



NATURAL RESOURCES DEFENSE COUNCIL

BY FAX AND OVERNIGHT MAIL

November 22, 2011

The Honorable Michael L. Krancer
Secretary
Pennsylvania Department of Environmental Protection
400 Market Street
Harrisburg, PA 17101

Re: Decision Allowing Cabot Oil and Gas Corporation to Terminate Delivery of Fresh Water to the Residents of Dimock, PA on November 30, 2011

Dear Secretary Krancer:

We are writing to you in connection with the October 18, 2011 decision by the Pennsylvania Department of Environmental Protection (“the Department”) notifying Cabot Oil and Gas Corporation (“Cabot”) that it may terminate provision of temporary fresh water supplies to the residents of Dimock, PA by the end of this month.

As the Department is well aware, these residents lost fresh drinking water when their local wells were contaminated by methane and other hazardous substances through Cabot’s gas drilling practices in and around Dimock. The Department’s October 18th decision is irresponsible given that Dimock residents rely on this temporary fresh water for drinking, bathing, and other household uses, and that the alternative treatment systems being offered have been reported to be inadequate. It is, moreover, beyond the scope of the Department’s legal authority under state law to terminate the delivery of water at this time. NRDC therefore strenuously objects to this decision and calls for its immediate revocation.

The Department has issued multiple notices of violation and entered into a series of consent orders (most recently amended in December 2010) with Cabot over its improper drilling practices and the resulting contamination of nineteen private water wells in Dimock. Indeed, in an October 19, 2010 letter, former Secretary John Hangar himself cited the “overwhelming evidence” showing that “Cabot is responsible for the gas migration that has caused families to be without a permanent water supply for nearly 2 years.”

Under the Pennsylvania Oil and Gas Act (“OGA”), any driller who contaminates a water supply must “restore or replace the affected supply with an alternate source of water adequate in

quantity or quality.” 58 P.S. § 601.208(a). When the Department finds such contamination it is similarly required “to issue such orders to the well operator as are necessary to assure” the restoration or replacement of the supply. 58 P.S. § 601.208(b). The Department’s own regulations set out in detail what benchmarks a water supply must meet to be considered restored or replaced, including that it “be as reliable as the previous water supply;” “be as permanent as the previous water supply;” “provide the water user with as much control and accessibility as exercised over the previous water supply;” and meet “the standards established under the Pennsylvania Safe Drinking Water Act.” 25 Pa. Code § 78.51.

Recognizing Cabot’s responsibility for the Dimock well contamination, the Department’s original November 4, 2009 consent order demanded that Cabot “shall assure that the users of the Affected Water Supplies will receive water in amounts sufficient to continually satisfy water usage needs until the Department notifies Cabot, in writing, that the Department has determined that the Affected Water Supply has been restored.” In the October 19, 2010 letter from John Hanger the Department itself also promised to build a \$11.8 million, “5.5-mile water main from the Lake Montrose treatment plant to provide water service to the residents of Dimock,” which it stated it would initially fund through PENNVEST, an agency that finances water and sewer infrastructure projects, and “then aggressively seek to recover the cost of the project from Cabot.”

Despite these promises, and despite Cabot’s obligation to restore the drinking water under the original consent order, the Department modified the order several times – progressively weakening it. By the time the order was last modified on December 15, 2010, it no longer held that Cabot was required to restore the contaminated drinking water as required by Pennsylvania law but rather simply “that any obligation of Cabot to pay for or restore and/or replace the Water Supplies, or to provide for ongoing operating or maintenance expense” would be satisfied by compliance with Paragraph 6 of that order.

Paragraph 6 does not mention that Cabot ensure the water be clean or safe to drink in accordance with the OGA and its implementing regulations. It provides only that Cabot establish nineteen escrow funds, each with twice the value of the property owned by the households still affected by contaminated water, and offer the funds to those households along with a promise to install a whole house methane treatment system. The order further provides that once the Department has certified that Cabot has done these two things, Cabot will no longer be responsible for providing daily fresh water to the affected Dimock residents. This modification of the order was challenged by Dimock residents in the Pennsylvania Environmental Hearing Board on January 11, 2011.

On October 17, 2011 Cabot sent a letter to the Department claiming that it had complied with the terms of Paragraph 6. The very next morning, without any notice to the affected residents, the Department sent a letter back to Cabot – essentially copying and pasting paragraph 6 of the modified order – stating “the Department has determined that Cabot has satisfied the terms and conditions of Paragraph 6 of the [modified consent order] and therefore grants Cabot’s request to discontinue providing temporary potable water to the remaining property owners” beginning November 30, 2011. Having been denied any official notice from the Department, the residents learned of the Department’s action through media reports. Notably absent from the

letter is any finding by the Department that the water is safe to use or that the whole house mitigation system is effective at providing clean water.

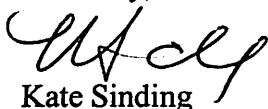
Testing results, some of them conducted by the Department's own Bureau of Laboratories, demonstrate that the drinking water of Dimock residents contains elevated levels of aluminum, barium, beryllium, iron, manganese, toluene, tributyl phosphate, and non-naturally occurring chemicals associated with fracking such as bis (2-Ethylhexyl) adipate and bis (2-Ethylhexyl) phthalate – all in excess of primary and secondary drinking water standards under both the federal and state Safe Drinking Water Acts. Furthermore, NRDC has been informed that even *after* treatment by whole house treatment system, some residents still have found toxic chemicals in their water such as ethylene glycol – otherwise known as antifreeze. Residents have also indicated that the system has been almost completely ineffective at removing other contaminants such as strontium, manganese, aluminum, barium, calcium, iron, potassium and sodium, as well as turbidity.

In light of this information, the Department's action allowing Cabot to suspend provision of temporary fresh water supplies to the Dimock residents is not only unconscionable but it is also outside the Department's scope of authority and inconsistent with the OGA. As noted, the OGA requires that any driller who contaminates a water supply must "restore or replace the affected supply with an alternate source of water adequate in quantity or quality." 58 P.S. § 601.208(a). *See also* 25 Pa. Code § 78.51.

The contaminated water now sitting in the drinking water wells of Dimock residents does not meet the standards of the OGA or of the Department's own stringent regulatory standard implementing this provision. The Department cannot, through private negotiations with a regulated party, ignore relevant Pennsylvania law. Nor can it determine that a driller has restored or replaced a contaminated water supply without saying how and why that supply is now meets the very specific and demanding standard of the OGA and its implementing regulations. When a driller's obligations have not been satisfied, the Department is under its own obligation to issue orders to ensure that they are. 58 P.S. § 601.208(b). As such, the Department's actions, both modifying the original consent order and absolving Cabot of its statutory responsibilities without reference to the appropriate regulatory standard, are beyond the scope of the agency's authority and in derogation of its own statutory responsibilities.

In sum, NRDC strongly urges the Department to rescind its unlawful action allowing Cabot to terminate delivery of temporary fresh water supplies on November 30, and immediately issue orders to Cabot sufficient to guarantee that the affected Dimock residents' drinking water be restored or replaced in accordance with the OGA.

Sincerely,



Kate Sinding

Senior Attorney

Natural Resources Defense Council

cc: Tom Corbett
Governor
Commonwealth of Pennsylvania

Shawn M. Garvin
Regional Administrator, Region 3
U.S. Environmental Protection Agency