., filling in of a stream or eradication of wildlife habitat due to well site development). (47)

Response: The Department acknowledges this comment.

285. **Comment:** It is also important for the Department to clarify which aspects and types of “past conduct by the violator” would lead to use of an injunction. Department staff have indicated that an operator’s compliance history doesn’t have bearing on future permitting unless there are outstanding violations. In order to assure the public that it is, in fact, willing to take action in response to operator misconduct, the Department needs to clarify what the “trigger” for an injunction would be. (47)

Response: The Department acknowledges this comment.

286. **Comment:** The Criminal Action section should be edited to state “DEP’s Oil and Gas Management Program shall initiate a criminal investigation or prosecution if a party intentionally committed a violation of law and refuses to initiate or continue corrective activity.” If an operator has intentionally committed a violation and is not correcting the violation, clearly the normal channels are not effective. In such instances, criminal investigations should be initiated. (47)

Response: The Department acknowledges this comment.

287. **Comment:** violations must be followed through and if continued the operation must shut down until the damage is corrected and no longer continues. (50)

Response: The Department acknowledges this comment.

288. **Comment:** Part II.A. of the Draft TGD includes a detailed section regarding Notices of Violation that raises several concerns. First, an NOV is described in the first paragraph as a formal notice of a violation that requests a response from the operator, but the second paragraph states that the NOV is merely advice and cannot direct, require or command action. The two statements are not consistent – NOVs generally require action in the form of a written response and often require the written response to detail additional action that will be taken. This inconsistency and confusion could be overcome by allowing staff to use inspection reports when no response is required from the operator, and by providing discretion to the inspectors where NOVs need not be issued because the alleged violation was immediately corrected or was de minimis. NOVs should not be mandatory and should be used only where additional responses are required to address alleged violations. (49)

Response: Department issued NOV's often do request a written response. There is considerable variation in the responses received by the Department after issuance of an NOV.

289. **Comment:** Second, this section does not include any recognition or provision for occasions when NOV's are issued in error. The commentator organization's members are aware of occasions when inspection reports contain mistakes, or NOV's are issued in error, but do not see a process by which the public record is to be corrected upon such occurrence. The Draft TGD should provide a mechanism for immediate correction of the record when such errors are identified. Without a mechanism to allow for correction, or removal of NOV's where appropriate, the public record is distorted and misleading to the public, which relies upon the Department's website for accurate information about the oil and gas industry in Pennsylvania. Another important consideration in correcting the record is so that if and when the Department determines that penalties are warranted for significant violations, the parties have the advantage of an accurate record that was created contemporaneously with the incident in question. (49)

Response: The Department thoughtfully considers the information provided by operators in their NOV responses. If the Department issues an NOV in error, it will work to correct the issue and assure that the eFACTS database is updated timely.

290. **Comment:** Third, the section on NOV's does not include or address procedures required by the Oil and Gas Act of 2012, Section 3262, which states that:

The department shall post inspection reports on its publicly accessible Internet website. The inspection reports shall include: (1) The nature and description of violations.

(2) The operator's written response to the violation, if available. (3) The status of the violation. (4) The remedial steps taken by the operator or the department to address the violation.

This provision in the Oil and Gas Act created mandatory, not discretionary, obligations of the Department to accurately inform the public about inspections, responses to alleged violations, and the status of violations. The commentator organization understands that eFACTS includes inspection dates, types, and results, but is not aware of how the Department has complied with its obligation to post operator responses, which are regularly provided in writing to the Department by the commentator organization's members. The Draft TGD should provide for compliance with the Oil and Gas Act by including express direction to post operators responses to NOV's on the Department's website. (49)

Response: The Department has developed an ability to scan inspection reports and operator responses, upload them into eFACTS, and display them via the Oil & Gas Mapping application in a similar manner that well permits and applications are currently displayed. The Department is also pursuing a mobile platform project for inspections that could address the inspection side of this issue. Inspectors could create their inspection reports electronically which would allow for the automatic extraction

of data for upload into eFACTS and generation of a PDF of the inspection report. The Department intends to continue to devote resources to these developmental projects.

291. **Comment:** Part II.D. of the Draft TGD states that a CACP is a negotiated settlement that includes a confession of judgment of admission of guilt. Penalties negotiated by federal agencies for alleged violations of environmental laws do not require an admission of liability and there is no reason for a CACP to include such an admission. The standard template for these agreements should be revised accordingly so that small businesses and those unable or unwilling to hire counsel to review penalty agreements are not treated unfairly. (49)

Response: The Department has a long-standing practice of using this provision in settlement agreements across all programs administered by the Department.

292. **Comment:** the Department should provide information with each CACP describing how the statutory factors were considered in the development of the proposed penalty amount. Without information about how the Department calculated the penalty amount, operators are at a significant disadvantage and cannot evaluate whether the proposed amount is reasonable under all of the circumstances of the incident or incidents in question. The Draft TGD states that the Department can deviate from the policy guidance for the calculation of the penalty amount, but it cannot deviate from the statutorily required factors of consideration. Transparency in penalty calculations would facilitate more balanced negotiations and would ensure the Department's compliance with its statutory requirements. (49)

Response: The Department acknowledges this comment.

293. **Comment:** DEP needs to suspend and revoke permits by applying standards, not be given such freedom of when and how hard to enforce the law. This is especially true of repeat offenders or criminal investigations. (62)

Response: The Department acknowledges this comment.

294. **Comment:** 3 strikes and you're out. Every drilling company that has accumulated 3 environmental violations should have their permits annulled and their license taken away. (65)

Response: The Department acknowledges this comment.

295. **Comment:** I am in general agreement with the Notice of Violations and enforcement processes as outlined in the document. I support the progressive corrective measures outlined in the document as well. As I stated, I live within a mile of four active well pads. I looked at a DEP report containing violations on these sites for 2014. I noted the following violations- failure to notify DEP of an improperly cemented casing, No Operator reps on site at time of drilling, improper waste storage, failure to contain a polluttional

substance in a pit, and bubbling water at site of well pad, to name a few of the over twenty-five violations noted by the DEP. Extrapolating these numbers of violations across the state where more extensive drilling is taking place is sobering. It is imperative that more inspections take place and that these violations are noted and documented in a standard method and tracked to resolve. I feel the *Standards and Guidelines for Identifying, Tracking, and Resolving Violations* document provides for this. (66)

Response: The Department acknowledges this comment.

296. **Comment:** DEP must be more aggressive in using legal staff to force compliance. This budget must be increased. Operators know that DEP is reluctant to use litigation and some take advantage of that. (67)

Response: The Department acknowledges this comment.

297. **Comment:** A notice of violation must be written and recorded for the public record, even if the operator has fixed the situation to the satisfaction of DEP. (67)

Response: The Department acknowledges this comment.

298. **Comment:** Within the Guidelines the DEP states that an NOV will be issued if warranted for any violation. The commentator recommends that the DEP include mechanisms for pre-NOV activities between the operator and DEP, such as warnings and proactive communications. (68)

Response: By providing written inspection reports that document the results of site inspections, the Department feels that adequate communication is taking place. Department inspectors often use the ‘remarks’ category in the inspection report in an effort to provide guidance, comments, and additional information on the inspection work that has been completed.

299. **Comment:** The commentator suggests that the DEP clarify if and when a violation is corrected before an inspection is complete and develop metrics for not issuing a formal NOV. The Guidelines state on Page 4 statement #2 that a violation will be recorded regardless if the issue is corrected during the inspection. The commentator recommends that if a violation is corrected before the inspection is completed, that a formal NOV not be recorded. (68)

Response: The Department acknowledges this comment.

300. **Comment:** The term “affected” may be misleading in the context of enforcement priorities. Determination letters would generally have to be issued (as described in Section IV of the Guidelines) for water supplies to be characterized as adversely affected. The commentator recommends revising this enforcement priority to state, “Need to restore or replace an adversely affected water supply, when a determination letter has been submitted.” (68)

Response: The Department acknowledges this comment.

301. **Comment:** Section II, A., Page 4. In the paragraph regarding violations there appears to be an inadvertent omission of the word “not” in the first sentence. It seems that the first sentence should end with “. . . . unless the Deputy Secretary or Bureau Director agrees that an enforceable document is not warranted in the specific case.” (68)

Response: The Department acknowledges this comment. The document has been edited to reflect this suggested omission.

302. **Comment:** Section II. C., Page 5. The 4th paragraph of C says that an administrative order may be initiated by an Oil and Gas Inspector or a Water Quality Specialist. The commentator believes that although an inspector or specialist could recommend an administrator order, it should require a higher level supervisor to actually “initiate” the order. (68)

Response: Compliance and enforcement matters are often initiated at the level of the field inspector. There is communication and concurrence with this persons supervisor prior to issuance of an administrative order.

303. **Comment:** Section II. D., Page 6. The last paragraph of D refers to three types of enforcement actions: 1) consent order and agreement, 2) consent order, & 3) final order. However, only one of those terms appears to be used on page 2 where the various types of enforcement actions are listed. For instance, the commentator recommends that clarification of the abbreviation CO&A be spelled out. The terms “consent order” and “final order” are not previously used or described in the document, and it is unclear whether they are the same as, or different from an “administrative order” described in II.C. DEP should ensure consistent use of terms throughout the document, and ensure each type of enforcement action is clearly described. (68)

Response: The Department acknowledges this comment.

304. **Comment:** Section II. E., Page 6. The Guidelines state that revoking or suspending permits is identified as being “an action of last resort.” The operator would need to submit a new permit application for an existing project. The commentator would like to understand from the DEP how this would affect an active project. (68)

Response: Revoking a permit or registration is an important matter. The individual circumstances associated with an active project would have to be carefully considered in each case.

305. **Comment:** Section II. H., Page 7. The term “consent order and adjudication” is first used here, and is not listed as a type of enforcement action on page 2. The commentator would like the DEP to provide clarity on where this occurs in the process. (68)

Response: The Department acknowledges this comment. Consent Order and adjudication has been placed in the appropriate place in the process under Corrective Actions.

306. **Comment:** In April 2010 DEP ordered 3 wells to be shut down in Dimock, PA and fined the company \$240,000. However, we are not aware of any other forced shut down of operations, though some companies have voluntarily ceased drilling for a while. For instance, in the huge Clearfield blowout in June, 2010 where methane and flowback created a 75 foot geyser that lasted 16 hours before the natural gas well was shut down, the company voluntarily ceased operating, but then started drilling again nearby a week later. Page 6 of the draft document states, “A revoked permit cannot be reinstated. A new permit application would be required.” We suggest that the requirement of more paperwork isn’t sufficient to compel compliance. With many subsidiaries, limited liability corporations and partnerships, it would also be good to require that an escrow account be created before drilling is allowed to begin, in case a catastrophic event occurs or there is no money for replacement water for affected homes. What is left in the account 5 years after a well has been permanently sealed, needs to be returned to the company. This would at least ensure that persons harmed due to accident or careless operations are not the ones who will carry the burden of health or property destruction. (69)

Response: The Department acknowledges this comment.

307. **Comment:** Page 1, Basic Principles: NOV must be issued *in every case* where there has been a violation. There have been numerous circumstances in the field where violations have occurred but no Notice Of Violation (NOV) was issued. This must stop, and must absolutely not be elevated to being policy. Examples:
- A. Operator-reported spills that have been “cleaned up” by the time of inspection are recorded as “In Compliance with Policy” (no NOV). There are several reasons why failure to write NOV when a violation has occurred is harmful:
- Inspection search in eFACTS produces no text if there was no violation. This means that operator-reported violations are basically missing from eFACTS.
 - The Oil & Gas Compliance Report can search on inspections with violations only, but not the “In Compliance” case. (There is no way to search for only inspections that do not have status “No Violations Noted”.) The net effect is to hide from the public cases where there has been a violation but the operator has become “in compliance” by the time of an inspection. This is unacceptable. A violation is a violation, and should be recorded as such.
- B. There are several kinds of violations that have often not been written up as violations, but (improperly) only recorded in inspection report Comments. Examples include:
- Leaking wells - Peer reviewed research using data mining methods on DEP inspection reports has revealed numerous cases of leaking wells (e.g. “leaking in the cellar”) that were only noted as such in the Comments field of the report — no NOV written.²

- Cement failure - Appendix A shows an example of an inspection report for a complete cement failure for an unconventional gas well in Fayette County. This situation resulted in a total failure of drilling this well, requiring a whole new permit to drill the well over again. Because there was no NOV, a search by “result” will classify this well as a “no-problem” well. This is completely misleading. Far from “no-problem”, this is a case of total well construction failure. One might reasonably inquire in this case: where did the cement go? Lost in an undocumented coal mine void perhaps? *What is the risk* for other wells on this same pad? What lessons can be learned from this event? These are legitimate questions, that might well be asked by industry, DEP, environmental groups, and concerned citizens. But research into such questions is only possible if there is a recording of an anomaly.
- Underground explosion - Appendix B shows two inspection reports documenting an underground explosion at Sheperd 6H in Redstone Twp, Fayette County. This case is very disturbing. While there was an NOV issued, it was administrative only, and only for failure to report, not for the substance of the actual accident. Area residents reported anecdotally that an explosion of some kind occurred in this vicinity. While the inspection reports don’t actually mention the word ‘explosion’, this conclusion is clear based on comments in the inspection reports, as follows. Inspection ID 2266784 reports that “THE TUBING WAS SEPERATED [sic] BY PERFORATTIONS [sic] @ 6215’.” [Emphasis added.] Inspection ID 2206094 reports that there was “LOSS OF PRESSURE DOWN HOLE” and “COULD NOT GET PASS [sic] 8342’ []DEPTH DOWN HOLE.”

