UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAY 12 2011

The Honorable Michael Krancer, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, Pennsylvania 17101

Dear Secretary Krancer:

I am writing regarding the April 19, 2011 Pennsylvania Department of Environmental Protection (PADEP) press announcement and the May 2, 2011 follow-up discussions between the U.S. Environmental Protection Agency (EPA) and PADEP concerning the disposal of Marcellus Shale wastewater.

On April 19, 2011, PADEP announced its request that Marcellus Shale natural gas drillers voluntarily cease delivering their wastewater to 15 wastewater treatment plants which currently accept it and have "grandfathered" status with respect to PADEP's 2010 Total Dissolved Solids regulations. We understand that PADEP believes oil and gas drillers will likely cease sending their Marcellus Shale wastewater to these Publically Owned Treatment Works (POTW) or Centralized Wastewater Treatment (CWT) within the Commonwealth by May 19, 2011. EPA was informed that PADEP will be contacting these POTW and CWT after that date to confirm that the oil and gas wastewater is no longer being disposed at those facilities. We also understand that PADEP will discuss the results of those POTW and CWT inquiries with my staff in early June 2011. We urge PADEP to seek formal written confirmation of the change of disposal methods since it may affect which POTWs are subject to the federal pretreatment regulations, which EPA Region III administers directly. We also must ensure that such wastewater is properly disposed of after May 19, 2011. Please specify whether PADEP will require the gas drillers to submit modified disposal plans pursuant to the Pennsylvania Code Title 52 Section 78.55. While we appreciate PADEP's effort to reduce oil and gas wastewater discharges to Pennsylvania's waters, we believe modifications to the prior wastewater disposal practices should be legally enforceable to the greatest extent possible. We are currently working with oil and gas drillers to obtain information on their waste and waste disposal methods and are providing the drillers with information on EPA's actions regarding Marcellus Shale wastewater.

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EPA, as the pretreatment authority, would like to clarify its position regarding pretreatment requirements for POTWs accepting new sources of waste for treatment. PADEP should notify EPA whenever PADEP becomes aware, whether through notice from POTW operators or by other means, of the introduction of all new pollutants into POTWs from indirect discharges. The POTWs also have an independent responsibility to provide such notice directly to EPA as the Approval Authority. EPA may, subsequent to such notice, determine that additional permit requirements are needed to protect water quality and prevent pass-through or interference. PADEP should include language in permits to assist permittees in understanding these notification requirements. In addition to PADEP's determination whether additional or more stringent water quality-based effluent limits are needed in light of the new information of pollutants being introduced into the POTW or its collection system, EPA will evaluate the introduction of new pollutants to determine whether POTWs that do not have approved pretreatment programs must develop such programs and whether POTWs with approved pretreatment programs must modify those programs, including a revision of local limits, before or as a condition of acceptance of the waste. POTWs may not accept, and the National Pollutant Discharge Elimination System (NPDES) permits may not authorize acceptance of, wastewater that will cause pass through or interference, including a violation of any sludge disposal requirements.

EPA also requests that, by June 19, 2011, PADEP prioritize modifying or reissuing NPDES permits for POTWs and CWTs that are still accepting Marcellus Shale wastewater after May 19, 2011 to include proper permit conditions and effluent limitations for the pollutants of concern identified in the Marcellus Shale wastewater. Permits for facilities that are permitted to accept Marcellus Shale wastewater but are not currently accepting this wastewater should be reopened and modified as soon as possible, but not later than May 31, 2012. EPA will work with PADEP to ensure that any permit issued to a POTW accepting such wastewater after May 19, 2011, either directly or from a CWT, include appropriate pretreatment requirements for Marcellus Shale wastewater. Both POTWs and direct discharging CWTs should also be evaluated for compliance with the Commonwealth's Water Quality Standards (numeric and narrative) and for protection of potentially affected public water supplies. EPA will be providing guidance to assist permitting authorities in developing such permit conditions for facilities that accept shale gas extraction wastewater.

My staff will also be sharing separate correspondence with PADEP on the current triennial review of state water quality standards to ensure that pollutants of concern from gas drilling are fully considered in the Commonwealth's standards for the protection of public health and the aquatic environment. We encourage you to move quickly to adopt water quality standards for the protection of drinking water and aquatic life uses, and to ensure that water quality criteria are applied throughout designated waterbodies, including at the point of wastewater discharge. We recommend that PADEP determine whether water quality criteria for such parameters as Total Dissolved Solids, chlorides, bromides, and radionuclides need to be adopted or modified to protect drinking water and other designated uses downstream of oil and gas wastewater discharges.

We appreciate your recent request for supplemental monitoring and data from drinking water facilities and will have follow-up discussions with your staff on the need for additional, representative samples where drinking water facilities are downstream of POTWs or CWTs still accepting Marcellus Shale wastewater. Also, on the matter of drinking water protection,

Mr. Jon Capacasa, EPA Region III's Water Protection Director, sent a May 9, 2011 letter to PADEP's Southwest Regional Office addressing the necessary authorization from the Underground Injection Control program which EPA administers in Pennsylvania for any placement of fluids in injection wells or bore holes. Today we are initiating action to require Tunnelton Liquids Company to cease the unauthorized injection of wastes at its Saltsburg facility. We look forward to working with you on this matter statewide in the near future.

If you have any questions, please do not hesitate to contact me or have your staff contact Dr. Jennie Saxe, EPA's Pennsylvania Liaison, at 215-814-5806.

Sincerely,

Shawn M. Garvin
Regional Administrator

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