

---

# WUC

Water Utility Council of the  
PA-Section, American Water  
Works Association (PA-AWWA)



## GOVERNMENT RELATIONS UPDATE

### From Gmerek Government Relations, Inc.

---

212 Locust Street ♦ Suite 300 ♦ Harrisburg, PA 17101 ♦ Phone: 717-234-8525 ♦ Cell: 717-574-3963 ♦ Fax:  
717-234-8812 ♦ Erik A. Ross, Senior Lobbyist ♦ [www.ggrgov.com](http://www.ggrgov.com)

Harrisburg, PA

[eross@ggrgov.com](mailto:eross@ggrgov.com)

July 28, 2014 -- Issue 902

---

*PA- Section, American Water Works Association  
National Association of Water Companies  
Water Works Operators' Association of Pennsylvania*

---

## Auditor General DePasquale Says Rapid Shale Gas Development Outpaced DEP's Ability to Oversee Industry, Protect Water Quality

**O**n July 22, 2014, Auditor General Eugene DePasquale said that a recent audit shows that the meteoric growth of the shale gas industry caught the Department of Environmental Protection unprepared to effectively administer laws and regulations to protect drinking water and unable to efficiently respond to citizen complaints.

“There are very dedicated hard-working people at DEP but they are being hampered in doing their jobs by lack of resources – including staff and a modern information technology system -- and inconsistent or failed implementation of department policies, among other things,” DePasquale said. “It is almost like firefighters trying to put out a five-alarm fire with a 20-foot garden hose. There is no question that DEP needs help and soon to protect clean water.”

The audit covered the period of 2009 through 2012 and was launched by DePasquale in January 2013 immediately after he became auditor general. The audit's purpose was to assess DEP's ability to protect the water quality in the wake of greatly escalated shale gas well drilling.

The audit revealed that DEP failed to consistently issue official orders to well operators who had been determined by DEP to have adversely impacted water supplies. After reviewing a selection of 15 complaint files for confirmed water supply impact, auditors discovered that DEP issued just one order to a well operator to restore or replace the adversely impacted water supply.

DEP claims that in many cases such orders are procedurally unnecessary as well operators may have already taken steps to restore the water supply under what the agency terms “voluntary compliance.”

“When DEP does not take a formal, documented action against a well operator who has contaminated a water supply, the agency loses credibility as a regulator and is not fully accountable to the public,” DePasquale said. “When DEP has enforcement authority under the law it must exercise that authority routinely,

consistently, and transparently.

Those gas well operators whose actions cause harm to water supplies should not get an enforcement ‘pass’ just because they have convinced DEP that they will come into compliance with the law or that they negotiated a settlement with the property owner.”

Auditors also reported that DEP did a poor job in communicating its investigation results to citizens who registered complaints with the department. The agency was not always timely in meeting statutory timeframes for response to complaints it did receive.

“For example, of the water-related complaints reviewed by auditors, the DEP Williamsport regional office responded to complaints within 10 days, 100 percent of the time, while the DEP Pittsburgh regional office responded to the complaints within the 10-day time period only 64 percent of the time,” DePasquale said. “Why would citizens in the Pittsburgh area have to wait longer for a response than people in the Williamsport area?”

Auditors also noted that DEP’s complaint tracking system, which is used to monitor all environmental complaints, including those that are oil and gas related, was ineffective as it did not provide management with reliable information to effectively manage the program.

“We could not determine whether all complaints received by DEP actually were entered into the system. What’s more, because of how DEP grouped related complaints, it is difficult to figure out exactly how many complaints were received, investigated, and resolved by DEP,” DePasquale said. “While DEP did issue a new policy related to complaint handling, for most of our audit period the existing policy was woefully inadequate. DEP must get that complaint system working.”

In the area of inspections, auditors attempted to measure how quickly DEP was in conducting its initial inspection of shale gas wells, a basic regulatory responsibility. Unfortunately, auditors were thwarted by DEP’s lack of reliable data—

learning that only a “needle in a haystack” review of thousands of hard-copy files would ever yield a conclusion. Worse, DEP uses a 25-year-old policy on the frequency of inspections, which has a “loop hole,” that only requires DEP to conduct inspections as it has the financial and human resources to do so.

Auditors also found that DEP does not post to its website all statutorily required inspection information. When the data was tested for accuracy, the auditors found errors of more than 25 percent in key data fields, and that as many as 76 percent of inspectors’ comments were omitted from the online inspection reporting.