Together, these comments indicate that the casing was perforated more than two thousand feet above the producing interval: clear sign of an explosion.

An underground explosion is an extremely serious accident. The fact that it takes alert citizens to point this out, and to even bring out word that it happened, shows conclusively that DEP’s NOV and enforcement policies are completely broken. Why was there no full investigation in this case? Why was the only NOV “administrative” for failure to report? Where is DEP’s report on this accident, providing best guidance to both industry and DEP as to how to prevent such accidents in the future? What caused this explosion? What is the risk for other future wells in this vicinity? (79)

Response: If a violation is found during a Department inspection, it should be documented as a violation in the appropriate inspection report.

308. **Comment:** Page 2, Enforcement Priorities: An item needs to be added regarding well engineering risk To the list of priorities I suggest adding the following item: Any condition which is likely to pose a threat to the integrity of a well, well bore, well casing, or pressure containment. (79)

Response: Well integrity is an extremely important concept and the Department believes the broad concept is covered in item #1.

309. **Comment:** Page 3 – wide latitude for interpretation. Is this subjective nature good or bad for the people and the environment? (83)

Response: The Department acknowledges this comment.

310. **Comment:** Page 6 – who determines if “a serious public health or environmental hazard exists”? (83)

Response: The Department works cooperatively with local and state emergency responders and also maintains its own Emergency Response Teams across the state at each DEP Regional Office. The Oil & Gas Program has employees on each emergency response team where there are active Oil & Gas Operations. All of these various groups work together during emergency situations.

311. **Comment:** Page 7 – “For violations...document,” this seems like a great deal of time being allowed for violations to go unresolved. (83)

Response: The Department acknowledges this comment.

312. **Comment:** Also “Revoking...the law,” is slanted in favor of the oil and gas companies. If losing a permit was a prompt consequence of violations, there would be far fewer violations. This policy is too lenient. (83)

Response: The Department acknowledges this comment.

313. **Comment:** Page 8: However...expense: oil and gas operators should be REQUIRED to plug any orphaned/abandoned wells before commencing operations, not given this as a task to offset violations. (83)

Response: The Department acknowledges this comment.

314. **Comment:** Page 9, Injunctions – “immediate and irreparable harm” to whom or to what, by whom or by what? (83)

Response: The document has been revised and this wording has been removed.

315. **Comment:** Why aren’t bad actors kicked out? DEP must suspend or revoke permits as a matter of course, as a frequently used enforcement tool.

As it is, DEP enforcement is a laughingstock from here to Texas. PA DEP must change this by refusing permits to operators who are repeat violation and use criminal investigation and prosecution for intentional violations or refusal to carry out corrective actions.

If rules are broken, Notices of Violation must be issued! Period! (82)

Response: The Department acknowledges this comment.

316. **Comment:** Section I.B. Enforcement Process: To acknowledge that the term “corrective action” is often used in a general sense to describe actions taken voluntarily by an operator to achieve compliance, paragraph 2 of this section should be amended as follows: “Enforcement actions are basically two types: corrective actions and penalties. **In the context of this guidance document, the term “Corrective actions” is used to describe** ~~are~~ formal actions initiated by the Department to persuade or compel the violator to take corrective measures.” (77)

Response: The Department has made revisions to this paragraph to improve clarity.

317. **Comment:** Section I.C. Enforcement Priorities: Priority #1 appears to be a catch-all for any type of violation that results in endangerment to health or the environment. Accordingly, Priority #3 appears to describe releases of any quantity and of any substance defined as a “pollutant” regardless of whether it endangers health or the environment. The Department should consider including a materiality threshold (i.e., spills requiring notification under the existing spill policy). Nonetheless, please clarify whether Priority #3 is, in fact, describing (1) unintentional releases of (2) any quantity of (3) any substance defined as “pollutant” (including sediment) (4) even if the release does not endanger health or the environment. (77)

Response: The Department feels that Priority #3 covers all discharges to surface or ground waters. These discharges should be abated as soon as possible.

318. **Comment:** Section I.C. Enforcement Priorities: If Priority #3 is describing unintentional releases of any “pollutant” in any quantity and of any substance, it seems out of place to prioritize these types of incidents ahead of intentional violations or drilling without a permit (Priority #5 and Priority #4, respectively). (77)

Response: Again, discharges to surface or ground waters should be abated as soon as possible. In reality several of these various enforcement priority scenarios may be handled simultaneously by Oil & Gas staff in a particular District.

319. **Comment:** Section II.A. Enforcement Actions NOV: To ensure consistency throughout this policy, the following statement on page 4 should be amended as follows: “For violations that are not physically correctable such as a short-term discharge or a spill, the seriousness of the violation will be assessed and a penalty ~~will~~ **may** be calculated if applicable.” This modification takes into account the progressive enforcement structure described in this policy, which acknowledges that a penalty is not always appropriate or necessary to assure compliance or deter non-compliance (see, for example, page 2 of the draft guidance which states that “this does not mean that each step is used in every enforcement case, nor does it mean an action must be taken before a higher-level action is taken or a penalty assessed.” (77)

Response: The Department acknowledges this comment.

320. **Comment:** Section II.A. Enforcement Actions NOV: It appears that the word “not” is missing in the second-to-last paragraph on page 4 (“Violations taking more than 180 calendar days to resolve should be addressed via a ... enforceable document unless ... an enforcement document is **not** warranted in the specific case...” (77)

Response: The Department acknowledges this comment and has edited the document as a result.

321. **Comment:** Section II.C. Enforcement Actions, Administrative Order: The Department should revise paragraph 3 as follows: “...if the Department presumes the operator to be responsible for pollution, it ~~will~~ **may** issue an administrative order to the well operator **as if** necessary to assure restoration or replacement of the water supply.” This modification would acknowledge situations where an operator is pro-actively and voluntarily restoring or replacing a water supply (on a temporary or permanent basis). In many cases, these voluntary actions would be completed more quickly than could be effected through an agency enforcement process. In these cases (particularly where the water supply impacts are temporary and the operator presumed to be responsible is the operator who is providing replacement water), an administrative order is unnecessary and could appear punitive when the operator is already addressing the conditions. Furthermore, refraining from issuing administrative orders in this context would also be a way of pursuing mitigated enforcement for voluntary compliance (as referenced in comment #1 above). (77)

Response: The Department acknowledges this comment.

322. **Comment:** Section I, General, Page 2, C. Enforcement Priorities, number 2. The term “affected” may be misleading in the context of enforcement priorities. Determination letters would have to be issued for water supplies to be adversely affected. The commentator recommends revising this enforcement priority to state: “Need to restore or replace an adversely affected water supply, upon issuance of a determination letter.” (74)

Response: The Department acknowledges this comment.

323. **Comment:** Section II, Enforcement Actions, Page 4, 2nd paragraph. The commentator recommends the following sentence be added at the end of the paragraph: “The inspection report or other notification will note that the violation was corrected before the end of the inspection.” (74)

Response: The Department acknowledges this comment and agrees that when violations are corrected before the end of an inspection it should be noted in the inspection report.

324. **Comment:** Section II, Enforcement Actions, Page 4, 5th paragraph regarding notification of resolution of the NOV. The second sentence states that the operator will be notified when a violation is closed out; however, the policy doesn’t detail how that notification will be made. The commentator recommends that the DEP provide a statement explaining how this notification will be made and that this information be posted in eFACTS. In

accordance with the Pennsylvania Oil and Gas Act (Act 13), the DEP is required to post all resolutions to NOV's in eFACTS when they are closed out. (74)

Response: The Department is working on an electronic mechanism for posting NOV responses on the Department's website.

325. **Comment:** Section II, Enforcement Actions, Page 4, 7th paragraph regarding violations taking more than 180 calendar days to resolve. The commentator suggests the DEP provide additional guidance on current violations which have been outstanding for more than 180 days. In addition, the commentator recommends that the DEP provide a required timeframe for processing violations, so that operators have adequate time to resolve and respond to these violations within the 180 days.

Also, there appears to be a typo in the sentence "Violations taking more than 180 calendar days to resolve should be addressed via a final permit, consent order and agreement, consent decree, final order, and/or other enforceable document unless the Deputy Secretary or Bureau Director agrees that an enforceable document is warranted in the specific case." Should the sentence read "...is *not* warranted in the specific case"? (74)

Response: The Department acknowledges this comment. The document has been edited.

326. **Comment:** Section II, Enforcement Actions, Page 5, B. Administrative Conference - This section should reference the citation for Administrative Conferences, Section 3251 of Act 13. (74)

Response: The document has been edited.

327. **Comment:** It's too easy for the industry to pay "slap on the wrist" fines and continue to pollute. Companies with top numbers of violations should be denied new permits. (84)

Response: The Department acknowledges this comment.

328. **Comment:** I want standards for the notices of violation instead of leaving this up to the field investigators. (88)

Response: The Department acknowledges this comment.

329. **Comment:** I want standards set to suspend or to revoke permits as an enforcement tool. This should include prohibiting future permits to repeat violators and criminal sanctions for intentional violations or refusal to carry out corrective action. I would like the deficiencies pointed out in the PA Auditor General's Special Performance Report to be remedied to the extent that can be accomplished DEP regulation. (88)

Response: The Department acknowledges this comment.

330. **Comment:** We agree with the draft Guidelines that the minimum response to every violation should be issuance of a written notification in the form of a notice of violation (NOV). We strongly disagree with the concept that there should be any situation in which a notice of violation (NOV) is not issued for every violation that occurs. Issuance of an NOV with every violation identified should be required regardless of whether a violation is corrected before the end of an inspection and regardless of whether a violation is noted in an inspection report. The NOV is the cornerstone of the entire enforcement structure to protect public health and the environment in connection with oil & gas activities. The NOV is the starting point for every other activity that is part of the process of identifying, tracking and resolving violations. All of the information in the NOV ties into the eFACTS system and every other aspect of the compliance database. Listing of each and every violation in the NOV is a non-discretionary action. Regardless of how and when there is a response to and resolution of a violation, each violation must be recorded in an NOV so that the information related to each violation can be tracked through the enforcement process by access to one computerized system, rather than requiring reference to other paper files such as inspection reports and forms. This includes the essential obligation of the agency to make information from the enforcement process available to the public. Uniformity in the enforcement process across all DEP offices and inspectors is essential to providing transparency, consistency and predictability in the enforcement process. (96)

Response: The Department acknowledges this comment.

331. **Comment:** Violation of the rules must uniformly and reliably trigger Notices of Violation and consistent, meaningful (i.e., consistent with damages or potential damage, of a magnitude that is definitively violation-discouraging) response on the part of DEP. All violations should be enforced to the full extent required by law. (99)

Response: The Department acknowledges this comment.

332. **Comment:** Regulatory compliance is a goal of both the regulator and the regulated party. That regulatory compliance goal is met far more often than it is missed. To put the current regulatory climate into perspective, thus far in 2014 (as of November 10th), PADEP has conducted 22,908 inspections at 11,362 conventional, unconventional and “client/site” oil and gas related “facilities”. Ninety percent (90%) of those site inspections found inspected facilities to be in complete regulatory compliance. In less than 3% of the inspections completed, conditions were found that required enforcement action under the existing policies. If 90% compliance or better grades as an “A”, from the perspective of the regulated community represented by the commentator organization – as well as from any reasonable, objective perspective – the compliance goal is already being very successfully achieved. This accomplishment is significant – and no mean feat – considering the ever increasing and voluminous regulatory requirements. And, it apparently must be emphasized that the Pennsylvania citizens who rely upon oil and gas activities for their livelihood want the same healthy environment, as do the citizens who choose civil service as a profession. (78)

Response: The Department acknowledges this comment.

333. **Comment:** This existing success in regulatory compliance is the perspective through which industry views the revisions to the Draft Policy. The commentator organization’s members do not see a necessary basis for the change in policy and suspect that the underlying purpose of the change is to pander to unwarranted criticism of the PADEP management’s regulatory compliance responsibilities. For instance, the first sentence of the Draft Policy states that “*the primary objective of the enforcement program is to attain and maintain a high degree of compliance.*” Yet, as shown above, there is already an extremely high degree of regulatory compliance that takes place because of on-going industry efforts to improve operations and achieve compliance – and not due to government enforcement. This Draft Policy document should begin with a general acknowledgement of the high degree of regulatory compliance already being maintained by the oil and gas industry in the Commonwealth so that the PADEP’s staff members, the anti-industry activists, the general public and the regulated community are all aware of this fact. Furthermore, PADEP should develop and present in the Draft Policy: (i) plain consistent language concerning regulations, policies and permits and (ii) recognition that decisions made based on the Draft Policy must be timely and rational. The Department should hold internal management accountable for consistent guidance and policy interpretations between and among regions, offices and individual staff members. After all, the Draft Policy is based upon *statewide* statutes and regulations –not regions or political/government units. (78)

Response: The Department acknowledges this comment.

334. **Comment:** PADEP should examine the terminology used in this Draft Policy to ensure that it is consistent with other PADEP documents. For instance, the Policy states that an “appropriate action” must be taken for each violation and that the minimum response for any violation is a Notice of Violation (NOV). However, Workload Reports accessed for the above facts list “violations” and “enforcements” separately (78)

Response: The Department acknowledges this comment.

335. **Comment:** The Enforcement Process section is written in a very heavy-handed, imperialistic style and intends very harsh circumstances. It states that “Enforcement begins at the point of notification of non-compliance” and that corrective actions – despite being actions always taken by the operator – are formal actions “initiated by the Department to persuade or compel the violator to take corrective actions.” This language is very harsh considering that greater than 90% of the time, it is the oil/gas operator who has independently and unilaterally taken appropriate compliance actions without mandates from the Department.

