

April 2, 2015

Chief Rick Simmers
ODNR
2045 Morse Rd.
Bldg. F2
Columbus, OH 43229-6693

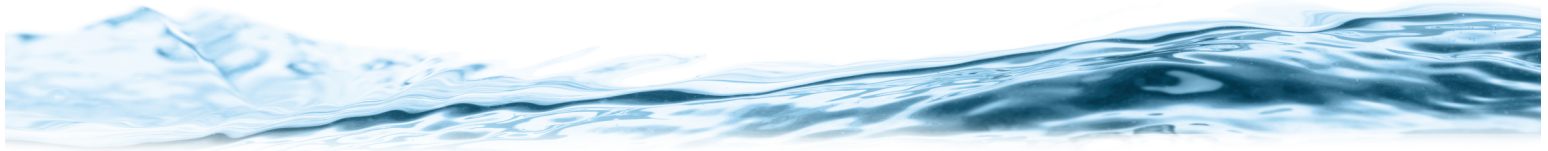
Dear Chief Simmers:

We would like to bring to your attention the recent report from Earthworks stating that Ohio has been largely deficient in the regulation of the hazardous waste that is generated by the oil and gas industry, primarily from the process of horizontal hydraulic fracturing (fracking). A link to this report can be found at:

http://www.earthworksaction.org/library/detail/wasting_away_full_report#.VR3EQ_nF-Sq

We quote from this report in the bulleted points below about issues directly pertaining to Ohio and the lack of adequate regulations to protect Ohioans from harmful public health and environmental effects, as well as the huge costs that will be incurred by the Ohio taxpayer for environmental clean-up once the industry has fracked and disposed of its waste:

- The Ohio Department of Natural Resources (ODNR) and Ohio Environmental Protection Agency (OEPA) do not track or report volumes, origins, or destinations of solid waste (e.g., drill cuttings, muds, and fracturing sand).
- Draft regulations do not include standards or limits related to waste storage and treatment methods, volumes, or chemical parameters, nor specify any practices (e.g., reserve pit burial or brine evaporation) that would be prohibited.
- Ohio doesn't require operators to conduct chemical testing of drill cuttings disposed of at well sites or verify that they are "uncontaminated" according to the law. State agencies only recommend that landfills obtain documentation from operators about the content of waste.
- No public information is available on the number, location, or use of pits and impoundments. Ohio doesn't have specific requirements for the construction and use of pits and impoundments. Draft changes to related regulations only request that operators use "sound engineering design and construction, and commonly accepted industry practices."
- In 2014, ODNR issued authorizations for 23 waste facilities to process oil and gas field waste using "Chief's Orders" that circumvent public notification requirements and local government review. Even though companies in Ohio are pursuing projects to repurpose drill cuttings and other waste, Ohio doesn't have any regulations on the "beneficial use" of oil and gas field waste.



- Operators are prohibited from disposing of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) waste at well sites and disposal facilities have limits on concentrations of radioactive elements. But such rules don't apply to drill cuttings or brine, which can go into landfills with no testing because ODNR defines as them as Naturally Occurring Radioactive Material (NORM). This distinction makes disposal easier for operators but creates environmental risks. Nor does Ohio require radiation detectors at solid waste facilities.
- Nearly all of Ohio's produced water and fluid waste is disposed of in the state's underground injection wells. Between 2011 and 2014, the volume of waste injected underground increased by 75%. Ohio does not require operators to test or disclose the chemicals in its waste prior to injection.
- Ohio does not have procedures or requirements in place to verify that "brine" spread on roads for de-icing and dust suppression is produced water, not flowback. The state's definition of brine includes flowback water from hydraulic fracturing.

Although the Director of the ODNR, Governor Kasich, and many Ohio legislators are aware of these issues, the problems continue and are growing. As a result, it is important that the ODNR immediately cease the issuance of all Chief's Orders for oil and gas treatment facilities for frack waste, including injection wells, and cease issuing permits for horizontal hydraulic fracturing until adequate regulations are in place, such as the restoration of the federal environmental regulations removed by the "Halliburton Loophole" in 2005.