“It is unfathomable to us that for a basic responsibility of DEP -- inspecting oil and gas facilities – little criteria exists for when those inspections should occur,” DePasquale said. “Until DEP updates its out-of-date inspection policies, to include mandated inspections at specific critical drilling stages and during the life of the well, it will be nearly impossible to measure DEP’s performance in conducting this very basic responsibility to protect the environment.”

The auditors also noted that DEP does not use a manifest system for tracking shale gas well waste from the well site to disposal. Instead DEP relies upon a disjointed process that includes self-reporting by well operators with no assurances that waste is disposed of properly.

With respect to transparency, auditors discovered that accessing DEP data is challenging as it is a myriad of confusing web links and jargon. The information that was presented on its decades-old eFACTS database was often incomplete—requiring a physical review of hard-copy files at distant offices to verify the actual information.

“Through our audit we found that even conducting a review of hard-copy files is not a fool-proof guarantee, as we found some supporting paper files were missing and DEP was not able to produce them,” DePasquale said. “DEP must improve how it conveys reliable

information to the public for an activity that is as high-profile as shale gas development.”

Of the eight audit findings and 29 recommendations to improve DEP’s monitoring of potential water quality impacts of shale gas development, DEP disagreed with all audit findings, but conversely agreed with the majority of the recommendations, indicating that there is some acknowledgement on DEP’s part that it must improve. Eighteen of the 29 recommendations do not require additional funding.

“There was plenty of back and forth with DEP during this audit, and in some cases we just could not agree on some findings,” DePasquale said. “What matters here is the protection of our drinking water supplies. Implementing these 29 recommendations, two of which were directed to the General Assembly, will go a long way now to protecting drinking water resources. When we look back five years from now, I believe everyone will all agree that our environment and our quality of life are better because of this audit.”

Among the recommendations, auditors encouraged DEP to:

- always issue an administrative order to a well operator who DEP has determined adversely impacted a water supply—even if DEP used the cooperative approach in bringing the operator into compliance or if the operator and the complainant have reached a private agreement;
- develop better controls over how complaints are received, tracked, investigated, and resolved;
- invest resources into replacing, or significantly upgrading, its complaint management system;
- find the financial resources to hire additional inspectors to meet the demands placed upon the agency;
- implement an inspection policy that outlines explicitly the requirements for timely and frequent inspections;
- create a true manifest system to track shale gas waste and be more aggressive in ensuring that the waste data it collects is verified and reliable;

- reconfigure the agency website and provide complete and pertinent information in a clear and easily understandable manner;
- invest in information technology resources and develop an IT structure that will ensure its oil and gas program has a strong foundation for the ongoing demands placed upon it; and
- develop an all-electronic inspection process so that inspection information is accurate and timely to DEP—and more importantly—public stakeholders.

“Shale gas development offers significant benefits to our commonwealth and our nation, but these benefits cannot come at the expense of the public’s trust, health, and well-being,” DePasquale said. “We must collectively find solutions to this challenge so that Pennsylvania becomes a leader among states in regulating shale gas development. I am committed to working with the governor, the General Assembly, and other partners to ensure this audit begins that discussion.”

A full copy of the audit report is available [here](#).

**Source:** Auditor General DePasquale’s Press Release, 7/22/2014

## **Auditor General Performance Report Validates DEP’s Work Regarding Unconventional Gas Drilling Activities; DEP has already implemented many of the AG’s recommendations**

**O**n July 22, 2014, the Auditor General’s Office released the Special Audit of DEP’s Performance in Monitoring Potential Impact to Water Quality from Shale Gas Development for the period 2009 through 2012, finding no instances where DEP failed to protect public health, safety or

the environment with respect to unconventional gas drilling activities.

The audit report encompasses the period of January 1, 2009 through December 31, 2012 and focuses largely on DEP's management of electronic data with respect to water supply complaint investigations.

"For the past 16 months, we've cooperated fully with the Auditor General's Office and we appreciate the professionalism shown by their staff," DEP Secretary E. Christopher Abruzzo said. "As we've explained to the auditors, because the report focused on the time period up until the end of 2012, most of this audit reflects how our Oil and Gas Program formerly operated, not how the program currently functions.