Despite the Policy’s suggesting that compliance occurs only through PADEP actions, the Department recognizes it has limited resources and provides itself with an indulgence in the “Enforcement Priorities” section of this document. (78)

Response: The Department acknowledges this comment.

336. **Comment:** Within the “Enforcement Actions” section, the Policy refers to promoting regulatory consistency amongst its own regional offices. However, the commentator

cautions that it should only do so in a manner that exercises reasonable discretion and does not apply the “worst case” to all situations. (78)

Response: The Department desires to promote regulatory consistency among the District Oil & Gas Offices in a manner that exercises reasonable discretion.

337. **Comment:** Confusing language is found in the “NOV” section, where it states that: “A[n] NOV is not an order of the Department. The purpose of an NOV is to advise the recipient of the existence of a violation, not to compel an action with significant impact on the recipient.” In contrast, earlier in the draft document, the policy is stated differently: an NOV is a corrective action used to “compel the violator to take corrective actions.” If compliance is really PADEP’s goal, the Department must provide clear and unambiguous guidance. How can any operator be expected to always – and in all ways – be in regulatory compliance when PADEP’s own policies used by its staff members are internally inconsistent and illogical? The commentator submits the answer, and solution, are self-evident. (78)

Response: The commentator has incompletely quoted the guidance document in a manner that makes the Department’s communication on the subject appear inconsistent. When both sections are read in their entirety, it is clear that the Department is clear and consistent in its description of what a NOV is. A NOV is a corrective action taken to inform the operator of corrective measures that are needed, to give the operator an opportunity to correct them.

338. **Comment:** The “Administrative Conference” subsection raises some questions. For example, why is an administrative conference considered an “informal discussion”, and what is a “formal discussion”? An “administrative conference” is stated not to be an “enforcement action”, but “a step in the policy of progressive enforcement.” As demonstrated by these questions, this section creates confusion rather than providing clarity and continues the theme of inconsistency across the regional offices. (78)

Response: The Department has corrected this inconsistency.

339. **Comment:** There is concern regarding language contained within the “Consent Assessment of Civil Penalty” (CACP) subsection, defined as a “negotiated settlement that includes a confession of judgment or admission of guilt.” The process outlined in the Policy allows the Department to force an operator into an admission of guilt without due process, by the withholding of permits until NOV’s are resolved. As a result, operations can be significantly impacted unless the admission of guilt is submitted, even if the operator believes that it is not responsible for the alleged regulatory violation. (78)

Response: The Department respectfully disagrees with this comment. The Department has a long-standing practice of using this provision in settlement agreements across all programs administered by the Department. Operators are not forced to agree to negotiated settlements.

340. **Comment:** In addition, the “Bond Forfeiture” subsection misses the most important part of the action. These bonds are posted so that the Commonwealth can potentially hire an independent contractor to complete work required under a permit or to plug an abandoned well. The Draft Policy language stops with the collection of the bond. The narrative must be expanded to include the process used to disburse the funds to complete the required restoration work. (78)

Response: The Department respectfully disagrees with this comment. It is not appropriate in this policy to describe the Department’s process for using bond forfeiture funds.

341. **Comment:** The language in the “Equity Actions – Lien” subsection should be revised to be consistent with the Act 13 verbiage (Section 3256). (78)

Response: The Department has revised the Policy.

342. **Comment:** The commentator organization appreciates that the highest priority includes violations that result in pollutions that endanger the environment. Our agency shares enforcement of pollution responsibilities in the Commonwealth. However, the priority list is silent to those violations that may require inter-agency coordination. It is our opinion that violations that necessitate inter-agency coordination for compliance or penalties should hold a place high in the priority list. Consider amending the list to prioritize joint compliance actions. (322)

Response: The Department agrees that violations that may require inter-agency coordination are important and will continue to engage other state and federal agencies in the compliance process when appropriate.

343. **Comment:** The commentator organization agrees that an NOV should be clear, establish a basis, identify a solution and provide a time frame as noted on Page 4. A forwarded copy of an NOV should also be provided as an official notice to other agencies, such as the PFBC, who are also responsible for environmental enforcement of pollution to water or where damage to trust resources may or have occurred. (322)

Response: The Department agrees to partner with other agencies to jointly investigate compliance matters. To be effective, this coordination must take place very early on in the process and would most likely be initiated prior to the development and issuance of an NOV.

344. **Comment:** The commentator organization agrees that CEP’s may be a worthwhile option. We also acknowledge that prioritizing the plugging of abandoned or orphaned wells has environmental significances. The commentator organization implements many projects on an annual basis where environmental restoration and/or enhancement efforts provide benefits to the aquatic resources of Pennsylvania. CEP, CACP or Consent Order and Agreements (CO&A) that identify environmental projects that would be a valuable alternative option. Again we request that DEP revise the document to acknowledge or otherwise identify PFBC aquatic resource projects as a possible CEP during the process of resolving violations. (322)

Response: *The Department's Policy for the Consideration of Community Environmental Projects in Conjunction with Assessment of Civil Penalty (012-4180-001)* describes the process for consideration of a CEP in appropriate situations as an exercise of enforcement discretion. One of the acceptable types of projects outlined in the policy is the restoration of land or water resources not owned by the person or regulated entity. The Department does not initially identify the potential CEP project. It is up to the regulated entity to formally request consideration of a CEP.

WATER SUPPLY COMPLAINTS

345. **Comment:** DEP has had late, confusing and inconsistent communication with people who complain of water supply disruptions related to drilling. (4) (6)

Response: **The Department is working to improve its communication with all stakeholders, including complainants.**

346. **Comment:** The DEP also fails to issue enforcement orders every time oil and gas operations damage water supplies so that violations can be dealt with 'off the books' and away from the public's scrutiny. (4) (6)

Response: **The Department will take the appropriate action to permanently restore or replace an adversely affected water supply, as provided by law. This may include orders when that mechanism is appropriate.**

347. **Comment:** To quote the state Auditor General, "Mr. DePasquale's audit criticized DEP for late, confusing and inconsistent communication with people who complained of water supply disruptions related to drilling. The audit also reprimanded the agency for failing to issue enforcement orders every time oil and gas operations damaged water supplies, saying that without such official actions "violations can be dealt with 'off the books' and away from the public's scrutiny." (5)

Response: **The Department acknowledges this comment.**

348. **Comment:** I am concerned that the proposed revised standards for identifying tracking and resolving violations propose a number of changes that endanger the safety of the wells and of the people living in the vicinity of the wells. Requiring the company to temporarily replace disrupted water supplies seem an inadequate response. (8)

Response: **Providing an affected water supply owner with temporary water is only one phase of the process and is not meant to be a one size fits all solution.**

349. **Comment:** If the drillers make a mistake, they must be held accountable, with required water replacement at a minimum. They make more money annually than PA does, but PA controls the resource they seek. You have one bargaining chip -- please use it. (13)

Response: The Department acknowledges this comment.

350. **Comment:** Section IV. Standards and Guidelines for Initiating, Documenting and Resolving Water Supply Investigation Requests. Subsection B, Procedures, Water Supply Investigations Requests Item 9. It should be incumbent on the Department to notify the operator as well as the complainant of its findings in writing. (14)

Response: Operators are copied at the appropriate stages of a water supply investigation.

351. **Comment:** Allow us to say that our government was trying to protect us instead of abandoning the many people who have already lost all of their water. With the science out now, and the many cases the DEP is aware of it's hard to understand how our governmental is promoting an industry that is harming the taxpaying citizens. We must insists they fix the problems they have created before moving forward full speed ahead. (22) (25)

Response: The Department acknowledges this comment.

352. **Comment:** This Technical Guidance must include strong standards for what kind of tests DEP should do on a water supply and all test results must be disclosed. The tests should include everything in:

EPA's drinking water standards

DEP's own studies of produced water ("Suite Code 944")

What the drillers are testing for in their own pre-drilling (rebuttable presumption of liability) tests

Testing standards for waste management (Form U, Form 26R)

Chemicals listed on fracfocus.org

As drafted, the Technical Guidance doesn't include any water testing standards whatsoever. This was one of the issues discussed in the Auditor General's performance audit of the DEP. (32) (35) (53) (58) (59)

Response: The Department has not included prescribed water testing standards as part of the current document. The Department believes it utilizes a robust suite of tests in its water supply investigations. Over time those tests may change as additional scientific data is compiled.

353. **Comment:** The DEP does not provide enough protection for those PA residents using well water. The DEP must adopt strong standards that include adherence to EPA standards. ALL water testing results must be disclosed. Drillers cannot make the rules on this in any way nor should they be permitted to only test on what they deem important. It is

inexcusable that those having well water contaminated by nearby drilling have to wait months and even years for the state to resolve the issue. The DEP must direct the driller to provide a permanent water supply to those having been affected by the drilling and it must be done in a timely matter. (33)

Response: The Department acknowledges this comment. The Policy contains a variety of procedures and guidance to administer the Department's legal authority to ensure that water supply impacts are addressed as required by law.

354. **Comment:** Technical Guidance with strong standards for the tests Pa. DEP performs on water supplies with no limitations on test results as we have seen with current suite codes. (34)

Response: The Department acknowledges this comment.

355. **Comment:** When Pa. DEP determines that a water supply has been contaminated, it should issue an order to restore quality water in every case. (32) (34) (35) (53) (58) (59)

Response: The Department acknowledges this comment.

356. **Comment:** Make it top priority to promptly replace or restore contaminated water supplies: DEP has way too much wiggle room in their response to water pollution complaints. People who have impacted water supplies must be immediately helped, all violations promptly enforced, and clean water supplied to avoid adverse health effects and financial burdens to those harmed. (37) (52) (60) (73) (85) (87) (88) (90 - 95)

Response: The Department appreciates this comment and agrees these responsibilities are a top priority.

357. **Comment:** DEP states that responsibility for water contamination is based on a "hydrologic connection" being established but that is too limited because there are many pollution pathways on well sites and related operations. Also, there is no established ongoing monitoring of wells that were reported through the DEP complaint system, ignoring that pollutants may move at varying rates through groundwater and the natural environment. Using too narrow a standard lets some polluters off the hook and can expose people to pollution and health risks. (37) (52) (60) (73) (82) (85) (87) (88) (89) (90 - 95)

Response: When responding to a request for a water supply investigation, the Department goal is to conduct a thorough and detailed investigation. The Oil & Gas program often works in cooperation with other DEP programs to conduct these investigations so that multiple pollution pathways and time frames are examined as part of an investigation.

358. **Comment:** DEP must do better in protecting water supplies. For example, well pads should not be drilled next to drinking water reservoirs like Beaver Run in Westmoreland

County. When evidence of water contamination is present, DEP should move swiftly to require that water is provided to the people affected and the problem fixed. (38)

Response: The Department acknowledges this comment. The Policy contains a variety of procedures and guidance to administer the Department's legal authority to ensure that water supply impacts are addressed as required by law.

359. **Comment:** We recommend a minor wording revision in the last sentence. We recommend changing "The letter should include a paragraph instructing" to "The letter shall include a paragraph instructing". This will provide consistency and not a case by case determination of whether or not to provide this information to the requestor. (42)

Response: The Department acknowledges this comment.

360. **Comment:** Prompt replacement or restoration of contaminated water supplies. (46)

Response: The Department acknowledges this comment.

361. **Comment:** Recognize water contamination by oil and gas activities has many causes and they can occur over time NOT that contamination is based on a "hydrologic connection" being established." (46) (86)

Response: The Department acknowledges this comment.

362. **Comment:** We disagree with the Department's statement that a "hydrologic connection" is the basis for establishing a connection between oil and gas activities and water contamination. Water quality can be compromised by activities at the surface (e.g., spills and leaks), not only sub-surface (e.g., methane migration). The Department should clarify what is meant by this term or change it to encompass a broad array of possible pathways for contamination from oil and gas activities. (47)

Response: When responding to a request for a water supply investigation, the Department goal is to conduct a thorough and detailed investigation. The Oil & Gas program often works in cooperation with other DEP programs to conduct these investigations so that multiple pollution pathways and time frames are examined as part of an investigation.

363. **Comment:** The Department should specify in this section that when presented with a citizen complaint that also involves potential health issues, the Department will directly share that information, with the resident's consent, with the Department of Health (DOH), instead of simply providing the resident with contact information of the DOH. Greater cooperation between the Department and DOH is needed to ensure that all aspects of a water supply complaint are properly addressed and that adverse health effects do not persist or worsen while the Department is conducting an investigation. (47)

Response: Due to privacy laws related to health complaints, at this time the Department feels that it is best if the complainant contact the Department of Health directly about their personal health concerns. The Department will continue to work with the Department of Health with regard to determinations.

364. **Comment:** The need for referral to DOH and/or another DEP water quality supply program is supported by statistics maintained by the Department. In a review of 349 complaints or Department actions that resulted in a Letter of Determination issued to water supply users/owners between the period of October 12, 2012 and May 9, 2014, obtained through a Right to Know Law request, it was found by the Department that 53 of these contaminated water supplies were caused by oil and gas operations, with an additional 18 still under investigation and 3 “temporary” positives (i.e., a total of 74 addressed or being addressed). (47)

Response: The Department acknowledges this comment.

365. **Comment:** Of the 275 reported complaints determined to *not* have been affected by oil and gas operations, water supplies in 139 investigations were found to contain at least one pollutant (see Appendix I). The users of these contaminated water supplies should be immediately referred to resources for assistance to protect their health and the Department should further investigate the water quality issues manifested by these findings. (47)

Response: When it has been determined that Oil and Gas Operations have not impacted the water supply, but the water supply may have been impacted by something else, the Department refers the complainant to resources they may use to help identify the source of the issue and to correct it.

