May 8, 2024

Honorable Josh Shapiro
Governor of Pennsylvania

Honorable Members
Pennsylvania General Assembly

Dear Governor Shapiro, Legislators,

In written testimony on road spreading of conventional drilling wastewater the DEP submitted to the Senate Democratic Policy Committee, the agency said that “if a valid coproduct determination can be made that adequately compares brine to a commercially available product, even if it may not be as effective as other road-spreading products, it’s possible that oil and gas waste brine may continue to be spread as a dust suppressant. [emphasis added]” Given the scientific evidence of the danger road spreading poses, as well as the inability of the agency to manage oil and gas waste, continued road spreading is unacceptable. The undersigned organizations and individuals are calling for an outright ban on road spreading of all oil & gas waste in the Commonwealth.

In 2022, the DEP issued a report ordered by Governor Wolf evaluating the agency’s oversight of the conventional drilling industry in Pennsylvania that declared, “A significant change in the culture of non-compliance as an acceptable norm in the conventional oil and gas industry will need to occur before meaningful improvement can happen.” The remark was based, in part, on shocking statistics that indicated that fewer than half of the conventional drillers operating in the state had filed production and waste reports in the previous five years. The yearly percentages told an even worse story. The rate of non-compliance was trending upward from 53.7% in 2017 to 61.8% in 2021. It was no surprise in March when Kurt Klapkowski told the House Environmental Resources and Energy Committee that the figure for 2023 had risen to 86%.

When a moratorium on road spreading of conventional drilling waste was imposed in 2018, some companies continued the practice by claiming a loophole in a program managed by the Bureau of Waste Management called the Coproduct program. Some of those drillers continued to report road spreading in their annual waste reports, so we know that at least 3.5 million gallons of highly toxic, radioactive drilling waste has been disposed of on our roads in the past six years. Given the degree of non-compliance, the amount that has gone unreported is surely much higher.

The program allows owners of a waste product to use it in place of a commercial product if it performs a function as well and does no more damage to the environment or health than the commercial product does. Although the program was conceived with the best of intentions, it was designed so poorly that it was vulnerable to exploitation by the oil & gas industry. The determination of how a waste product stacks
up is made by the waste owner, guided by section 287.8 of the Pennsylvania Code. Upon making a positive determination, the waste owner can start using the waste as a coproduct without having to notify the DEP. If the agency becomes aware of a coproduct, it can request a copy of the determination report. The owner is required to provide it.

In 2021, the Bureau of Waste Management started requesting determination reports from drillers who reported road spreading in 2020. It was the beginning of a process that continues today. The 3.5 million gallons of waste spread since the moratorium represents the amount that has been reported by 46 waste owners, most of them drilling companies. For the three years leading up to the Bureau’s intervention, the Office of Oil and Gas Management did nothing to question the drillers’ ongoing reporting of road spreading. In fact, in 2019, the Oil and Gas office acted on a verbal request from Pennfield Energy to create a nonexistent product type, “brine coproduct”, that would provide the air of legitimacy to the continued reporting of road spreading. The agency’s written testimony to the Senate Democratic Policy Committee says that the Oil and Gas office and the Bureau have coordinated efforts to address use of the Coproduct program, but there is no evidence of that, none was provided, and the agency canceled its scheduled appearance before the committee, so nothing in its testimony could be questioned.

In its 2022 report, in a similarly questionable statement, the agency said that it had “undertaken significant efforts to force compliance or penalize operators for their non-compliance.” A chart of the most frequent violations in both environmental/health/safety and administrative categories shows a total of 13,615 for the years 2017 through 2021. A chart of enforcement actions broken down by type indicates that between 2017 and 2021, there were 1,293 enforcement actions taken, but only 98 that resulted in fines that totaled $1,353,403. In other words, roughly 9.5% of the total of most frequent violations resulted in enforcement actions and not quite 0.7% resulted in fines. We could not find any fines for failure to file waste reports. We could find no violations issued for road spreading since the moratorium.

The astonishing combination of defiance of a moratorium, failure to fulfill basic reporting requirements, and the inability of the DEP to manage waste are occurring as a mounting body of evidence proves the environmental and health impacts of road spreading and the ineffectiveness of the practice. When asked at the Senate Democratic Policy Committee hearing what research is still needed to make the case for a ban on road spreading, Penn State dirt and gravel road expert William Burgos, Ph. D., Professor of Environmental Engineering in the Department of Civil and Environmental Engineering, said none is needed. The case has been made.

The conventional drilling industry has forfeited its power to run roughshod over the state with its outrageous level of non-compliance with the most basic reporting requirements and its exploitation of a beneficial use program to sidestep the DEP’s authority once again. However, the agency is just as much to blame. If there is a years’-long free-for-all of non-compliance, then it has only come about because the DEP’s culture tolerates it and even enables it. The agency cannot demonstrate at present that it is capable of overseeing the disposal of highly toxic, radioactive waste.