Throughout the audit period until the present, DEP's Oil and Gas Program has made great strides improving the effectiveness of its regulatory efforts and its transparency to the public. Also, it's important to recognize that Act 13 of 2012, the first significant amendment to Pennsylvania's oil and gas laws in over 30 years, was enacted during the audit period, introducing sweeping changes to DEP's regulatory authority over the unconventional natural gas industry.

"We're not surprised by the results of this audit; we've volunteered to have our Oil and Gas program audited numerous times in the past by a nonprofit, multi-stakeholder organization called State Review of Oil and Natural Gas Environmental Regulations, Inc. (STRONGER)," Abruzzo said. "The most recent STRONGER audit was in March of 2013, and they found our program to be proficient and ready to address the increase of oil and gas operations in Pennsylvania, specifically praising our hydraulic fracturing and well construction regulations that are designed to protect fresh groundwater."

"We also agree with many of the helpful recommendations in the Auditor General's report. In fact, thanks to the leadership of Governor Corbett, the emphasis he puts on protecting the environment, and the increased protections in Act 13, many of these recommendations have already

been implemented, or are in the process of being implemented," Abruzzo said.

Findings that DEP disagrees with include that "DEP did not routinely and consistently issue orders requiring oil and gas operators to restore or replace adversely impacted water supplies as required by law." In these instances, orders were not necessary. The operators in those instances had already remediated the affected water supplies without an order.

"DEP's goals are to determine if oil and gas activities contaminated a water supply and to ensure restoration of that water supply if it is warranted," Abruzzo said. "If an operator voluntarily replaces or restores an impacted water supply prior to DEP's determination, negating the need for an order, our goals are still achieved."

Further, several of the 15 cases highlighted by the Auditor General were not related to unconventional drilling activities and while some of the cases are still pending, the operators in question have been fined more than \$848,000 to date.

Also, DEP does not agree with the Auditor General's finding that "DEP utilizes an ineffective complaint tracking system that does not provide management with timely and accurate complaint information related to oil and gas activities."

DEP's Complaint Tracking System (CTS) is an internal case management tool developed for and utilized by the entire Department, rather than just the Oil and Gas Program. However, with the recent expansion of unconventional oil and gas activities, DEP realized that CTS lacked some functionality with respect to tracking data specific to the Oil and Gas Program. Due to this, DEP's Bureau of Information Technology made numerous adjustments to CTS in July 2011 and July 2012 to allow for more precise tracking of information related to water supply complaints. Consequently, many of the criticisms contained in this finding have already been addressed.

DEP does not agree with the Auditor General's finding that "it could not provide reliable assurance that all active shale gas wells were inspected timely." In fact, the audit staff acknowledged that

they did not conduct a comprehensive review of the information necessary to make this conclusion.

DEP is committed to inspecting all unconventional gas wells during “critical stages” of the well construction process and DEP has significantly increased unconventional well site inspections over the past five years. In 2008, DEP conducted 1,262 unconventional well inspections. By 2012, the number of inspections increased to 12,680 and remained steady through 2013.

DEP concurs with many of the Auditor General’s recommendations regarding this finding – many of which are currently being implemented, including some enacted through Act 13.

Also, in June, a fee increase on unconventional well permits went into effect, which is projected to result in additional annual revenue of approximately \$4.7 million, supporting new information technology projects related to oil and gas, including streamlining electronic review, mobile digital inspections, upgrades to reporting systems and modernization of forms and databases. The new revenue will also be used to hire additional Office of Oil and Gas Management staff for inspections, policy and program writing, and permitting.

For a full finding by finding response to the Auditor General’s report visit [www.dep.state.pa.us](http://www.dep.state.pa.us) and click on the DEP Audit Response button.

Source: DEP Press Release, 7/22/2014

## Governor Corbett Announces \$81.5 Million Investment in Water Infrastructure Projects in 11 Counties

**O**n July 22, 2014, Governor Tom Corbett announced the investment of \$81.5 million in 14 non-point source, drinking water and wastewater projects across 11 counties through the Pennsylvania Infrastructure Investment Authority (PENNVEST).

“Through the PENNVEST program and its Board of Directors, we continue to make investments in water-related infrastructure improvements that protect public health, clean the environment and enhance Pennsylvania’s economic climate,” Governor Corbett said. “Furthering these goals will continue to be of the highest priority to me and will continue to shape the focus of this program.”