366. **Comment:** In addition, in cases in which the Department has determined that oil and gas activities were not the cause of water supply contamination, an ongoing review procedure should be established to monitor for changes in the quality and quantity of the water supply that prompted the complaint. Due to the variable amount of time that pollutants move through groundwater and the fact that chemical changes can occur over time, the Department should maintain a system that will track reported complaints to monitor for pollutants beyond the established investigative period. (47)

Response: When it has been determined that Oil and Gas Operations have not impacted the water supply, but the water supply may have been impacted by something else, the Department refers the complainant to resources they may use to help identify the source of the issue and to correct it. It is recommended that they consult a water quality specialist for further testing and monitoring.

367. **Comment:** it cannot be assumed that oil and gas operations have not released pollutant(s) because none have been found within the limited amount of time mandated by Section 3218(c) of the Oil and Gas Act. In order to provide protection to water supplies within the rebuttable presumption area, the Department should proactively follow up on dismissed complaints. (47)

Response: The Department follows up on each complaint it receives. When a request for a water supply investigation is received by the Department that falls outside of the timeframes and distances prescribed in 3218(c), the Department still initiates an investigation.

368. **Comment:** In the review of 349 complaints that resulted in a Letter of Determination (see Appendix I), water supplies were found to have been polluted or temporarily found to have been polluted on 56 occasions by oil and gas operations and 18 were still under investigation. The Departments should establish a process for following up on the 275 remaining water supplies that prompted water supply user/owner complaints, whether or not pollutants were found during the Department's investigation, to monitor for emerging contaminants and new evidence of causation to protect water users and the quality and quantity of regional groundwater. (47)

Response: The Department acknowledges this comment.

369. **Comment:** The need for proactive monitoring and investigation of groundwater quality and quantity is also supported by the receipt by the Department of 2,976 water supply complaints up to May 1, 2014. (47)

Response: The Department acknowledges this comment.

370. **Comment:** The Department should add to the list of information requested by staff whether health issues are present and if so, what they are and when they began. As indicated above, staff should then ask whether that information can be shared with the DOH. (47)

Response: The Department currently provides DOH contact information to any complainant that mentions human health concerns. The Department also contacts the DOH and provides them with the complainants contact information.

371. **Comment:** if scheduling an inspection/water sampling is not deemed to be appropriate by the Water Quality Specialist, the reasons for that conclusion should be properly documented in such a manner as to be made available for public review in order to ensure transparency about the Department's decision making and provide opportunity for follow up. (47)

Response: The Department will document this decision in the complaint tracking system.

372. **Comment:** evidence of the need for an established prompt response time and protocol by the Water Quality Specialist to the requestor is contained in the statistics maintained by the Department. A review of 349 Letters of Determination (see Appendix I) indicates that the time between a complaint being filed and a response by the Department varied greatly and was rarely prompt. In the Letters of Determination in which the complaint date was

provided, a response by the Department was two business days or less at the Southwest District, 1 time in response to 30 complaints; at the Northwest District, 6 times in response to 121 complaints; and in the Eastern District, 55 times in response to 198 complaints. (47)

Response: Section 3218(b) of the 2012 Oil & Gas Act requires the Department to investigate the claim within ten days of the complaint being filed. The new procedure for a response within two business days is meant to ensure a prompt response from the Department in every case.

373. **Comment:** if water samples are not warranted, then the reasons for that conclusion should be properly documented and made available for public review in order to ensure transparency about the Department’s decision making and provide opportunity for follow up. (47)

Response: The Department will document this decision in the complaint tracking system.

374. **Comment:** the Department should provide an established procedure for how to identify an operator that is required to provide temporary water when the water supply is not located within the rebuttable presumption area. (47)

Response: The Department acknowledges this comment.

375. **Comment:** if the Department cannot make a determination within 45 days, the water supply user/owner should be provided with a new timeframe for conclusion of the investigation. In addition, the Department should consider setting a deadline for requesting an operator to provide temporary water to the water supply user/owner while the Department’s investigation is ongoing—otherwise, residents will be at risk of using contaminated water for indefinite periods of time due to Departmental factors. (47)

Response: The Department acknowledges this comment.

376. **Comment:** the Department should also inform residents that they can contact the Department if they notice any new changes in their water quality or supply. In addition, potentially dangerous substances that are not regulated under the SDWA but are found in the water supply through the investigation, such as substances included in the U.S. Environmental Protection Agency’s Emerging Contaminants Monitoring Rule, should be reported and guidance offered to the water supply user/owner. In these instances, the Department should take proactive steps to further monitor for changes in the levels and presence of the identified contaminants. (47)

Response: If a resident notices new changes to their water supply, they can contact the Department to request additional assistance or to initiate an investigation.

377. **Comment:** if an adverse impact is determined, the Department should include in the written notification to the water supply owner/user an explanation of the obligations of the

operator and the rights of the water supply owner/user under the law following a positive determination of contamination. The Department's timeframe of 24 hours for temporary water replacement by operators should also be stated in writing to the water supply owner/user. The Department should contact the owner/user by phone in order to confirm receipt of the letter or send the letters by certified mail, helping to ensure that exposure to contaminated water does not continue. (47)

Response: The Department acknowledges this comment.

378. **Comment:** Because the operator is required to provide temporary water under the law in cases where a positive determination has been made, the operator should be *ordered* by the Department to provide temporary water within 24 hours (not simply requested, as currently written in the Guidelines). This order should be issued immediately after the positive determination is made. The procedure recommended below (paragraph 1 in the section on water supply investigations within the rebuttable presumption area) should also be applied in these instances of positive determinations (i.e., the Water Quality Specialist Supervisor, Environmental Group Manager or District Program Manager shall order the operator by phone and in writing, via certified mail, to provide a temporary water supply adequate in quality and quantity for the needs of the user within 24 hours). (47)

Response: The Department acknowledges this comment.

379. **Comment:** With regard to paragraphs 11-12, the timeline provided by these two paragraphs, taken together, provides for up to 70 calendar days until an operator will be issued an administrative order to permanently replace a water supply, which is too long for individuals to be forced to rely on temporary, limited sources of water (particularly because a permanent replacement supply is essential to maintaining health and property values). Once a positive determination has been made, the NOV should be issued simultaneously with the determination letter. The remaining timelines should be significantly compressed to ensure individuals are not without an adequate permanent source, while still allowing for voluntary resolution. The impacted individuals should be kept informed by phone calls or letters throughout this process. The Department should not allow operators to avoid an enforcement order by entering into an agreement with a water supply owner/user; agreement is not a replacement for regulatory enforcement, and there must be a public record of all water contamination cases and how the Department and operators responded. (47)

Response: The Department acknowledges this comment.

380. **Comment:** With regard to paragraph 12(4), the Department should specify which staff or specialist will make the determination that a water supply is no longer contaminated, how that decision will be documented, and how that information will be communicated to the water supply owner/user. (47)

Response: If the Department has made a determination that a water supply has returned to background conditions, a letter is sent to the water supply owner/ user documenting this determination.

381. **Comment:** With regard to paragraph 14, for instances where no responsible operator is identified, the Department should establish a procedure to assign responsibility to more than one operator. Alternatively, further investigation should be conducted to identify responsible operators so that a NOV can be issued and appropriate action taken by the Department (i.e., the investigation should not cease and the case should not be “closed” until the responsible party/parties has/have been identified). The Department should include the names of the responsible party(ies) in all positive Letters of Determination issued to residents following investigations. (47)

Response: The Department acknowledges this comment.

382. **Comment:** With regard to paragraph 15, a neutral party should be engaged to evaluate the replaced water supply for adequacy and quality—not the operator. This neutral party could be someone with relevant qualifications from the Department, or a third party water quality professional. The fees incurred should be paid by the operator that affected the water quality or supply, not the affected resident or taxpayers. (47)

Response: The Department acknowledges this comment.

383. **Comment:** With regard to paragraph 16, more information should be recorded in the water supply investigation tracking system and made available to the public. The current Complaint Tracking System that is available to the public only provides the County, Municipality, date received, complaint type, and date resolved (see Appendix II). (47)

Response: The Department acknowledges this comment.

384. **Comment:** The information publicly provided should include: the disposition of the Department’s investigation; the responsible operator; whether an NOV was issued and the dates and type of NOV; and a list and description, including concentrations, of the pollutants found. As indicated in the examples in Appendix I, the Department’s Letters of Determination make some of this information available. In addition, the Department has ready access to other information (e.g., inspector notes and correspondence with operators). The public should have access to information on local/regional water supply issues in order to be prepared to protect themselves and their families from potential pollution—and in order to ensure that the Department is resolving cases fully and transparently. (47)

Response: The Department acknowledges this comment.

385. **Comment:** if an operator fails or refuses to provide a temporary water supply within 24 hours of receipt of written notification and also fails to rebut the presumption of liability, a civil penalty should be issued. This civil penalty should be greater than the cost of providing the temporary water supply. (47)

Response: The Department acknowledges this comment.

386. **Comment:** In addition, paragraph 3 should be changed to state, “[i]n circumstances where an operator offers evidence to rebut the presumption of liability, an investigation shall still be conducted by the Department pursuant to the above-referenced guidelines.” Even when the presumption of liability has been rebutted, it is possible that an operator is still liable, and/or a citizen’s water supply has been negatively affected, and the Department therefore has a duty to investigate. (47)

Response: The Department acknowledges this comment.

387. **Comment:** This is what needs to improve in regard to Gas and Oil:
Personnel;

- performance: samples should be collected before during and after at proposed and operating oil drilling sites at locations designated by DEP;
- the samples should be collected by qualified personnel using appropriate sample collection and storage techniques (i.e. not just salts, pH, and metals but volatiles, semi-volatiles, and any other suspected toxins)
- The analysis should be run according to specifications spelled out by EPA;
- the sampling and analysis should be done by qualified personnel;
- the drilling company may collect duplicate samples as well but not do the sampling for DE (50)

Response: The Department acknowledges this comment.

388. **Comment:** When a water supply is impacted, there should be an order issued for the company to restore the water. Not all wells impacted are considered impacted until a determination letter is issued. There are hundreds of unaccounted wells contaminated by drilling that the DEP has not acknowledged. (61)

Response: The Department acknowledges this comment.

389. **Comment:** We need to promptly replace and restore contaminated water. DEP has proven to be very fickle when it comes to their response on claims of water contamination. Rather than looking to create a “no fault” state, we need to seriously get people clean water, and take action swiftly, rather than a series of re-tests until the DEP gets the response it wants. (62)

Response: The Department disagrees with this assertion. Multiple rounds of testing are often required to document seasonal variations or other potential issues with private water supplies. Procedures regarding temporary water supplies are described in the Policy. Moreover, Pennsylvania has no regulatory standards with respect to construction of private water wells.

390. **Comment:** Knowing that a well has many pathways to pollution and that wells exist long after they are producing, there needs to be ongoing monitoring that doesn't just let polluters off the hook because pollutants are ignored or because a hydrologic connection must be established. (62)

Response: The Department acknowledges this comment.

391. **Comment:** For any complaint from a resident who is seeing a change in water quality or experiencing health symptoms that they suspect can be attributed to the water, neighbors within one mile circle, should be forewarned. (65)

Response: Individual's health complaints are typically protected from being shared by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

392. **Comment:** Replacement water should be made available to affected residents regardless of the determination. (65)

Response: The Department acknowledges this comment.

393. **Comment:** Water contamination determinations and determinations that all the water on a complainant's property comes from their own recharge system, should have accompanying them all documents supporting the determination- Hydrologists reports, maps, etc in a timely fashion. If there is a determination that water is impacted from other source. Notification should include what that other source is, and what avenues the landowner might have to address and remediate the issue. (65)

Response: The Office of Oil and Gas Management is responsible for determining if oil and gas operations impacted a water supply when a complaint is made. Impacts could be caused by a number of different scenarios. If it is determined that oil and gas activities did not cause an impact on the water supply, the Department tries to guide landowners to resources to aid them in their situation.

394. **Comment:** All codes should have a key and all chemicals listed should have a msds-sheet included. (65)

Response: The Department acknowledges this comment.

395. **Comment:** Of utmost concern is water protection and the policies and procedures that are outlined in this document- Standards and Guidelines for Initiating, Documenting and Resolving Water Supply Investigation Requests. From the press and other sources there have been many aspersions cast on the DEP for its handling of water contamination complaints and resolution or lack thereof. I think it is imperative to have the procedures outlined in the document so not only are the members of the DEP handling these complaints uniformly, but that the public understands the procedures as well. My family and I rely on well water- we have no other public source for water. I have paid to have my well tested and have also had it tested once by an Operator. I feel that I have good baseline

numbers and that my well water is of very high quality, however I would currently fall in the non-rebuttable area right now based on the activity around my residence. I am concerned that if my water source were 2501' from the vertical hole of the non-conventional well, and I was experiencing effervescence, turbidity, or similar obvious contamination and the WQS witnessed this, I do not think it is acceptable that my family and I would have to wait 45 days at a minimum to have temporary water supply delivered. Water is necessary to sustain life and the Operator should be required to provide a temporary source. At a minimum- the Operator, if found that they have polluted the source, should be required to pay the affected water source owner for the 45 days the affected water source owner provided their own temporary water source- or lodging expenses in the case of unsafe water conditions. (66)

Response: The Department acknowledges this comment.