We cannot ignore the realities that conventional drilling waste will never meet the requirements of any beneficial use program, that the conventional drilling industry will never stop testing the limits of non-
compliance until some governmental body makes it, and that DEP has demonstrated through its passive, enabling behavior that it is not that governmental body today.

Governor Shapiro, Legislators, we call on you to ban all road spreading of oil and gas wastewater and take steps to ensure that Pennsylvania is protected from all oil and gas waste by mandating and helping to implement needed changes in the culture of the DEP.

Respectfully,

**Organizations**

Karen Feridun, Co-founder, Better Path Coalition

Mayor Nikole Nesby, Environmental Organizer, 412 Justice

Peter Crownfield, Coordinator, Alliance for Sustainable Communities

Hilary O'Toole, Executive Director, Beaver County Marcellus Awareness Community

Karen Feridun, Founder, Berks Gas Truth

Jess Conard, Appalachia Director, Beyond Plastics

Rebecca Roter, Chairperson, Breathe Easy Susquehanna

Matthew Mehalik, Executive Director, Breathe Project

Sharon Furlong, Spokesperson, Bucks Environmental Action

Ellen Gerhart, Administrator, Camp White Pine

Jodi Borello, Washington County Community Organizer, Center for Coalfield Justice

Citizens’ Environmental Assn. of Slippery Rock Area, Inc., Legal Liaison, CEASRA, Inc.

Vera Scroggins, Director, Citizens for Clean Water

Liz Green Schultz, Political Director, Clean Air Action

Alex Bomstein, Executive Director, Clean Air Council

Phoebe Reese, Former Chair, Climate Reality: Pittsburgh and Southwestern PA Chapter

Sandy Field, Chair, Climate Reality Project: Susquehanna Valley PA Chapter

Barbara W. Brandom, MD, Steering Committee Member, Concerned Health Professionals of Pennsylvania
Barbara Arrindell, Director, Damascus Citizens for Sustainability

Barbara Laxon, Co-treasurer, Defend Ohi:yo'

Maya van Rossum, The Delaware Riverkeeper, Delaware Riverkeeper Network

Melissa Ostroff, Pennsylvania Policy and Field Advocate, Earthworks

Robin Lesko, Western PA Organizing Manager, Food & Water Action

Ginny Marcille-Kerslake, Pennsylvania Organizer, Food & Water Watch

Shannon Smith, Executive Director, FracTracker Alliance

Maya van Rossum, Founder, Green Amendments For The Generations

Patrick Campbell, Executive Director, Group Against Smog & Pollution (GASP)

Debra Borowiec, Co-ordinator, LAWPA (Local Authority Western PA)

Timothy Runkle, Co-chair, Lancaster County Green Party

Ann Pinca, President, Lebanon Pipeline Awareness

Michael Bagdes-Canning, Planning Group Member, Marcellus Outreach Butler

Michael Pollack, Executive Director, March on Harrisburg

Ashley Funk, Executive Director, Mountain Watershed Association

Tamela Trussell, Founder, Move Past Plastic

Anita Forrester, Faculty Advisor, NCC Climate Action Network

Jay Notartomaso, Founder, NEPA Green Coalition

Karen Elias, Co-founder, No False Solutions PA

Edith Abeyta, Co-founder, North Braddock Residents For Our Future

Dianne Petersen, Steering Committee Member, PASUP (Pennsylvanians Against Single Use Plastics)

Craig Stevens, Founder, Patriots From The Oil & Gas Shales

Michael Bagdes-Canning, Steering Committee Member, Pennsylvania Action on Climate

Jenny Lisak, Co-director, Pennsylvania Alliance for Clean Water and Air
Tonyehn Verkitus, Executive Director, Physicians for Social Responsibility PA
Barbara Jarmoska, President, Project CoffeeHouse
Jill Taylor, Business Manager, Protect Elizabeth Township
Gillian Graber, Executive Director, Protect PT
Maren Cooke, Director, Putting Down Roots
Glenn Olcerst, Esq., General Counsel, Rail Protection Pollution Pittsburgh (RP3)
Michael Schroeder, President, Quittapahilla Watershed Association
D. Snelbaker, Leader, Political Education, Reclaim Philly
Jesse Turri, President, Responsible Decarbonization Alliance
Laurie Barr, Training Coordinator, Save Our Streams America
Sandy Field, Chair, Save Our Susquehanna
Dan Tomkinson, Co-founder, Save The Allegheny
Faith Zerbe, Co-Founder, Schuylkill Pipeline Awareness
Douglas Mason, Chair, Sierra Club Moshannon Group
Kelsey Krepps, Senior Field Organizer, Sierra Club Pennsylvania
MacKenzie MacFarland, Communications Lead, Sunrise Movement Pittsburgh
Heather Hulton VanTassel, Executive Director, Three Rivers Waterkeeper
Ron Slabe, Director, UBCAMP (Upper Burrell Citizens Against Marcellus Pollution)
Rachel Mark, Chair, Environmental Justice, UUJusticePA
Andie Grey, Lead Wrangler, Watchdogs of Beaver County
Chris DiGiulio, Co-founder, Watchdogs of Southeastern PA (WASEPA)
Martha Evans, Organizer, YoughCARE.
Peggy Berry, Executive Director, Between the Waters, Ohio
Lea Harper, Managing Director, FreshWater Accountability Project, Ohio
Individuals

