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January 17, 2019

Sent by Certified First Class U.S. Mail

The Honorable Josh Shapiro, Attorney General
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Dear Attorney General Shapiro,

We are writing on behalf of the members of our organization, Protect PT (Penn-Trafford). Protect PT is a nonprofit citizens group dedicated to ensuring that the safety, security, and quality of life of community members are protected from the effects of unconventional natural gas development. Please consider this letter as an official complaint regarding Apex Energy (PA), LLC and the Pennsylvania Department of Environmental Protection.

In July, members of our organization met with PA Department of Environmental Protection Secretary Patrick McDonnell to discuss our concerns with the violations of one of the oil and gas operators in our community, Apex Energy (PA), LLC. We have enclosed a letter that we sent to Secretary McDonnell regarding the Department's failure to resolve outstanding violations with this operator after a prolonged period. To date, Apex Energy (PA), LLC, has been cited for 56 violations in Westmoreland and Armstrong Counties. Of these 56 violations, 46 are recorded as environmental health and safety violations. At the Fatur Well Site in Salem Township, this operator has had 49 outstanding violations for over 22 months, starting with a violation for the discharge of industrial water into the waters of the Commonwealth that lead to the Beaver Run Reservoir. This reservoir provides water for Westmoreland County and part of Allegheny County.

Apex also received citations at this site related to erosion and sediment control, control and disposal planning, emergency response for unconventional wells, and incidents causing or threatening pollution. Inspectors at this site found that the discharged water flowing into waters of the Commonwealth tested for elevated levels of iron, manganese, and total suspended solids (TSS) and cited the operator for failure to notify

the Department of Environmental Protection and downstream users of a potential pollution event *capable of endangering downstream users*. These violations remain outstanding, which means that this discharged water continues to pollute the waters of the Commonwealth.

Since it is within your jurisdiction under the *Clean Streams Law 35 P.S. § 691.601* to bring enforcement suits for violations of the Clean Streams Law, we ask that you enforce the laws established to protect our waters. These repeated violations indicate a willful violation of state laws put in place to safeguard the environment.

Additionally, Apex failed to submit annual and semiannual production and air emissions inventory reports designed to quantify the amount of methane and other pollutants emitted from oil and gas operations. Oil and gas operators are required to submit these reports to show that they comply with the laws and regulations of the DEP in order to receive new permits and meet Exemption 38 requirements. While the missing 2015 annual report was finally submitted and resolved on Nov. 28, 2018, it took significant time to bring them into minimum compliance. As a result, the inventory data used to ensure ambient air emissions thresholds are not exceeded is incorrect and citizens could be exposed to unhealthy levels unknowingly. Finally, we believe that had it not been for our request of these records, this and 20 other operators, who also failed to submit 2015 emissions inventories, would still be out of compliance.

While the DEP discussed these violations with this operator, they failed to fine or penalize them for these unresolved violations. Instead, the DEP continues to issue new permits to this operator as if the operator were in compliance with the law. This violates the Department's duty to conduct a thorough examination of applicant's current compliance status and history of compliance before issuing permits. In *Thomas Colbert v. DEP*, the Environmental Hearing Board held that the DEP has a duty not only to check digital records but also to evaluate whether the party's past conduct has proved trustworthy or not. *Thomas Colbert v. DEP and Middle Creek Quarry, Inc., 2006 EHB 90 (Adjudication issued March 10, 2006)*.

When we spoke with Secretary McDonnell in July, he responded to our concerns by stating that the DEP's first goal is to bring operators into compliance. While the Department seems to consider working towards compliance as good enough, it is clearly not actual compliance and that attitude fails to address the impact that violations have on the community. Past Environmental Hearing Board rulings support protecting communities and the environment. We maintain that the DEP's first priority should be to fulfill their stated mission to "*protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner*

environment." and to protect our constitutional rights to *"clean air, pure water, and the preservation of the natural, scenic, historic and aesthetic values of the environment."* Discussing violations does not correct them. Until Apex takes actions to correct these violations, they should not be considered compliant.

We have requested that the DEP revoke this operator's permits, and we ask that you bring an enforcement suit against Apex Energy for failing to comply with the Clean Streams Law since the DEP has failed to take proper action against this negligent operator and protect our waters. We ask that you fulfill your duty to serve and protect citizens by stopping these negligent operations. We ask that you investigate the conduct of the DEP as they are exhibiting a systemic failure to uphold their mission as a state institution charged with protecting citizens of the Commonwealth and upholding our state constitution.

We have enclosed a disk with supporting documentation of our complaint. On behalf of our members and our community, we appreciate your attention to these important matters.

Sincere Regards,



Gillian Graber
Executive Director

CC: Governor Tom Wolf