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Sent by Certified Mail and electronic submission

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Re: Draft General Permit WMGR163

We, Three Rivers Waterkeeper (3RWK) and Protect PT (PPT), thank you for the opportunity to provide comments on Draft General Permit WMGR163. 3RWK was founded in 2009 and aims to improve and protect the water quality of the Allegheny, Monongahela, and Ohio Rivers and their respective watersheds. These waterways are critical to the health, vitality, and economic prosperity of our region and communities. We are a scientific and legal advocate for the community, working to ensure that our three rivers are protected and that our waters are safe to drink, fish, swim, and enjoy. We are one of the 300 organizations that make up the global Waterkeeper Alliance and work together to connect local communities to global environmental and advocacy resources. Likewise, Protect PT (Penn-Trafford) is a nonprofit citizens group founded in late 2014 dedicated to ensuring the safety, security, and quality of life by engaging in education and advocacy to protect the economic, environmental, and legal rights of the people in Westmoreland and Allegheny counties, particularly as it relates to unconventional oil and gas development. Due to this and our significant experience and knowledge as stewards and advocates for the Three Rivers, we believe we can provide the Bureau of Waste Management with valuable insight on the proposed General Permit document.

The residents of Pennsylvania urgently call on the Bureau of Waste Management to address the inadequate setback regulations, ambiguous terminology, guaranteed renewal, and

potential contradictions to our right to clean water¹ associated with Draft General Permit WGMR163, or the Short Duration Processing and Beneficial Use of Oil and Gas Liquid Waste. In the draft's current form, there are numerous stipulations that are concerning and require clarity. This includes the following:

I. The draft general permit includes inadequate and arbitrary setback regulations that are not supported by scientific data.

With the threats of a spill or leak occurring during the process of storing oil and gas liquid waste, it is crucial that there is enough distance between the stored waste and waterways, residences, and other community institutions. We find that some of the distances within this draft are irrational and arbitrary. For example, Section C(4)(h) states that the storage facility may not be located within “900 feet measured horizontally from the property line of [a building owned by a school district or parochial school and used for instructional purposes, a park, or a playground], unless a written waiver is obtained from the current property.” However, 25 Pa. Code § 78.55, which governs oil and gas well waste disposal, requires that “the operator of an unconventional well shall develop and implement an emergency response plan that provides for equipment, procedures, training, and documentation to properly respond to emergencies that threaten human health and safety for each well site”, including “a summary of the risks and hazards to the public within ½ mile of the well site.”² This regulation in WGMR 163 is nearly one-third of the required distance for an unconventional extraction site.

In addition to the arbitrary setback of Section C(4)(g), the general draft permit includes many other arbitrary setback values. This includes forbidding facilities located “[i]n or within 300 feet of an exceptional value wetland,” “[w]ithin 50 feet of a property line,” or “[w]ithin 100 feet of a perennial stream.” The Bureau does not provide any justifications for these values, nor is there any science to support these numbers. The setback value of section C(4)(f) is attested for by 25 Pa. Code § 93.1. However, Sections C(4)(b), C(4)(d), C(4)(e), and C(4)(g) do not cite particular acts or legislation. These setback values should be based on scientific evidence of what is safe for public health, and therefore the regulation in its current language is inadequate.

II. The draft general permit contains ambiguous terminology that must be properly defined to avoid loopholes.

¹ 33 U.S.C. § 1251 et seq.

² 25 Pa. Code § 78.55.

To ensure that there is no misinterpretation of permit guidelines, all pertinent encompassing terms must be clearly defined. The term “beneficial use” is referenced multiple times throughout the draft general permit. While we can assume the definition of “beneficial use,” this term is never defined and it is unclear what would be considered a beneficial use. It is also unclear whether this “beneficial waste” would be tested before reuse, disposal of transportation, or how it will be evaluated as beneficial. The term “beneficial use” must either be clearly defined, or another term should be used. Currently, the language “beneficial use” is largely misleading and is used to elicit positive responses to citizens that are not fully informed on the impacts of fracking waste on their own public health.