In the meantime, it is important that the ODNR immediately contact all oil and gas drillers permitted by the agency as well as all toxic and radioactive waste handlers given Chief's Orders to operate to require bonds that will cover the costs of future clean-up and remediation so that these huge costs are not borne by the public in the future.

The formula for making massive short-term profits for limited liability corporations (LLC's) here in Ohio is being applied successfully for exorbitant short-term profits. The number of new companies coming to the state to take advantage of the lax and non-existent regulations is creating a perfect storm of externalized costs to be placed upon the Ohio taxpayer in the future. This is because the overseeing agency, the ODNR, does not require adequate bonds and insurance for these businesses to operate, especially without regulations while handling and injecting toxic and radioactive waste. Plus there are no written guarantees that the real owners of the LLC's are assuming this future liability. Consider the problem of earthquakes caused by injection wells. Just one large earthquake in a highly populated area, and the LLC could dissolve overnight, leaving individual homeowners and the tax-paying public to pick up the tab.

After fracking operations end, there must be a way to force the true owner to come back and clean up after it has legally dissolved its limited liability company. Because the ODNR is not insisting upon financial protection, LLCs can be used to drill while they hide the real money of owner, so the taxpayer or original land lessor is left with the cleanup. It's a tragic but true game that frackers are playing with LLC shell companies.

The ODNR can act now to insure this does not happen. A February 26, 2015 New Jersey case highlighted the need for the State of Ohio and the ODNR to listen carefully to what the fracking



industry's LLC's say to state licensing agencies and to the landowner. The state needs to require participation in the permit issuance from the true owner whose funds pay for the concrete and gravel that will later be contaminated or abandoned leaving a massive remediation of soil and water to be undertaken.

In another example to underscore the need for ODNR to require statements of future liability in writing, in a recent N.J. Chancery case (Coty vs. 680 LLC, 2/26/15), the buyer of a former pharmaceutical/chemical facility made statements about his ability to pay for cleanup. He then abandoned the site and dissolved the LLC. He claimed the property's former owner could not compel the buyer to pay since the deal had been run through his LLC. The seller refused to be stuck with cleanup costs, and the court found the actual buyer, not just his LLC, obligated to pay for cleanup:

"The Court agreed with Coty and found that 680 LLC was merely a 'shell company' established for the purpose of acquiring the property and had no cash flow or assets other than the parcel of real estate. Consequently, the Court found it proper to pierce the LLC veil of the single purpose real estate entity. The Court emphasized that Mr. Hasan represented numerous times that 680 LLC had enough financial resources to complete the necessary environmental work, despite its known inability to do so. The Court's decision in Coty is significant, as it may serve to increase the susceptibility of sole members of LLCs to environmental liabilities in the purchase of real property. It further demonstrates that environmental liabilities can reach far beyond the protection of the corporate or LLC forms and reach members, officers, directors, and shareholders."

(Cole Schotz, Environment & Energy Monitor, 4/1/15)

We urge the ODNR to be sure to require records with statement made by the real players about their financial responsibility for costs of a future cleanup. That statement will be necessary for the polluters to pay for cleanup costs later.

The more the ODNR requires drillers to make guarantees in writing to "stand behind" the shell company "Utica123 LLC", then the more likely it will be that a future court will hold the wealthy operator to be liable for the expensive cleanup, despite the dissolving of the LLC. If we want assurance that future cleanup will happen without Ohio taxpayers paying for it, we need to get it in writing from a level above the shell-company LLC's. We urge the ODNR to protect the environment, property values, public health and the wealth of future Ohioans so that we are not stuck with a hefty tax bill to pay for the cleanup of the fracking mess being made now once the industry has left the state and the LLC's are dissolved.

Sincerely,

Leatra Harper
Managing Director
FreshWater Accountability Project
www.FWAP.Org

cc: Governor John Kasich
Mr. James Zehringer