396. **Comment:** Tracers should be mandated so that complaints about responsibility for water contamination can be verified. (67)

Response: The Department acknowledges this comment.

397. **Comment:** Section IV. B.4., Page 18. The 3rd sentence that begins “Although there may be extenuating circumstances” should be revised to “When there are extenuating circumstances” (68)

Response: The Department acknowledges this comment. The Document has been edited.

398. **Comment:** Section IV.B.5., page 18. The requirement that the WQS request the operator to provide temporary water in every situation where he/she observes a “potential impact” (not yet determined to be an actual impact) is not supported by requirements in Act 13 or the regulations, where 58 P.S. 3218(a) & (c.1) and 25 Pa. Code 78.51(a) & (c) only require replacement when water supplies are determined to be actually affected or when within the presumption area and the presumption has not been rebutted. Operators have conducted pre-drill sampling and the DEP should, at a minimum, review the existing pre-drill data to determine if an operator should be required to supply temporary water to a water supply user. Further, on numerous occasions, water supply users have filed complaints with the DEP and/or operators regarding the condition of their water. In many of these cases a review of the pre-drill data resulted in the water supply users having the same issue in the pre-drill questionnaire, and further testing provided confirmation that there was no change in water quality.

In addition, operators' pre-drill programs also have identified water wells with restricted flow zone waters. These naturally occurring sodium chloride rich waters are prone to water quality variation due to variable usage, stratification and seasonal recharge conditions. These waters have been documented to commonly exhibit concentrations of metals above MCLs/SMCLs and are predisposed to variable concentrations of naturally occurring methane. Again the review of existing pre-drill water quality data and field notes

package should be completed before an operator is requested to provide temporary water, as it can be very difficult and contentious to remove temporary water supply from a homeowner once it is supplied.

Operators routinely receive complaints unrelated to oil and gas activities. Complaints are commonly made when water supply system components such as pumps, pressure tanks, hot water heaters, filters, water softeners and pressure switches are either not routinely maintained and are malfunctioning or require replacement as part of a normal life expectancy of the component. Water well maintenance also falls into this category as numerous water users have never chlorinated their water wells to address bacterial issues related to natural conditions in the aquifer or man-made issues related to poor well location. Further there are numerous wells (holes in rusted casings) and springs (inadequate sanitary cover and suspect recharge area) that are in poor condition and in reality should no longer be used as potable supplies. These numerous pre-existing conditions clearly indicate that the request for a temporary water supply by the DEP without reviewing existing information on a water user's supply is an inappropriate practice.

Finally, the DEP may not legally request an operator to provide temporary water to a water supply user if the water supply is not located within the rebuttable presumption area, and prior to any definitive determination of actual impact. The DEP does not provide language for how long temporary water should be provided/quantity/option to deny request or how the temporary supply will be terminated. The commentator recommends that number five in this section be deleted for the above reasons, or substantively revised to ensure proper review of pre-drill information and to ensure consistency with the limitations of 58 P.S. 3218(a) & (c.1) and 25 Pa. Code 78.51(a) & (c) for requesting water supply replacement (i.e. only within presumption areas when not rebutted, or once actual impacts have been determined to have been caused by the operator). (68)

Response: This section has been revised to have the water quality specialist gather all relevant information related to the investigation including sample results. Because this circumstance envisions a situation where the water supply is clearly of poor quality, the Department believes it is appropriate to ask (but not require) the operator to provide temporary water. This step is frequently taken voluntarily by operators without the Department asking for temporary water to be provided.

399. **Comment:** Section IV.B.6, 7, 8, 9, 10 & 17, Pages 18-19. This section should also include language which states that the DEP will provide operators within the investigation area with copies of determination letters, analytical results, and other status letters related to the investigation at the same time and manner as the water supply owner/user.(68)

Response: The Department feels that it engages operators at the appropriate stages in an investigation and copies them on the appropriate notification letters.

400. **Comment:** Section IV.B.9, Page 18: The wording "If the Department determines that a credible case cannot be established that the operator adversely impacted the water supply"

makes it sound as though the DEP's goal at the onset of the investigation is to establish that connection or to reach that conclusion, when in fact the DEP should simply be trying to determine whether any pollution or diminution was caused by the operator, as more clearly stated in number 6. The DEP should consider revising the first sentence of number 9. To state, "If the Department determines that there is not a credible case that the operator adversely impacted the water supply." (68)

Response: The Department's goal is to conduct a thorough and detailed investigation when it receives a request for a water supply investigation.

401. **Comment:** Section IV.B.11, Page 19. The reference to issuing an NOV to the responsible operator(s), "if identified" is the first acknowledgement that in some cases, a responsible operator may not actually be identified, even if oil or gas activities appear to be the cause of an impact. In those situations where a responsible operator is not identified, a similar qualifier or clarification should be incorporated into the water supply replacement provisions of numbers 5, 10, & 14 to avoid unintended outcomes where an operator who is not responsible for impacts (and not subject to a presumption) is nevertheless requested or required to provide replacement water. (68)

Response: The Department feels that the current language is sufficient. An NOV should only be sent to an operator if that operator has been determined to have adversely impacted a water supply.

402. **Comment:** Section IV. B. 17., page 19. The DEP should also include language that indicates that they will only investigate a potential water source complaint if the water supply user specifically requests an investigation. On numerous occasions the DEP and operators have received questions from water supply users only seeking advice and the DEP has classified these as complaints requiring investigation. Additionally, a mechanism needs to be put in place such that the DEP does not pressure water users to file complaints, when the user was only seeking advice and there was no significantly changed condition with the user's water supply. (68)

Response: The Department acknowledges this comment.

403. **Comment:** Section IV.B.1, page 19. The commentator notes that operators may need more than 24 hours (referenced in both 1. & 2. of this section) to provide the available rebuttable presumption documentation. At a minimum, those 24 hour provisions for providing rebuttable presumption defense information should be revised to at least one business day, and there should also be allowances for additional information (such as the allowable defenses under § 3218(d)(1)(v) & (d)(2)(v) related to other causes) to be provided later and still satisfy the rebuttable defense once established. There is nothing in Act 13 that authorizes the department to limit the ability to rebut the presumption to a 24 hour period. (68)

Response: The Department is committed to working with operators through this process and does not intend to limit the ability to rebut the presumption to a 24 hour period.

404. **Comment:** The commentator requests a protocol that would allow the DEP to email NOV's directly to an operator's certified agent in order to provide efficient time to abate newly issued NOV's. (68)

Response: The Department acknowledges this comment.

405. **Comment:** The language that states, "[p]ractically, a CACP is a negotiated settlement that includes a confession of judgment or admission of guilt..." is language that the commentator organization is not comfortable with due to the potential legal burdens said language may create in potential third party litigation. The Consent Assessment is created to settle violations in lieu of litigation. However, they do not serve as admissions of guilt. An operator, through agreeing to a CACP, is not admitting to any factual and/or legal determinations made by the DEP. The operator needs to reserve all rights and defenses available regarding alleged liability and responsibility in any proceedings regarding the incident in said CACP. Admitting to alleged guilt creates a burden in potential legal matters. (68)

Response: The Department has a long-standing practice of using this provision in settlement agreements across all programs administered by the Department.

406. **Comment:** In the decade that unconventional gas operations have been in PA, our water supplies of every kind (e.g., wells, rivers, municipal supplies, reservoirs) have been impacted by every aspect of shale gas operations above and below ground. Many of those cases of contamination could have been predicted and better documented if more testing had been done before, during and after operations from well construction through to waste water treatment. The DEP has known for years that produced water contains many harmful substances that require advanced tests of organics, heavy metals and radionuclides. In addition, it is well known that drinking water supplies have been contaminated with these substances in places where shale gas operations began earlier than in PA and also in PA soon after operations began, and yet a full range of relevant tests are not always required in testing protocols by the DEP or the industry. For example, EPA researchers, Kargbo et al. published as early as 2010 regarding the problems of arsenic and radioactivity in drinking water. (71)

Response: The Department acknowledges this comment.

407. **Comment:** The DEP should specify much more testing of water before, during and after well activities. The range of substances required for testing must be expanded. The DEP should at least be testing items in the EPA's drinking water standards, the DEP's own studies of produced water and what the drillers are testing for in their own pre-drilling. All tests and interpretations of values should be presented to homeowners and made available on the web site. (71)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance.

408. **Comment:** The DEP should require independent lab testing in cases where an operator claims to have restored water quality. I know of cases in which the DEP had the option to simply take the operator's word for the quality and quantity of water restored to the home owner after the water was declared impaired, and the operator made an attempt to restore a water supply. This is unacceptable for several reasons. It makes the DEP appear to be serving industry, not citizens; it allows the DEP to accept biased evidence; it might put people in danger if the new water supply was inadequately tested and it puts an undue burden on a family is that already likely to be under duress. The DEP must develop standards for independent, professional testing of replacement water. This testing must be paid for by the operators that caused the problem. Such testing must cover a wide range of substances such as organics, heavy metals, radio-isotopes, etc.. to verify that impaired water supplies are restored in quality and quantity. Such testing should occur for at least one year after the claim of water restoration. This is based on the current science of hydrology and government experts working in PA, that indicate ground water supplies can be impacted by pollutants up to at least one year after contamination (Swistok, Brian, Water Quality Specialist, presentation to Westmoreland Woodlands Association, Westmoreland Conservation District, 2013). (71)

Response: Act 13 of 2012 and Chapter 78.52(c) both require the use of independent certified laboratories when collecting samples.

409. **Comment:** It is recommended that section IV be placed elsewhere, as a new guidance document or as part of a more appropriate guidance document, or that the title of this document be revised to include this second subject matter. The most desirable option would be to have Section IV as part of a new Technical Guidance Document that deals more broadly with the water supply testing and replacement issues that would include recommended sampling parameters and other advice. (72)

Response: The Department acknowledges this comment.

410. **Comment:** Section IV.B.1.e&f instruct the DEP district staff to ask the landowner for a brief description of the complaint and the date when it was first noticed. These items should be simply recorded as statements or allegations of the person interviewed. The Guidelines should also indicate that the start date for an investigation is when the landowner first filed the complaint, not the date that the landowner first noticed the problem. (72)

Response: The Department asks these initial questions so that sufficient information may be gathered to initiate the complaint process and provide initial information for the staff member that is assigned to investigate. The Department considers the date that a complaint is received by the Department as the start date of an investigation.

411. **Comment:** Page 18: Water Supply Investigation Requests: Standards must include actual standards for what chemicals must be tested for and all test results must be disclosed. One must begin with a question which is shockingly obvious: How can a document whose very title begins with the word ‘standards’ in fact contain no standards whatsoever for what chemicals must be tested for in a Water Supply Investigation? This issue has a storied history, both in the press, in public statements by DEP, before the Environmental Hearing Board⁵, and as one of the subjects of the Auditor General’s Performance Audit of DEP⁶. That water testing standards are not part of Draft-550-3000-001 — even as an appendix or reference — is ample testimony that this issue is far from settled. DEP must speak in Standards to the issue of the standards for testing samples of a water supply when conducting a contamination investigation. The public is not reassured by DEP’s response⁷ to the controversy surrounding the “Upadhyay Deposition”.⁸ Standards must be amended to include actual standards for water supply testing. At a minimum, all of the following chemicals or contaminants should be included, and test results fully disclosed:

- EPA’s drinking water standards (e.g. Method 200.7).
- DEP’s own studies of produced water: Marcellus Inorganic Survey, “Suite Code 944”, 2008 - Constituents of Suite Code 944 as detailed in a press account are listed in Appendix C. It is particularly striking that although Suite Code 944 was developed by DEP itself as the result of actual studies of Marcellus Shale produced water, the public is able to obtain the list of components in Suite Code 944 only as the result of (1) a deposition in an Environmental Hearing Board appeal of a Determination Letter that a water supply was “safe”^{*} and (2) a press Right To Know request based on press accounts of this deposition. That Standards does not in fact contain actual standards for testing a water supply is ample testimony to the unacceptable stonewalling in which DEP has engaged on this issue going back some two years or more, and continuing to the present day. This must stop!
- What well operators are testing for in their own pre-drilling (“rebuttable presumption of liability”) tests. - Appendix D lists the parameters tested for in an actual driller’s “rebuttable presumption” (25 PA Code § 78.52) pre-drilling test. As DEP should not require reminding, 25 PA Code § 78.52(d) requires that such test results be sent to the DEP. It will be seen at once from Appendix D that this is an extremely elaborate test. Presumably, this driller has a reason for ordering a test for so many constituents. So why is DEP continuing to rely on such a narrow test as “Suite Code 942” or “Suite Code 946”?
- Constituents required to be tested for in DEP’s own waste management programs (Form 26R, Form U). - Appendix E shows a list of constituents to be analyzed in the annual report of a generator of residual waste, taken from part 2d of the Instructions for Form 26R¹¹. This is a considerably more elaborate list than “Suite Code 942” or “Suite Code 946”. The testing that DEP does itself in the investigation of contamination of a water supply by an unconventional Oil & Gas well should be at least this elaborate.
- All disclosed hydraulic fracturing chemicals (including those listed on fracfocus.org). Of course all hydraulic fracturing chemicals should be disclosed. These in turn should be passed on to the testing lab to determine if they are present in a water supply being investigated for contamination.

There is a clear pattern here: DEP is requiring water testing by other parties that is much more strict than the testing it reports on itself. This is outrageous. Standards must be amended so that all these various forms of testing are consolidated and evaluated into a single list of requirements for what must be tested for in investigating contamination of a water supply and all test results must be disclosed. (79)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance.