We ask that the Bureau rephrase the draft general permit to substitute the term “reuse” for “beneficial use.” There is no net public benefit to the reuse of this waste, as the deleterious impacts on human and environmental health are far greater than the industry’s financial gain. We further suggest that, in setting the parameters for allowing “reuse,” the Bureau uses the term “only” to limit what constitutes “reuse.” This will close any unintentional loopholes that permittees may attempt to exploit.

III. The draft general permit provides inadequate renewal guidelines that enable applicants to renew without proving that they did not violate any federal or state laws.

The draft general permit allows applicants to use their original application for renewal. According to the draft general permit, “the Bureau will consider the initial application for coverage under this general permit to also be the renewal application.” The Bureau justifies this decision by stating in Section F(1) that it is “[d]ue to the short duration that permittees are authorized to operate under this general permit,” as well as the “unlikelihood that any updates to original permit application materials would occur between the time of permit issuance and base permit renewal.

However, this decision provides opportunities for permittees to violate state and federal laws and still obtain a permit if their initial application is considered adequate. The draft general permit shortens the renewal process and allows the applicant to avoid submitting any water or air quality analysis. Additionally, with such a short permit time, public comments are not required

under WGMR 163. This puts the public and environment at risk, even if the permit is only short-term. The comment period is an integral part of the permitting process and allows for residents to vocalize any existing or new concerns to be addressed by the Bureau or permittee. Therefore, failing to provide an opportunity and consideration for comments at the initial and renewal permitting stage from the communities impacted by diminishing residents' property values, impinging on their property rights, and potentially violates their Constitutional rights under Article 1 Section 27³. Furthermore, applicants should not be able to acquire a permit if they violate any state or federal laws. As recorded by the DEP compliance history, certain operators have received a great number of violation notices over the past five years. This includes, but is not limited to, CNX Gas Co. LLC (598), Diversified Prod LLC (563), and Olympus Energy (314).⁴ Currently any operator that has an ongoing violation should not be granted a permit, but many times this is overlooked by the permitting agency thus perpetuating future environmental crimes. To ensure accountability and better protection of our waters, the application process must be more rigorous, and the public concerns and known violations to our right to clean water and air should be considered when approving and renewing permits.

We ask for an annual renewal process that requires applicants to provide environmental data proof that they did not violate any clauses of the permit. As part of the renewal process, applicants should prove that they are not contaminating groundwater and that their waste water is not leaking from their storage. There should also be a maximum number of times for a renewal to be allowed to ensure all environmental compliances are being followed.

IV. The draft general permit contradicts the Clean Water Act, as well as citizens' rights to clean water.

A. The general permit needs to provide clear monitoring guidelines and testing data should be available to the public.

Within this permit, there are no clear regulations or guidelines denoting the waste water's final destination. There is also no requirement to continually assess the environmental impacts of the waste storage and subsequent use of waste. Furthermore, the waste water's quality is

³ Pa. Const. art. 1, § 9.

⁴ *Oil and Gas Compliance Reports*, Department of Environmental Protection (2022), www.dep.pa.gov.

unknown before it is injected back into the ground, creating opportunities for irreversibly contaminating groundwater supplies. This threatens the health of our environment and the public.

If this permit is to move forward, it is critical that guidelines define the process for monitoring the potential impacts to our water sources and the consequences of contaminating our water sources with limitations on quantities and chemical makeup of the wastewater. With the waste temporarily stored on-site, it is unclear to the public if the waste storage containers are being properly measured, cleaned, tested, or broken down. According to a study published in 2019, eight chemicals that are characterized as toxic by the EPA's Resources Conservation and Recovery Act,⁵ as well as barium and chromium - all of which are typically found in fracking wastewater - exceeded safe limits in waste produced by 231 gas well sites in Pennsylvania.⁶ With Marcellus Shale's Radium-226 contents ranging from high to extreme in fracking waste,⁷ the chances of exposing residents who live near these sites - regardless of their temporary nature - is high. This can cause public health problems that reduce quality of life and life expectancy.

