



BY FAX AND OVERNIGHT MAIL

January 13, 2012

Shawn M. Garvin
Regional Administrator
United States Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Supplement to NRDC January 12, 2012 Letter Regarding Provision of Immediate Temporary Water to the Residents of Dimock, Pennsylvania: EPA's Additional Authority Pursuant to SDWA to Respond to Contaminants in Underground Sources of Drinking Water Which May Present an Imminent and Substantial Endangerment to the Health of Persons.

Dear Regional Administrator Garvin:

We are writing to supplement our January 12, 2012 letter urging the U. S. Environmental Protection Agency ("EPA") to take responsive action under its Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") authority to provide the residents of Dimock, Pennsylvania with temporary potable water.¹ As discussed in that letter, Dimock groundwater was thoroughly contaminated by the natural gas drilling practices of the Cabot Oil and Gas Corporation ("Cabot"), and, since November 30, 2011, affected residents have been without reliable access to drinkable water.² In the interest of ensuring the swiftest possible action to provide Dimock residents with fresh, potable water, we would like to identify additional statutory authority under the Safe Drinking Water Act ("SDWA") by which EPA can ensure provision of temporary water.

SDWA provides that EPA may take emergency action to address contamination of certain water supplies,³ such as the underground aquifer in Dimock,⁴ which *may* present an

¹ Letter to Shawn M. Garvin, Regional EPA Administrator for Region 3 from NRDC entitled "Provision of Immediate Temporary Water to the Residents of Dimock, Pennsylvania Pursuant to EPA's CERCLA Authority to Respond to Threats to Human Health and the Environment," dated January 12, 2012.

² This letter fully incorporates the facts set forth in the January 12, 2012 letter.

³ Although generally SDWA applies only to "public water systems," EPA's emergency powers under SDWA also allow the Agency to respond to contamination of an "underground source of drinking water." 42 U.S.C.A. § 300i (a). This term is defined relevantly in EPA's regulations as an aquifer or its portion which "contains a sufficient quantity of ground water to supply a public water system; and...[c]urrently supplies drinking water for

imminent and substantial endangerment to human health.⁵ When the Agency receives information that a contaminant which presents such an endangerment is either present or likely to enter a underground source of drinking water, and where the “appropriate State and local authorities have not acted to protect the health of such persons” using the source, it can take emergency action as may be deemed necessary to protect the health of those persons.⁶ This action can include “orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment.”⁷

The present situation in Dimock warrants such immediate action under SDWA. As outlined in our January 12, 2012 letter, the Pennsylvania Department of Environmental Protection (“PADEP”) has demonstrated that it does not intend to take any further action regarding the toxic and potentially explosive well water in Dimock. Furthermore, it is clear that Cabot “caused or contributed to the danger” that Dimock residents now face given the abundance of water testing results revealing the presence of chemicals particular to hydraulic fracturing gas drilling and PADEP’s own recognition of Cabot’s responsibility for the contamination of Dimock water.⁸ As with emergency action under CERCLA, there is agency precedent for issuing emergency administrative orders under the SDWA in the oil and natural gas extraction context.⁹ Issuance of such an order demanding Cabot to provide immediate temporary water to the residents of Dimock is, therefore, appropriate.

In writing this supplemental letter, NRDC by no means wishes to suggest that EPA should not take immediate action under CERCLA or any other provision pursuant to which it may have authority to provide Dimock residents with the fresh water they deserve. NRDC merely wishes to highlight another avenue by which the Agency may provide such relief so that it may proceed expeditiously.

human consumption,” and has not been specifically designated an exempted aquifer pursuant to 40 C.F.R. § 144.7. 40 C.F.R. § 144.3.

⁴ The Dimock aquifer meets the regulatory definition of “underground source of drinking water.” The aquifer has not been specifically exempted by EPA and, before contamination, was actively used as a drinking water source. Additionally, the aquifer is adequate in quantity to supply a public drinking water system as more than twenty-five people used the source when it was potable. 42 U.S.C.A. § 300f(4)(A) (defining a “public water system” as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals.”).

⁵ 42 U.S.C.A. § 300i (a).

⁶ *Id.* The statute also requires that EPA consult with State and local authorities to confirm the correctness of that information to the extent determined “practicable in light of such imminent endangerment.” In the present situation, EPA has already consulted with the Pennsylvania Department of Environmental Protection and the urgency of the situation merits immediate response.

⁷ *Id.*

⁸ See PADEP and Cabot, Consent Order and Agreement (November 4, 2009); PADEP and Cabot, Consent Order and Settlement Agreement, (December 15, 2010) (“December COSA”), available at <http://www.dep.state.pa.us/dep/DEPUTATE/MINRES/OILGAS/Final%20COA%20121510.pdf>.

⁹ See, for example, the emergency administrative order dated December 7, 2010 issued to the Range Resources Corporation – a Texas-based drilling operator – regarding water contamination as a result of its natural gas drilling practices in that state. Some contaminants of concern in that case are similar to those found in Dimock water, such as toluene and methane. EPA, Region 6, Emergency Administrative Order to Range Resources Corporation and Range Production Company (December 7, 2010) available at http://www.frackinginsider.com/emergency_range_order%5B1%5D.pdf.

As before, we thank you in advance for what we hope will be your swift action to secure safe and potable drinking water to the residents of Dimock.

Sincerely,



Kate Sinding
Senior Attorney



Daniel Raichel
Legal Fellow

cc:
Lisa Jackson
Administrator