412. **Comment:** Page 19, item 12: Following an NOV, an administrative order to permanently restore or replace an adversely affected water supply must be issued in all cases, even if the operator has already acted. Following “Within 30 calendar days following an operator’s written response to an NOV, the Department shall issue an administrative order to permanently restore or replace an adversely affected water supply unless:” the following text must be stricken: “(1) the water supply has already been restored or replaced;”

An operator may ostensibly “restore or replace” by variety of means, whose duration may not be permanent, and whose effectiveness may be subject to dispute. In a circumstance where a water supply has been contaminated, the well operator claims to have “restored or replaced”, and the owner disputes this claim, it is completely improper for the victim to be required *to go back* to DEP to seek an administrative order. The administrative order should be issued at the outset, and the burden of proof should be on the operator to show that the order was already satisfied when issued. (79)

Response: The Department may use a variety of enforcement tools to address restoration and replacement of water supplies, and this Policy gives Department staff to exercise discretion in using the most appropriate and effective method.

413. **Comment:** I was astonished to find myself personally scrambling to provide clean drinking water for, among others, Janet McIntyre, Kim McEvoy and an entire community in Butler County; Tammy Manning, an elderly gentleman whose name I’ve forgotten, and many others in Bradford County; Pat Volitis of Tioga County, whose need for clean water I believe is still unmet; and on and on. I am just an ordinary citizen, yet I found myself personally taking on the responsibility PA DEP has vacated.

Therefore you **MUST** make it top priority to promptly replace or restore contaminated water supplies. Too many people have been too badly hurt already and the buck must stop with PA DEP. Please act now to restore confidence in PA DEP, and most of all to protect the health of residents. Low-income families can ill afford to shower away from home, get fresh clean water every day, and have their lives turned upside down. Help these families now. It is in your power. (82)

Response: The Department acknowledges this comment.

414. **Comment:** In addition to providing water of the quality and quantity a property owner or resident had before drilling or related activity began, the energy companies should be responsible for paying all related energy costs (electrical or other heating cost associated with preventing a water supply from freezing in cold weather months) and also for cleaning and maintaining any water supply, such as a water buffalo, and documenting the safety and potability of the water. (83)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance. It is not intended to be an outline of scenarios.

415. **Comment:** This guidance appears to address affected water supply incidents as though they are always permanent, which is rarely the case. We would support amending the guidance document to describe and differentiate the Department’s response to water supply impacts that are temporary compared to impacts that are permanent. (77)

Response: This policy is intended to provide guidance to DEP Oil and Gas Management staff in determining the courses of action to pursue to resolve violations and bring about compliance. It is not intended to be an outline of scenarios.

416. **Comment:** Section IV.B. Water Supply Investigation Requests: To avoid deterring an operator’s willingness to provide temporary water under a “Good Neighbor” policy, the Department’s guidance should clarify that an operator’s voluntary decision to provide temporary water supplies should not be viewed as an admission of liability. (77)

Response: This step is frequently taken voluntarily by operators without the Department asking for temporary water to be provided. It is not viewed as an admission of liability.

417. **Comment:** Section IV.B.10, 11, 12 Water Supply Investigation Requests: The Department should clarify the meaning of “temporary water” as used in Item 10 under the Procedures for Water Supply Investigation Requests and provide further guidance regarding its interpretation of the phrase “temporary water.” For example, the Department’s regulations at 25 Pa Code § 78.51(f) state that “tank trucks or bottled water are acceptable only as temporary water.” Please clarify whether this is an exhaustive list of actions constituting “temporary water.” (77)

Response: The individual characteristics and use patterns associated with a private water supply would dictate what an acceptable form of temporary water is.

418. **Comment:** Section IV.B.10 Water Supply Investigation Requests: This section addresses situations that are not within the rebuttable presumption area, so it is unclear which “operator” would be requested to provide temporary water. Please clarify the Department’s expectations regarding the temporary provision of water when (1) there is more than one potentially responsible operator (i.e., more than one operator meeting the rebuttable presumption criteria); or (2) there are no operators within the rebuttable presumption’s time or distance criteria. (77)

Response: In situations where multiple operators are potentially responsible for adversely impacting a water supply, a conference pursuant to Section 3251(a) of the Oil and Gas Act should be scheduled to discuss the matter. If there are no operators within the rebuttable presumption’s time or distance criteria, the presumption clause in 3218(c) of the 2012 Oil and Gas Act would not apply.

419. **Comment:** Section IV.B.11 Water Supply Investigation Requests: Please clarify whether this section only addresses situations involving permanently-affected water supplies. It would be inappropriate for an operator to provide a permanent water supply restoration or replacement source in situations where the water impact is temporary. (77)

Response: It may be unnecessary for an operator to provide a permanent water supply restoration or replacement plan for a temporary water supply impact that has returned to background conditions.

420. **Comment:** Section IV.B.11 Water Supply Investigation Requests: This section describes the Department’s expectations following the issuance of a positive determination letter. The second sentence of this section should be revised as follows: “The NOV will **require request** a written response by the operator within 10 business days of **issuance receipt** and shall request that the operator provide the Department with a permanent water supply restoration or replacement plan.” These edits would address the following concerns:

- a. Page 2 of the draft guidance correctly states that an “NOV cannot direct, require, or command an action to be taken...” Accordingly, in this section detailing the Department’s expected response to an NOV, the response should be *requested*, not required.
- b. The Department’s mail can take several days to be dispatched to a recipient. Accordingly, the timing for any response should run from the date of receipt, not issuance.
- c. Given that this section only references permanent water replacement, please clarify that the Department would only issue NOVs and would only request a restoration or replacement plan when a water supply has been permanently affected. (77)

Response: The Department acknowledges this comment. The document has been edited. It may be unnecessary for an operator to provide a permanent water supply restoration or replacement plan for a temporary water supply impact that has returned to background conditions.

421. **Comment:** Section IV.B.14 Water Supply Investigation Requests: Please clarify that this section (which deals with conferences with multiple potentially responsible operators) only addresses situations involving *permanent* and not temporary water replacement. (77)

Response: The Department feels that a conference pursuant to Section 3251(a) would be scheduled to discuss adverse impacts to a water supply.

422. **Comment:** Section IV, Standards and Guidelines for Initiating, Documenting and Resolving Water Supply Investigation Requests, Page 16, Five Statutory Defenses. Section 78.52(a) though (f) of the current Chapter 78 Regulations do not require that the pre-alteration survey be documented in the approved drilling permit application prior to permit issuance. Many operators submit well permit applications well in advance of conducting their predrill water supply survey. Requiring documentation of the survey results in the drilling permit application would result in data collected more than twelve to eighteen months in advance of construction or drilling. It is recommended that the draft policy accurately reflect the current requirements contained in Section 78.52 and Section 3218(d) of Act 13. (74)

Response: The Department acknowledges this comment. The document has been edited.

423. **Comment:** Section IV, Page 17, B. Procedures, Water Supply Investigation Requests. The policy should list current phone numbers for the District Offices and a link to the DEP web page that maintains current contact information. (74)

Response: Phone numbers and directions to District Offices can be found on the Department's public website at the following link:

http://www.portal.state.pa.us/portal/server.pt/community/contacts_directions/20298

The Department does not specifically list these contacts in the document as web addresses or other contact information may change over time.

424. **Comment:** Section IV, Page 17, B. Procedures, Water Supply Investigation Requests. In If the DEP instructs the district staff to ask the landowner for the date the problem was first noticed, the commentator recommends that the Guidelines also make clear that the start date for the investigation is when the landowner first contacted the operator and/or DEP to file a complaint, per 58 P.S. §3218(b), and not the date that the landowner provides under 1.f as the date when the problem was first noticed. (74)

Response: The Department considers the start date of an investigation to be the date when the water supply complaint / request for investigation is filed with DEP.

425. **Comment:** Section IV, page 18, B. Procedures, Water Supply Investigation Requests, number 5. The requirement that the WQS request the operator to provide temporary water in every situation where he/she observes a "potential impact" (not yet determined to be an actual impact) is not supported by requirements in the Oil & Gas Act or the regulations, where 58 P.S. §3218(a) and c.1) and 25 Pa. Code 78.51(a) and (c) only require replacement when water supplies are determined to be actually affected or when within the presumption area and the presumption has not been rebutted. Operators have developed extensive pre-drill sampling programs and the DEP should first review the existing pre-drill data to determine if an operator should be required to supply temporary water to a water supply user. Further, on numerous occasions, water supply users have filed complaints with the

DEP and/or operators regarding the condition of their water. In many of these cases a review of the pre-drill data resulted in the water supply users having the same issue in the pre-drill questionnaire, and further testing provided confirmation that there was no change in water quality.

In addition, operators' pre-drill programs also have identified water wells with restricted flow zone waters. These naturally occurring sodium chloride rich waters are prone to water quality variation due to variable usage, stratification and seasonal recharge conditions. These waters have been documented to commonly exhibit concentrations of metals above MCLs/SMCLs and are predisposed to variable concentrations of naturally occurring methane. Again the review of existing pre-drill water quality data and field notes should be completed before an operator is requested to provide temporary water, as it can be very difficult and contentious to remove a temporary water supply from a homeowner once it is supplied.

Also, operators routinely receive complaints unrelated to oil and gas activities. Complaints are commonly made when water supply system components such as pumps, pressure tanks, hot water heaters, filters, water softeners and pressure switches are either not routinely maintained and are malfunctioning or require replacement as part of a normal life expectancy of the water supply system. Water well maintenance also falls into this category as numerous water users have never chlorinated their water wells to address bacterial issues related to natural conditions in the aquifer or man-made issues related to poor well location. Further, there are numerous wells (holes in rusted casings) and springs (inadequate sanitary cover and suspect recharge area) that are in poor condition and in reality should no longer be used as potable supplies. These numerous pre-existing conditions clearly indicate that the request for a temporary water supply by the Department without reviewing pre-drill sampling results or other existing information on a water users supply is an inappropriate practice.

The Department requesting the operator to provide temporary water to a water supply user if the water supply is not located within the rebuttable presumption area, and prior to any definitive determination of actual impact, is an inappropriate practice. Also, the Department does not provide language for how long or how much temporary water should be provided or how the temporary water supply will be terminated. The commentator recommends that number five in this section be deleted for the above reasons, or substantively revised to ensure proper review of pre-drill information and to ensure consistency with the limitation of 58 P.S. § 3218 (a) and (c.1) and 25 Pa. Code 78.51 (a) and (c) for requesting water supply replacement (i.e. only within presumption areas when not rebutted, or once actual impacts have been determined to have been caused by the operator. (74)

Response: This section has been revised to have the water quality specialist gather all relevant information related to the investigation including sample results. Because this circumstance envisions a situation where the water supply is clearly of poor quality, the Department believes it is appropriate to ask (but not require) the operator

to provide temporary water. This step is frequently taken voluntarily by operators without the Department asking for temporary water to be provided.

426. **Comment:** Section IV, page 18, B. Procedures, Water Supply Investigation Requests, number 5 - Include the following language: Following an onsite inspection, if the WQS observes a potential impact to the water supply (e.g. effervescence, turbidity or similar obvious contamination) *that the WQS believes is likely caused by oil and gas activities...* (74)

Response: The Department acknowledges this comment.

427. **Comment:** Section IV, page 18, B. Procedures, Water Supply Investigation Requests, number 8 - Please clarify or expand the statement: The test results shall reference Pennsylvania Safe Drinking Water standards. (74)

Response: The written determination letter developed by the Department as part of a water supply investigation should include references to Pennsylvania Safe Drinking Water Standards when final sample results exceed those standards.

428. **Comment:** Section IV, page 18 - 19, B. Procedures, Water Supply Investigation Requests, number 6 and 17 should also include language that the DEP will provide operators with copies of determination letters (either positive or negative) at the same time as the water supply user. (74)

Response: The Department currently copies operators on positive determination letters and also copies operators on negative determination letters when there has been an operator involved in that particular investigation.

429. **Comment:** Section IV, page 18, B. Procedures, Water Supply Investigation Requests, number 9 - DEP should consider revising the first sentence to “If the Department determines that there is not a credible case that the operator adversely impacted the water supply.” (74)

Response: The Department acknowledges this comment.

430. **Comment:** Section IV, page 19, B. Procedures, Water Supply Investigation Requests, number 17 should also include language that indicates that the DEP will only investigate a potential water source complaint if the water supply user specifically requests an investigation. On numerous occasions the DEP and operators have received questions from water supply users only seeking advice and the DEP has classified these as complaints requiring investigation. Additionally, a mechanism needs to be put in place to assist water users when the user was only seeking advice and there was no significantly changed condition with the user’s water supply. (74)

Response: The Department acknowledges this comment and has outlined steps in Section IV, Procedures that will specifically categorize a request for water supply

investigation. It is not the Department's intent to categorize questions from water supply users seeking advice as a valid request for a water supply investigation.

431. **Comment:** Section IV, page 19 - 20, Water Supply Investigation Requests Within the Rebuttable Presumption Area, is inconsistent with Act 13, Section 3218 (c) which states that, "unless rebutted by a defense established in subsection (d)...it shall be presumed that a well operator is responsible for the pollution of the water supply if:" Act 13 clearly gives the operator the ability to defend itself within the presumptive radius without having to provide a temporary water supply. Section 3218 (c. 1) also supports this position by stating, "... (c) and the rebuttable presumption applies,..."". The commentator recommends that the DEP delete this item from the Guidelines. The commentator also notes that operators may need more than 24 hours (referenced in both 1 and 2 of this section) to provide the available rebuttable presumption documentation. At a minimum, those 24 hour provisions for providing rebuttable presumption defense information should be revised to at least one business day, and there should also be allowances for additional information (such as the allowable defenses under §3218(d)(1)(v) and (d)(2)(v) related to other causes) to be provided later and still satisfy the rebuttable defense once established. (74)

Response: The Policy has been revised in some regards to address these issues. The Department disagrees that the guidance document is inconsistent with Act 13. An order to provide temporary water would normally be issued only if the operator does not provide temporary water AND does not rebut the presumption of liability. Requiring an operator to provide temporary water when the presumption applies is authorized by section 3218 (c.1) and the policy is consistent with that requirement.

