Failure to adequately enforce oil and gas rules is harming Pennsylvania’s public health, safety, and environment.
Pennsylvania’s Oil & Gas Enforcement

DEP CAN’T KEEP UP WITH RAPID DEVELOPMENT

The Pennsylvania Department of Environmental Protection (DEP) Office of Oil and Gas Management is responsible for overseeing “the safe exploration, development, and recovery of Pennsylvania’s oil and gas reservoirs in a manner that will protect the Commonwealth’s natural resources and the environment.”

Through the 1990s, only 1,383 wells were drilled in Pennsylvania. Recently, however, oil and gas development has boomed in the state: more than 20,000 conventional oil and gas wells and more than 5,700 “unconventional” shale gas wells have been drilled since 2005.

DEP recently quadrupled the size of its enforcement staff to 130 employees, 65 of whom are inspectors. In 2012, the number of inspectors was reported to be 83. While these increases are necessary, they are not sufficient in light of the rapid increase in wells and related facilities. Even with increased staff, DEP does not adequately enforce existing oil and gas regulations:

• Tens of thousands of active wells are not inspected every year.
• The number of oil and gas violations continues to increase, and some operators have a chronic problem with non-compliance.
• Enforcement actions are insufficient to deter violators—violators are now more likely than ever to go unpunished.

Inspection Capacity – LACKING

In Pennsylvania, when inspections of oil and gas well sites occur, violations are found. Unfortunately, not enough inspections are taking place, and as a result it is likely that many problems are going unreported and are being left unaddressed.

In 2010 DEP failed to inspect more than 82,000 or 91 percent of active wells. In 2011, more than 66,000 active wells (86 percent) did not receive DEP oversight.

In 1989, DEP’s “Inspection Policy for Oil and Gas Well Activities” was incorporated into the Pennsylvania State Code. This policy recommends that a well be inspected seven times before it ever begins to produce oil or gas; at least once a year thereafter during production to determine compliance with oil and gas statutes; and at various other times throughout the life of the well.

However, codifying these recommendations has not resulted in compliance with the policy. There were 2,843 new wells drilled in Pennsylvania in 2010. Under the Inspection Policy, there should have been close to 20,000 inspections of those wells. Also, each of the 70,000 wells that produced oil or gas in 2010 should have received an inspection. If DEP had been following its adopted policy, it would have performed more than 90,000 inspections. However, DEP carried out just 15,368 inspections, or 19 percent of the inspections suggested in the policy.

Even some representatives of the oil and gas industry believe that DEP cannot keep up with its inspection load. At a conference held in April 2012, the president of Southwestern Energy Company stated that “We as an industry have gone to the state of Pennsylvania and said you don’t have enough inspectors, you don’t have enough people.”

Violations – INCREASING, WITH CONTINUED NON-COMPLIANCE

More violations were found by inspectors in 2011 than in any of the past 15 years. As seen in the chart below, even though drilling has slowed in the past few years, violations have remained high.

Our research shows that many operators repeatedly violate the same rule at different well sites, and from one year to the next. And the practices of many operators are getting worse.

The table on the next page shows the 12 Pennsylvania oil and gas operators with the most violations in 2011. All but two (Chief and Anadarko) had more violations in 2011 than in previous years, and many operators have had consistently large numbers of violations for three years in a row (e.g., Chesapeake, Cabot, Chief, Range, XTO, and Ultra).
In the past ten years, the total number of enforcement actions in Pennsylvania more than doubled, from 426 in 2002 to 976 in 2011. Over that same time period, however, there was an even greater increase in violations (nearly four-fold), from approximately 1,153 in 2002 to 4,089 in 2011.
that citizens’ complaints are taken seriously and are resolved in a timely manner. Moreover, to encourage public participation in oversight activities, DEP should increase transparency and access to information on oil and gas facilities, incidents, complaints and DEP enforcement efforts.

In January 2012, DEP released an online database that made some data on oil and gas wells more publicly accessible.28 But public access to other important DEP data is lacking, especially when compared to data available in other states:21

- Detailed inspection reports are not posted online.
- Detailed information on wells (e.g., copies of permits and supporting data filed by operators) is not available online.
- There is no public spills/blowouts/well control database.
- There is no public database of citizen complaints.

