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June 11, 2020

Sent by Certified Mail and Email

Pennsylvania Department of Environmental Protection
Attn: Patrick McDonnell, Secretary
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105

Re: Suspension Of Mining and Oil & Gas Permitting During COVID-19 Crisis

Dear Secretary McDonnell,

On behalf of Mountain Watershed Association, our over 1,400 members, Protect PT (Penn-Trafford) and our over 200 members and additional 400 supporters, the organizations signed on to this letter and their combined membership - which represents several thousands of individuals - we write to demand that the state immediately halt the process of permit review or issuance for any and all oil and gas or mining-related activity.

Because mining and oil and gas operations have been deemed "essential businesses" by the state, operations are being allowed to proceed without proper agency oversight. This puts shalefield and coalfield communities at an increased risk to their health and safety. For example, since state agencies such as the Department of Environmental Protection (DEP or Department) cannot do on-site inspections, they are unable to monitor operations and cannot enforce permit conditions, or any rules of health, safety, or environmental protections.

Furthermore, the Department has continued to issue new permits for these operations, despite the fact that the restrictions adopted by the DEP largely prevent any possibility of meaningful public participation.

Public Is Currently Deprived of Right to Participation

The public has the right to participate in the DEP's permitting process in three significant ways. The first is through the right to access publicly available documents, such as permit application materials. The second is the public's lost opportunity to comment on those materials (provided the statutory scheme is one of the many that includes a public comment period). The last right that the public can no longer employ is their right to first request, then participate in, a public hearing. These public participation opportunities allow the public to raise issues or any outstanding questions or concerns they may have about any harmful impacts presented by the permitted project. The agency is also deprived of critical on-the-ground information from the community, without which a project could be critically harmed.

Starting on March 19, 2020, the Department shut down all regional offices to staff and to the public. This put an abrupt end to the public's ability to conduct informal file reviews. Informal file reviews are the quickest and most common way for impacted community members to review public documents related to a site or facility permitted through the DEP.

Without the information provided in the file reviews, the public is then de facto robbed of their ability to provide meaningful public comment. They can only speculate about the specifics being proposed and are completely incapable of preparing technical comments, which are the comments that the Department considers most heavily when reviewing permits.

The public is currently deprived of their right to a public hearing in two ways. First of all, it is difficult to request a public hearing on a project that you may not know any details about, because of the inability to conduct file reviews. Secondly, the Department has taken an inconsistent stance on whether - and how - it will hold public hearings at all.

For some projects, such as the Mariner East pipeline, previously scheduled public hearings have been canceled outright. The public was told of no intent to reschedule the hearings to a later date or change to a video platform. Other requests for public hearings have been met with nebulous responses about how or when such hearings will be held. In one instance, MWA staff was told in response to their request for a public hearing that an extended comment period of 15 days presented the exact same opportunity for public participation as a public hearing. However, a significant portion of our rural community does not have access to computers or the internet and would have no way of submitting such comments.

We are aware that the recently passed amendments to Title 35 Chapter 57 § 5741(f) allows that:

To the extent practicable, an agency, department, authority, commission, board, council, governing body or other entity of a political subdivision shall allow for public participation in a meeting, hearing, or proceeding through an authorized telecommunication device or written comments.

For many rural and low-income areas of Pennsylvania, it is entirely impracticable to hold a public hearing online or via telecommunications devices. The Federal Communications Commission [estimates](#) that around 600,000 Pennsylvanians don't have broadband internet access, while a [2019 report](#) from Penn State University's Center for Rural Pennsylvania estimates that the number without reliable internet is far higher. Connectivity issues exist predominantly in rural and impoverished regions, where broadband access is limited or too expensive to afford. For these reasons, hosting virtual hearings threatens to further disenfranchise impacted communities in the state, especially those currently designated as Environmental Justice Areas.

For this reason, any permit that provides the opportunity to hold a public hearing should be paused until the state of emergency has been lifted by the state and public hearings can be safely held. Even as restrictions are lifted, for the next several years, public hearings should be required to be in person and include a call-in option for all those who may be immunocompromised, or for whatever reason, are uncomfortable with sharing public spaces.

In the meantime, the DEP should also require that any new permit application materials be submitted electronically by the applicant. Then, the DEP should be required to upload those materials to DEP's website in a timely manner and make the materials available for the public to review.

Thank you for your consideration. If you have any questions, please contact us anytime.

Sincerely,

A handwritten signature in blue ink, appearing to read "William M. Allen".

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cc: Governor Tom Wolf