The Department declines to change the 24 hour response time provided in the guidance. This provision of the policy contemplates a water supply that is clearly of poor quality and the Department believes that this situation should be addressed promptly – particularly where the operator is presumed to have caused the impact and has not rebutted the presumption.

432. **Comment:** There must be an immediate response to the loss of safe drinking water. The people impacted should not have to prove that their water is bad. If a change is noted, they should be provided with water - and the burden of proof fall to the driller. (84)

Response: The Department acknowledges this comment.

433. **Comment:** During the investigation of the potential connection of oil & gas activities to impacts on water supplies, the DEP enforcement policy should require, rather than simply request, an operator to provide alternate water supply to the complainant for all of the complainant's needs and to continue to provide such water supply until final resolution of all issues related to the potential contamination linkage. Further, the Guidelines should not allow a private resolution of water supply contamination issues between the complainant and the operator without the participation of DEP so that the agency can fulfill its fiduciary obligations to protect public health and the environment in connection with oil & gas

activities. Finally, the Guidelines should require DEP to affirmatively notify the Department of Health (“DOH”) of every situation in which health impacts are reported by a complainant, including all relevant information available regarding the alleged water supply contamination, and including health related information approved by the complainant for transmittal to the Department of Health. The Guidelines should require DEP to follow up with DOH concerning any further information or evaluation related to health issues before DEP finally resolves an NOV or other enforcement action related to a contaminated water supply matter. (96)

Response: The Department currently notifies the appropriate Pennsylvania Department of Health contact when health impacts are reported by a complainant. The Department also provides this important DOH contact information to the complainant.

434. **Comment:** DEP should always issue an administrative order to a well operator who DEP has determined adversely impacted a water supply—even if DEP used the cooperative approach in bringing the operator into compliance or if the operator and the complainant have reached a private agreement. I would want to have access to information if a violation has been issued on a neighboring property due to water contamination. The public and policy makers need to be informed of all violations because that data informs decision-making that will serve to protect or harm public health and the environment. DEP states that it presently does not intend to issue an order in cases when a water supply has already recovered on its own or has been replaced, when a water supply owner withdraws the investigation request, or when the drilling company and water supply owner reach a settlement. “It will be documented that the determination occurred. A notice of violation will be issued. But we’re not going to issue that order,” Mr. Klapkowski said. (97)

Response: The document provides that an NOV should be issued to the responsible operator within 30 calendar days following a final positive determination. These NOV’s will be entered into the Department eFACTS database and be publically available through that system. It is the Department’s policy to utilize all appropriate compliance and enforcement options during an investigation.

435. **Comment:** Pre-drilling water testing (at the expense of the intended operator) of all water wells, nearby waterways and bodies of water in the vicinity of drilling activities should be required, and all water pollution complaints should be promptly and thoroughly investigated with testing of adequate samples by independent labs. Also, water replacement for affected parties should be required immediately in the event of a complaint, until such time as potential pollution has been investigated and disproven. (99)

Response: Act 13 of 2012 outlines the current legal requirements for an operator to preserve their defense and conduct pre-drill sampling, including the use of independent certified laboratories. The Department does not have the legal authority to require water replacement simply due to the receipt of a complaint. An investigation must be conducted.

436. **Comment:** Under item #5, on page 18, when the Water Quality Specialist makes a request to provide a temporary water supply for a property owner, a full explanation of the water supply issues and operator's rights and responsibilities should be provided. (78)

Response: The Department acknowledges this comment. It is understood that further interaction will be required by all parties if a request to provide temporary water is made by the Department.

437. **Comment:** Under item #9 on page 18, if the operator provided temporary water as requested by the Water Quality Specialist and the Department determined that the operator did not adversely impact the water supply, then both the operator and the water supply user should be promptly notified by PADEP that provision of the temporary water supply can be discontinued. (78)

Response: In addition to the complainant, the Department will notify an operator if temporary water is no longer required and can be discontinued.

438. **Comment:** In item #13 on page 19, the operator's refusal to provide temporary water before the PADEP makes a final determination of liability should not be a basis for deciding whether or not a civil penalty is assessed. This provision makes the "request" for the temporary water supply provision a *demand*. (78)

Response: The Department feels that when it makes a request to provide temporary water it is not a demand.

439. **Comment:** Additional language should be inserted within this section stating that the Department will only investigate a potential water supply complaint if the water supply user requests an investigation. There should also be some sensitivity here whether the Department may be answering questions or offering advice regarding a water supply complaint and, although there were no conditions indicating potential impacts, PADEP representatives suggested the property owner file a formal complaint. (78)

Response: A request for water supply investigation must be initiated on the part of the complainant. Some complainants may not be aware of the appropriate process. The Department provides information to the complainant to inform them so that they may proceed at their discretion.

440. **Comment:** The discussion in this section appears to be inconsistent with Act 13 requirements and needs further clarification. We suggest that reference to "24 hours" be replaced with "one business day". In addition, we suggest that the Department is responsible for providing the operator with a written response to the operator's claims rebutting the presumption. In addition, if the operator successfully rebuts the presumption, there should be reimbursement of the cost of providing temporary water and the Department should provide the details in this section. (78)

Response: The Department acknowledges this comment.

OUTSIDE THE SCOPE

441. **Comment:** State law presumes drillers are responsible for water supply pollution within 1,000 feet of traditional oil and gas wells and 2,500 feet of shale gas wells during six months or a year after drilling. What about having a state law that addresses Class 2 Disposal Injection wells, which have not been addressed??? After drilling a disposal injection well, oil and gas waste, such as brine and Marcellus waste fluids, will be injected into the ground under pressure for MANY years. Water supply pollution may not occur for many years, hence, water supplies need to be covered under a new law that has a longer time frame than 6 months or a year after drilling. (6)

Response: This comment is outside the scope of this guidance document.

442. **Comment:** It is bad enough we and the environment are subjected to a reckless and greedy industry that is not even compensating us with suitable taxes; the least you can do is follow and enforce guidelines. They should be updated and improved to include more progressive methods resulting in less land destruction/pollution, resolving the leaking cement casings' issue, ensure less toxic wastewater contamination/leaking impoundments, less radio-active exposure by fracking methods, less escaping of methane gas and cease leaving detritus instead of an ecologically sound finishing of an area.

If I can access experts' discussions of how methodically wrong and non-caring the industry is, I'm sure you can too. This link is #1 in a series of 4 @8 minutes each with landscape restoration specialist Leslie Sauer discussing the unnecessary environmental damage caused by gas pipeline construction projects and her expert suggestions on improving such - presented by The Delaware Riverkeeper Network.

https://www.youtube.com/watch?v=KRId1ed_qw&list=UUBxNaY3MzWj0RFZVQSTTrhw

The release of methane gas is much more than we are being told and you need to halt this escape or stop the fracking. We all know how dense methane is - there is NO excuse for allowing such pollution!

The current methods are extraordinarily selfish and industry profiteering - not ecologically sound and you are just condoning roughshod activity at our health's expense, that of our environment and creature habitat. Please correct the situation. (15)

Response: This comment is outside the scope of this guidance document.

443. **Comment:** Thanks to "The Marcellus Shale Documentary Project, which is currently being exhibited on the Penn State campus, and which represents a collection of evocative photographs from a talented cohort of professional photographers, photojournalists and academics, as well as "Storied Images: Marcellus Shale," by Penn State student photographers, many of us in Centre County are painfully aware of the human,

psychological and environmental consequences of fracking gone awry, right here in our home state!

A description of the Documentary Project and “storied Images” is found in the November 2014 issue of “Voices,” entitled “Marcellus Shale Project comes to Palmer,” by Marylouise Markle, pp. 14 and 15. (26)

Response: This comment is outside the scope of this guidance document.

444. **Comment:** Drillers must comply with all Air Quality Standards. Coordination is sorely needed between the Bureau of Air Quality and the EPA Air Quality Rules for oil and gas drillers. DEP should not allow any exemptions such as Exemption 38 that allows a well operator to be exempt from needing an Air Quality permit. (33)(71)

Response: This comment is outside the scope of this guidance document.

445. **Comment:** Better testing standards, including water testing, for waste management, especially considering all the radioactive materials handled. (34)

Response: This comment is outside the scope of this guidance document.

446. **Comment:** I have concern regarding all the negative environmental affects of fracking; however, the contamination of water with hundreds of chemicals (some undisclosed) is devastating to the people it affects. WATER IS LIFE! We all need clean water. No one should be allowed to use fresh water and turn it into chemical laden water and dispose of contaminated water like the gas companies are doing. The people being immediately affected by this contamination need quick mitigation by the gas companies. Fines and shut downs of these companies need to be enforced. (39)

Response: This comment is outside the scope of this guidance document.

447. **Comment:** Self-testing by emission producers does not work. The expensive FLIR instrument is listed with soap bubbles Section 3.b.iii !!! The fact that laboratory fraud is being committed means that the State needs to control every step of the testing. My second point is: multiple sources are a problem as well pads are crowded with wells and areas are crowded with well pads. The benign VOC’s are not listed...do they exist in fact? as stated in item 15...item 19 mentions sands without acknowledging that coating the sand with carcinogenic acrylonitrile is standard practice. The involvement of foreign investors from countries like China with a high rate of contamination and no incentive to obey any US regulations is a real concern. From the Delta in Nigeria to Texas, the death rate reflects the toxicity of the now used methods. The contamination at former Nazi slave camps where the Shale Industry really was begun is still there, still a deadly danger and the subject of European papers on consequences. The aquifer that is in the Rt. 89 area of Wetzel County, WV is now contaminated and wells on unfracked farms are now toxic. The lie about distances and number of “accidents” is corporate pr. The effort to move natural resources

to off-shore buyers at the cost of land, lives and the future of local families is genocide. We are haunted by the dead. (43)

Response: This comment is outside the scope of this guidance document.

448. **Comment:** I am under the impression that permits are written as a simple check list. If the driller has checked off the appropriate boxes and is able to sign his name, the permit is approved. Thus is clearly not working. There is evidence of:

- private well contamination;
- air pollution
- scarring of the earth
- serious pollution from illegal disposal of drilling wastes (50)

Response: This comment is outside the scope of this guidance document.

449. **Comment:** Fracking should be outlawed because of the destruction it has done and is doing to our environment, water and air here in Pa. There are other forms of technologies for oil and gas extraction that are much safer for the environment but are not being employed because they are said to be a bit more expensive to use. They are actually cheaper in the long term than present technologies and do not require the destruction of millions of gallons of our precious water resources per well. (63)

Response: This comment is outside the scope of this guidance document.

450. **Comment:** Greater setback distances should be initiated for new injection wells and marcellus well sites. Property values plummet in the shadow of drilling. Both injection and marcellus wells have a very negative impact on properties in the proximity of this industry. Is it fair that my property value should be stolen from me and pocketed by a drilling company. Contamination of the landscape around these well sights is common place. That means many people, including employees are exposed to life threatening chemicals, contaminated air from frack ponds, and diesel fumes containing benzene. Who, in their right mind, wants to live near that? (63)

Response: This comment is outside the scope of this guidance document.

451. **Comment:** Much more oversight and regulation is needed for injection wells, their locations and construction. There are relatively few if any regulations written specifically for injection wells and their operation, either by the DEP or EPA. (63)

Response: This comment is outside the scope of this guidance document.

452. **Comment:** Last but not least, open frack wastewater impoundments should be banned. Liners used for these toxic and possibly radioactive containing areas are a joke. They all leak. The damage done by the toxic vapors escaping these frack ponds cannot be calculated in terms of environmental and human damage. The industry knows that they

will never be held accountable for the damages inflicted through poisoned air because it can never be proven.

On the other hand, leaks and overflows of the toxic liquids placed in them due to failed containment structures and sudden rain storms have resulted in contaminated earth and ground water. Violations and fines have been issued but DEP will never catch all the violations committed through the use of these dangerous and unsafe poison pits. Also, these fines can never fully restore damages inflicted on Pa. residents and the environment in which they live. Please ban the frack waste ponds. (63)

Response: This comment is outside the scope of this guidance document.

453. **Comment:** Any flaring and drilling in a community should be advertised beforehand with a list with all health and safety implications. With any well permit approved, residents within a one mile circle should be forewarned of health and safety implications, what to test water for, dangers of gas migration, flaring etc. What would be your opposition to this? No permits should be given for condensate tanks without vapor capture systems No waste impoundments should be included in permits, all previous buried waste impoundments should be dug up, disposed of correctly and the soil remediated. Every tank of brine used for dust suppression, and deicing should have an accompanying analysis of its contents. Every violation for noncompliance or violation for using frack brine should be publicized to every township and community that has contracted with the same company for de-icing or dust suppression. These violations should be publicized on local radio and in newspapers and letters sent out to residents who live along the affected roads. All drilling taking place on public lands should be advertised in local papers, any violations, spills, leaks, blowouts, deaths, injuries, explosions, accidents should be public information. Any chemical injected through commonwealth aquifers should not be proprietary and be included in pretest and protest results. Radiation testing reports at each bore head, every hour, should be required. Radioactive tailings must be tagged, tracked, and documentation produced on proper disposal. Standards and documentation process regarding clean up, return to safe water levels, well replacement costs, replacement of all household water, related appliances and pipes should be the responsibility of DEP and their corporate partners. No public funds should be allocated to clean up. Setbacks need to be reevaluated, not as to what might be tolerated by industry, but for emissions, odors, light and noise impacts on citizens. There are now studies that suggest those within a mile are being negatively impacted. Lastly and most seriously, aggregation should be required, as science shows methane leakage is a dire consequence of gas production, the climate cannot tolerate this. Limits must be set and all industry leakage should be aggregated and severely limited. This aggregation needs to include VOC's as well, not for each company but for all gas industry combined. (65)

Response: This comment is outside the scope of this guidance document.