The Path Forward

DEP’s inadequate enforcement of existing drilling regulations promises irresponsible oil and gas development, particularly in light of the state’s presumed goal of expanding production. The most important step to address these enforcement problems is to make enforcement a priority, rather than an afterthought. Our review of enforcement shows that Pennsylvania does not have the regulatory tools to adequately enforce its oil and gas regulations. To remedy this, we believe there should be a new rulemaking focusing exclusively on enforcement.

At minimum, new rules should address:

INSPECTIONS

- Develop comprehensive and binding inspection protocols.
- Establish minimum inspector-to-well and annual-inspections-to-well ratios. New wells must not be allowed until the state can meet these minimum standards.
- Competitively pay inspectors so as to retain high-quality personnel and ensure competent inspections.

ENFORCEMENT ACTIONS

- Establish binding criteria for taking enforcement actions and levying penalties to ensure that violations receive consistent treatment.
- Increase fines and enforcement actions, especially against the worst offenders (such as repeat offenders and those with the most fines) to encourage better practices and improve overall compliance.

PUBLIC PARTICIPATION

- Strengthen relationships with citizens by responding to and resolving citizen complaints in a timely and thorough manner and maintaining communication with the residents of properties where violations have occurred.
- Collect and track comprehensive data on citizen complaints— including facilities of concern, nature of complaint, DEP follow-up, and resolution (e.g., any enforcement actions taken).
- Periodically analyze and publicly report trends in enforcement.
- Increase transparency by improving online access to detailed data on wells and other oil and gas facilities, and incidents such as spills and blowouts.

ENDNOTES

1 Pennsylvania Department of Environmental Protection (DEP) web site, “Oil and Gas Program”: http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas/6003
3 Unconventional includes Marcellus, Utica and other formations defined in Pennsylvania Code: http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas/6003
5 See Earthworks’ Pennsylvania enforcement web page “enforcement actions” for data and analysis on penalties in Pennsylvania. http://www.earthworksaction.org/issues/detail/pennsylvania_oil_gas_enforcement_the_publics_role
6 Data on active wells. See Pennsylvania “Well Data from DEP Oil and Gas Production Database" table on Earthworks’ Enforcement web page for references and details on how these numbers were generated. http://www.earthworksaction.org/images/uploads/Table_pennsylvania_active_well_data_100509.pdf
8 For a more detailed analysis of oil and gas enforcement in Pennsylvania, visit Earthworks’ Pennsylvania Enforcement web page: http://enforcement-pa.earthworksaction.org
9 This number is based on active wells that produced oil or gas. See Pennsylvania “Well Data from DEP Oil and Gas Production Database" table to find out how these numbers were generated. http://www.earthworksaction.org/images/uploads/Table_pennsylvania_active_well_data_100509.pdf
10 See Earthworks’ Pennsylvania Inspections Data table for more details: http://www.earthworksaction.org/images/uploads/inspections_table_pennsylvania_active_well_data_footnotes.gif
11 This number is based on active wells that produced oil or gas. See Pennsylvania “Well Data from DEP Oil and Gas Production Database" table to find out how these numbers were generated. http://www.earthworksaction.org/images/uploads/Table_pennsylvania_active_well_data_100509.pdf
12 See Earthworks’ Pennsylvania Drilling and Violations Data” table for more details: http://www.earthworksa.org/images/uploads/Table_pennsylvania_drilling_violations_footnotes.gif
13 Using data downloaded from the DEP Compliance Report system, it was possible to sort the data by “Violation Code” to determine which companies frequently violated a particular rule. View data chart at: http://www.earthworksaction.org/images/uploads/Table_pennsylvania_violations_repeat_offenders.gif
14 Violations data. DEP Oil and Gas Compliance Report system. Search by operator and year: http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas_compliance_report/2029
15 See Earthworks’ Pennsylvania enforcement web page “enforcement actions” for data and analysis on penalties in Pennsylvania. http://www.earthworksaction.org/issues/detail/pennsylvania_oil_gas_enforcement_the_publics_role
16 Pennsylvania Oil & Gas Accountability Project. Earthworks’ OGAP EARTHWORKS • 1612 K St., NW, Suite 808 Washington, D.C., USA 20006 www.earthworksaction.org • www.ogap.org

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