An OG71 Alternative Waste Management Practice form would identify how solid and liquid waste will be separated and how sites are going to manage and store the liquid waste. These sites should also be required to monitor their storage facilities and assure no spills or leaks are occurring and the groundwater is not being impacted. Sites containing any radioactive waste and their respective amounts as well as any known spills, leaks, or contaminants should be made public, as it is Pennsylvania citizens' "right to . . . pure water, and to the preservation of the natural, scenic, historical, and esthetic values of the environment."⁸

B. There are known environmental and public health impacts associated with the storage of fracking waste that must be addressed.

Section C(15) declares that this permit "shall not harm or present a threat of harm to the health, safety, or welfare of the people or environment of this Commonwealth." However, the oil and gas industry has not proven that fracking waste is not harmful. There are numerous peer-reviewed studies and compiled research that show the devastating health impacts on public

⁵ See 42 U.S.C. § 6901 et seq.

⁶ E. Swidler et al., *Should Solid Waste from Shale Gas Development be Regulated as Hazardous Waste?*, 129 Energy Pol'y 1020, 1020-33 (2019).

⁷ Elizabeth Ridlington & John Rumpler, *Fracking by the Numbers: Key Impacts of Dirty Drilling at the State and National Level*, Env't America Res. & Pol'y Ctr (Oct. 2013), https://environmentmaryland.org/sites/environment/files/reports/MD_FrackingNumbers_print.pdf.

⁸ Penn. Const. art. 1, § 27.

health associated with proximity and exposure to the fracking process. Fracking waste cannot be cleaned in any way that allows it to be used without conflicting with this clause. Radioactivity in fracking waste can cause complicated health issues, including cancers, pathologies, endocrine, immune system, and neurological disorders.⁹ Additionally, salts, which are major constituents of wastewaters, can diminish the quality of life for aquatic wildlife and resources by impacting the hardness of the water and affecting natural populations of species.¹⁰ This includes species which may be considered endangered or protected. On-site storage overflows, overfills, and liner malfunctions are common incidents even in tanks.¹¹ Because of this, stringent government regulation is necessary to mitigate any risks to human and ecological health.

It is imperative that your agency provides more stringent regulation with this type of permit to provide clear guidance on the oil and gas industry and protect the citizens right to clean water as outlined by the Clean Water Act and our state constitution under Article 1, Sec. 27.¹² Historically, there is a pattern of negligence and subsequent violations by operators that threaten the health of residents and the waterways of the Commonwealth, and these permit guidelines can potentially foster an environment for this concern to be elevated. We are thankful for your consideration and attention to these matters, as your service as the governing body for the environment in Pennsylvania is instrumental to protecting our families, our communities, and our water from the many hazards of the oil and gas industry.

Sincerely,



Gillian Graber
Executive Director, Protect PT



Heather Hulton VanTassel
Executive Director, Three Rivers Waterkeeper

⁹ Mohsen M.M. Ali et al., *A Review about Radioactivity in Tenorms of Produced Water Waste from Petroleum Industry and Its Environmental and Health Effects*, 467 IOP Conf. Series: Earth & Env'tl. Sci. (2020).

¹⁰ Aida M. Farag and David D. Harper, *A Review of Environmental Impacts of Salts from Produced Waters on Aquatic Resources*, 126 Int'l J. of Coal Geology 157, 157-61 (2014).

¹¹ Yusuke Kuwayama et al., *Risks and Mitigation Options for on-Site Storage of Wastewater from Shale Gas and Tight Oil Development*, 101 Energy Pol'y 582 (2017).

¹² Penn. Const. art. 1, § 27.