454. **Comment:** The waste from O&G operations should not simply be self-reported. It should be verified and tracked via a chain-of-custody paper trail for each load. (67)

Response: This comment is outside the scope of this guidance document.

455. **Comment:** Increase the distance for required water testing from 1,000 feet to at least 3 miles.

A distance of 1,000 feet from the drilling pad is not sufficient. Lateral wells can be drilled to go out as far as 4 miles from the vertical borehole in 4, 8, 12 and possibly more directions with fracking done in rotation at the end of each line. Therefore, the potential impact on water sources is in a much larger radius than it was a few years ago when most wells had one horizontal line bending at an angle with the well being fracked at the end of that line. Well water or aquifer contamination is therefore possible 2 or 3 miles from the well pad and the 1,000 feet distance should be greatly increased. Also, as industry practices change over time, regulations need to keep pace with new practices.

When water quality in a well or municipal source changes color, odor, viscosity, or people complain of health symptoms after drinking it (within 3 miles from an oil or natural gas well pad), the company needs to supply replacement water for drinking and if symptoms continue, also for bathing, cooking and clothe and dish washing (water buffalo).while water testing takes place. Costs for testing should come from the escrow account to avoid any arguments. (69)

Response: This comment is outside the scope of this guidance document.

456. **Comment:** Why keep contamination data in a separate file that is confidential? Both the land and owner and people living on the affected property, as well as their neighbors have a right to know if well or municipal water is suspected of contamination that may be drilling related. The property owner as well as the mineral rights owner should know if there is a suspected pollution problem and so should neighbors, so they can immediately warn pregnant women and parents of small children as well as other vulnerable populations not to drink or cook with the water or bathe children in it even before testing starts. (69)

Response: This comment is outside the scope of this guidance document.

457. **Comment:** Improve air quality testing and responses to problems. Researchers from the Rand Corporation estimated air pollution from Marcellus gas operations in PA in 2011 cost \$7- 32 million in health and environmental damage. (Litovitz et al. 2012) Gas development air pollution also produces substances with immediate impacts such as asthma attacks and long term health risks such as cancer (McKenzie 2012). The public bears these costs in dollars and, more importantly, impaired health. These numbers will only increase, if operations continue to increase and pollution emissions are not reduced. Better testing and responses by the DEP is an essential part of addressing this problem. (71)

Response: This comment is outside the scope of this guidance document.

458. **Comment:** New protocols are needed to improve measures pf air quality during routine industry operations and especially during unusual emissions or accidents. The current DEP protocols to respond to reports of problems with air quality often result in help that is too

little, too late. This does not reflect the critical nature of air pollutants in human health. In addition, recent published studies show the presence of spikes of serious air pollutants associated with industries such as fracking.(Brown et al. 2014). DEP protocols and equipment must to updated to better document air pollution scientists know is harming human health. This information is essential to inform people when immediate protective action is needed and to develop long-term regulation for individual and aggregate air emission standards. (71)

Response: This comment is outside the scope of this guidance document.

459. **Comment:** Aggregate air pollution must be considered in testing, reporting and permitting air emissions. Our lungs cannot select separate emissions from multiple smaller emission sources. Even if the laws have not yet caught up to this basic fact, the DEP records should document aggregate emissions when recording impacts of a routine emission or an accidental excess release. (71)

Response: This comment is outside the scope of this guidance document.

460. **Comment:** Historically, Oil & Gas wells were determined by DEP’s Bureau of Air Quality (BAQ) to be exempt from requiring an air quality permit. BAQ maintains a list of exemptions from the requirements of Plan Approvals — i.e. Air Quality Permits — in which the exemption for an Oil & Gas well is #38. On August 16, 2012, EPA published a final rule “Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews”³ subjecting unconventional Oil & Gas wells to the Clean Air Act under 40 CFR Part 60, Subpart OOOO. BAQ subsequently modified its exemption Technical Guidance on August 10, 2013 to take account of 40 CFR Part 60, Subpart OOOO.⁴ BAQ now gives the operator of an Oil & Gas well two choices: apply for an Air Quality General Plan Approval under BAQ-GP-5, or retain Exemption 38 but “demonstrate” compliance with 40 CFR Part 60, Subpart OOOO. Unfortunately, this latter choice is fraught with problems.

- Absent an application under GP-5, how is BAQ to be informed about well sites for which compliance with 40 CFR Part 60, Subpart OOOO needs to be “demonstrated”?
- Has OOGM been properly informed by BAQ concerning what “states” a well has to be in for determining compliance with 40 CFR Part 60, Subpart OOOO?
- What sort of documentation is produced concerning determination of compliance with 40 CFR Part 60, Subpart OOOO? What “file” does that documentation go in? Is it supposed to be part of the File Review documents for a well site maintained by OOGM? Note that from the standpoint of the public, there is a nasty catch-22 here: in order to do File Review, we are required to supply a Permit Number. Absent a GP-5, *there is no permit number* maintained by BAQ, but there are permit numbers maintained by OOGM. But presumably OOGM knows nothing about 40 CFR Part 60, Subpart OOOO since that is an air quality issue and air quality issues are handled by BAQ.
- Is there an eFACTS authorization for verifying compliance with 40 CFR Part 60, Subpart OOOO? If there is not, there should be! If there is, it is not being made

available to the public, and is certainly not *linked* from any of the eFACTS records for wells and well sites maintained by OOGM.

These issues need to be resolved. In fact, it appears to the public that for well sites without any GP-5 (which is almost all of them) “demonstration” of compliance with 40 CFR Part 60, Subpart OOOO is simply not occurring in any fashion. This is unacceptable.

Of course there’s a very simple solution to this problem, the solution that should have been adopted: BAQ should rescind Exemption 38 completely. BAQ was urged to do so in Public Comment, but they refused. By rescinding Exemption 38 for unconventional Oil & Gas wells and requiring that their operators submit applications under BAQ-GP-5, this entire picture becomes simplified:

- The currently non-existent “file” for 40 CFR Part 60, Subpart OOOO becomes no longer a mystery, but is just the normal kind of file maintained by BAQ for a GP-5.
- “Demonstration” of 40 CFR Part 60, Subpart OOOO would be handled by BAQ, as it should be, as a normal part of the GP-5 inspection process.
- eFACTS authorizations for 40 CFR Part 60, Subpart OOOO compliance occur through the normal eFACTS GP-5 process.

I would like to take this opportunity to invite OOGM to use its best efforts to urge BAQ to reopen 275-2101-003 and completely rescind Exemption 38 for unconventional Oil & Gas wells. Absent that, Standards needs explicit mention of the 40 CFR Part 60, Subpart OOOO issue. (79)

Response: This comment is outside the scope of this guidance document.

461. **Comment:** We have had numerous incidences of careless or negligent, possibly criminally so, handling of hazardous materials at well sites near homes, waterways, even a school. Examples – Pine Creek, Larry’s Creek, Wallis Run Road, Costello Site. No weakening of inspection practices or violation tracking is acceptable and these practices should be strengthened. (83)

Response: This comment is outside the scope of this guidance document.

462. **Comment:** Page 18: The water supply is not within 1,000 feet of a conventional well or 2,500 feet of an unconventional well. Does this include vertical distance because of elevation and topography? We live at the base of a ridge on which we are concerned drilling may occur, because it is PA State Forest leased to PGE. (83)

Response: This comment is outside the scope of this guidance document.

463. **Comment:** Page 11: “Road Spreading: Any inspection conducted by field inspectors related to the spreading of brine for the purposes of dust control and road stabilization on unpaved roads.” THIS SHOULD NOT BE ALLOWED ANYWHERE IN THE COMMONWEALTH UNDER ANY CIRCUMSTANCES. THIS IS A DIRECT THREAT TO THE HEALTH AND SAFETY OF PEOPLE, WILDLIFE, STREAMS, AND LAND. (83)

Response: This comment is outside the scope of this guidance document.

464. **Comment:** IT IS DIFFICULT FOR PRIVATE INDIVIDUALS TO KNOW WHEN ACTIVITY TAKES PLACE AT WELL SITES AND OTHER INDUSTRY OPERATIONS. THAT MAKES IT DIFFICULT TO DOCUMENT RELATIONSHIPS OF IMPACT AND ACTIVITY. BASELINE MEASUREMENTS OF RADON AND RADIOACTIVITY SHOULD PRECEDE DISTURBANCE AND DRILLING ACTIVITY for private individuals. THE STATE OR GAS COMPANIES SHOULD PAY FOR PRIVATE WATER, RADIOACTIVITY, RADON, AND AIR QUALITY TESTING before any activity commences. (83)

Response: This comment is outside the scope of this guidance document.

465. **Comment:** ALSO NOT MENTIONED HERE ARE THE OPEN WASTE AND “FRESH” WATER IMPOUNDMENTS THAT ARE A SOURCE OF HEALTH AND ENVIRONMENTAL IMPACT. These must be addressed and should be BANNED. (83)

Response: This comment is outside the scope of this guidance document.

466. **Comment:** Press for full industry disclosure of all materials and chemicals used in the drilling and fracking process, from site preparation to initiation and completion of wells. (99)

Response: This comment is outside the scope of this guidance document.

467. **Comment:** As for the penalties imposed on the violators, the public has the right to know how they are calculated, as well as an estimation of their effectiveness. (26)

Response: Typically, the Department outlines penalty calculations in separate technical guidance documents and therefore outside the scope of this guidance document.

468. **Comment:** Under the “Civil Penalties” subsection, it appears that the current political and regulatory environment has allowed the Department to issue fines without specifying the exact circumstance for which a fine is levied or without specifying how the fine amount is determined, or whether the fine is being imposed for single or multiple alleged violations. The Policy should require the Department to specify how fines are calculated and what violations are covered, so that the process is consistent and understood by the regulated community as well as the general public. (78)

Response: Typically, the Department outlines penalty calculations in separate technical guidance documents and therefore outside the scope of this guidance document.

469. **Comment:** What prevents DEP from having drinking water standards for all chemicals, standards that are based on sound epidemiological research? Shouldn't water standards be set before permits are granted? (65)

Response: This comment is outside the scope of this guidance document.

470. **Comment:** Have you seen this report?
Warning Signs: Toxic Air Pollution Identified at Oil and Gas Sites
<http://comingcleaninc.org/assets/media/images/Reports/cc-rpt-fracking%2010.14.pdf>

I hope you will read it and recommend that DEP includes such regular air-monitoring near shale gas well sites and facilities as part of its normal inspections that can tell us whether these facilities are a threat to public health. I hope a "violation" would include any action that sickens workers or nearby residents. Can we have ongoing monitoring of shale gas facilities as described in this report? If not, why not? (57)

Response: This comment is outside the scope of this guidance document.

471. **Comment:** Allow us to say that our government was trying to protect us instead of abandoning the many people who have already lost all of their water. With the science out now, and the many cases the DEP is aware of it's hard to understand how our governmental is promoting an industry that is harming the taxpaying citizens. We must insists they fix the problems they have created before moving forward full speed ahead. I live in Johnsonburg, PA and we have had the same two water sources for over 100 years but since a Nov. 2011 drilling spill in the Silver Creek Watershed (East of town) and mysterious problems with Powers Run Watershed (West of town), which you are unable to find the cause of, you are forcing us to build a new water plant on the East Branch of the Clarion. Ironically, what is occurring in both watersheds is drilling! Our two water sources once served 6000 people, now only around 2000 but you are forcing us to build a new plant on a new water source but you are allowing us to sell 500,000 gallons a day to Hunt Marcellus! Yet, you workout a deal with Sen. Scarnati to protect his watershed, what about mine? (23)

Response: This comment is outside the scope of this guidance document.

472. **Comment:** DEP should report all data from all households where well water was sampled due to suspected pollution from gas and oil operations, this data should be sent immediately. Withholding data does not serve the public good. What would be your opposition to this? (65)

Response: This comment is outside the scope of this guidance document.

473. **Comment:** DEP should report all cases where there was a determination and cases dropped before finalized or before a determination was made. DEP should report all cases where there was a determination that all the water on the complainant's property came from their own recharge system. What would be your opposition to this? (65)

Response: This comment is beyond the scope of the guidance document. The Department maintains its records in accordance with the Right to Know Law.

474. **Comment:** Protect professionalism standards for DEP professionals. If not already present, the standards should establish highly transparent performance review protocols for DEP inspectors and similar professionals. Citizens must be confident that the persons they are asking to respond to a problem or evaluate their air or water will be themselves evaluated fairly, even if those DEP employees produce outcomes that might harm a company's reputation or reveal a serious problem with local air or water. Standard job performance review protocols help to remove pressure, the appearance of bias and real bias from a person's job review. The DEP must stand apart from industry and politics. Standardized job review protocols occur in all professions, such as my profession, teaching, as well as law enforcement and health care; environmental care should be valued and evaluated in a similar manner. (71)

Response: This comment is outside the scope of the guidance document.