M Adams, Allegheny
Nancy Adams, Jefferson
Randi Anderson, Berks
Victoria Austin, Allegheny
Laurie Barr, Potter
Nancy Bernstein, Allegheny
Janice Blanock, Washington
Larry Borowiec, Westmoreland
Joan Bouchard, Centre
Barbara Brandon, Allegheny
Felecia M. Bute, Allegheny
Liz Cates, Berks
Barbara Clifford, Susquehanna
Jackie Colclaser, Allegheny
Julie Delozier, York
Mary Ann Demi, Mifflin
Susan DeSantis, Jefferson
Carol Anne Donohoe, Berks
Lois Drumheller, Allegheny
Cheryl Epp, Adams
J Federico, Bucks
Kate Fissell, Allegheny

Melody Fleck, Dauphin
Hilary Flint, Beaver
Colleen Foley, Huntingdon
Kellianne Frketic, Allegheny
Ron Gavalik, Allegheny
Karen Gdula, Beaver
Gwynn Goldring, Allegheny
Karen Granche, Elk
Joe Guthrie, Allegheny
Joanne Hall, Westmoreland
Aaron Henderson, Allegheny
Marci Henzi, Allegheny
Katherine Heron, Allegheny
Elizabeth Hoffman, Lancaster
Richard Horton, Clearfield
Georgina Hricak, Potter
Gene Hunter, Northampton
Patsy Ann Johnson, Butler
Katie Jones, Allegheny
Pete Kasich, Allegheny
Ray Kemble, Susquehanna
G Kochanski, Allegheny
Norman Koerner, Philadelphia
Siri Lawson, Warren
Barbara Laxon, McKean
Louise Legun, Berks
Marcia Lehman, Beaver
Kevin Long, Perry
Nichole Lupari, Allegheny
MacKenzie MacFarland, Allegheny
Jean MacFarlane, Montgomery
Sherri Mackenstein, Beaver
Risa Marmontello, Berks
Dean Marshall, Clinton
Richard McCorkle, Centre
Gary Metzger, Centre
Linda Murphy, Columbiana
Katie Muth, PA Senate
Erin Needham, Allegheny
The Honorable Nikole Nesby, City of Duquesne (2018 - 2022)
Gail Neustadt, Allegheny
Diana Noble, Butler
Donald Noble, Butler
Frank Noll, Allegheny
Kari Pohl, Beaver
Andrew Puglionesi, Philadelphia
Ryan Rauch, Allegheny
Kate St. John, Allegheny
Michael Sauers, Columbia
Pamela Shaffer, Allegheny
Kai Shaikh, Allegheny
Barbara Sims, Westmoreland
Pam Steckler, Centre
John Stolz, Allegheny
Victoria Switzer, Susquehanna
Peri Unligil, M.D., Allegheny
Tammy Walker, Allegheny
Garret Wasserman
Leon Weber, Lancaster
Joe Webster, PA House of Representatives
Joseph Wells, Susquehanna
Linda Willhide, Allegheny
Michael Willhide, Allegheny
Jessica Wilson, Susquehanna
Jody Wilson, Allegheny
Ed Wrenn, M.D., Allegheny
Diane Young, Allegheny
Lloyd Zeiler, Allegheny
Tara Zrinski, Northampton County Controller
Sheri Deal-Tyne, Johnson County, Iowa
The following research papers were referenced by Dr. William Burgos in his testimony before the Senate Democratic Policy Committee on April 17, 2024.

Oil and gas produced waters fail to meet beneficial reuse recommendations for use as dust suppressants


Science of the Total Environment, 2024, 919, 170807

DOI: 10.1016/j.scitotenv.2024.170807

Toxicity and chemical composition of commercial road palliatives versus oil and gas produced waters

J. Farnan, J. P. Vanden Heuvel, F. L. Dorman, N. R. Warner, W. D. Burgos,

Environmental Pollution, 2023 334, 122184


Geochemical and isotope analysis of produced water from the Utica/Point Pleasant Shale, Appalachian Basin

T. L. Tasker, N. R. Warner, W. D. Burgos

Environmental Science: Processes and Impacts, 2020 22 (5), 1234 – 1232

DOI: 10.1039/D0EM00066C

Laboratory Method to Assess Efficacy of Dust Suppressants for Dirt and Gravel Roads

Environmental and Human Health Impacts of Spreading Oil and Gas Wastewater on Roads


Environmental Science & Technology 2018 52 (12), 7081-7091

DOI: 10.1021/acs.est.8b00716