Of the \$81.5 million, \$66.5 million is for low-interest loans and \$15 million is offered as grants.

The awards range from a \$100,000 grant to eliminate nutrient run-off from a farm in Cambria County in order to help with restoring the Chesapeake Bay, to a \$13,785,287 loan to a community in Northumberland County to eliminate discharges of raw sewage into the Susquehanna River that occur during heavy rains.

The funding comes from a combination of state funds approved by voters, federal grants to PENNVEST from the Environmental Protection Agency and recycled loan repayments from previous PENNVEST funding awards. Funds for the projects are disbursed after bills for work are paid and receipts are submitted to PENNVEST.

For more information, visit [www.pennvest.state.pa.us](http://www.pennvest.state.pa.us) or call 717-783-6798.

**Note:** A list of project summaries follows:

### **PENNVEST Non-point Source Projects:**

#### Cambria County

**R J Davis Farm** received a \$100,000 grant to construct manure management facilities to eliminate nutrient runoff into Swartz Run and, eventually, the Chesapeake Bay.

#### Lancaster County

**Joseph Smucker** received a \$208,842 grant to construct manure storage facilities, a composting facility, grassed waterways, animal trails and other improvements to eliminate nutrient runoff into the Little Conestoga and, eventually, the Chesapeake Bay.

#### Union County

**Harmony Springs Farm** received an \$821,212 loan to construct two manure storage tanks, animal trails, a stream crossing and other improvements to eliminate sediment, nutrient and pathogen-laden runoff into Penns Creek.

**PENNVEST Drinking Water Projects:**

Cambria County

**Hastings Municipal Authority** received a \$3,879,859 loan and a \$1,353,305 grant to construct an interconnection to the Elder Township water system, install over a mile of new distribution lines and cover a raw water reservoir in order to provide safe and reliable water service to its customers.

Greene County

**East Dunkard Water Authority** received a \$4,443,755 loan and a \$5,040,141 grant to install almost fourteen miles of new water distribution lines, three new water storage tanks and make other improvements that will allow it to take over a neighboring nonviable water system that loses about half of its water to leaks and whose customers are frequently without water for long periods of time.

Lycoming County

**Williamsport Municipal Water Authority** received a \$9 million loan to construct a new pump station, a new water storage tank and about five miles of water distribution lines in order to eliminate low pressure and related drinking water contamination problems in three nearby communities served by the Authority.

Mifflin County

**Lewistown Borough Municipal Authority** received a \$4 million loan to construct over three miles of new water distribution lines and make other improvements that will provide safe drinking water to local residences as well as a health care business that will be able to expand its facility and create 100 new professional, technical and service jobs in the area.

Washington County

**Pennsylvania American Water Company** received a \$8,370,000 loan to construct about nineteen miles of drinking water distribution lines to serve residents in parts of eight communities whose wells do not produce sufficient drinking

water and the water that is produced is often contaminated by nearby malfunctioning on-lot septic systems.

Westmoreland County

**Westmoreland County Municipal Authority** received a \$200,000 loan to install more than two miles of new water distribution lines to serve homes in a local community whose drinking water is contaminated with coliform bacteria from nearby malfunctioning on-lot septic systems.

York County

**Pennsylvania American Water Company** received a \$5,357,480 loan to construct over six miles of drinking water distribution lines to serve 350 households that do not have fire protection and whose drinking water wells are contaminated by nearby malfunctioning on-lot septic systems.

**PENNVEST Wastewater Projects:**

Armstrong County

**Leechburg Borough** received a \$4,311,862 loan and a \$6,658,709 grant to construct more than seven miles of new sanitary sewer collection lines in order to eliminate wet weather overflows of its combined sewer system that result in the discharge of contaminated storm water into the Kiskiminetas River.

Cambria County

**Johnstown City** received a \$10.9 million loan to install almost seven miles of new sanitary sewer collection lines in order to eliminate wet weather overflows of its combined sewer system that result in the discharge of contaminated storm water into the Little Conemaugh River.

Lancaster County

**Strasburg Township** received a \$1,405,997 loan and a \$1,639,003 grant to construct almost two miles of sewage collection lines and a small sewage treatment facility to serve homes that currently have no centralized service and whose malfunctioning on-lot septic systems are contaminating local drinking water wells.

Northumberland County

**Northumberland Borough** received a \$13,785,287 loan to construct a new sewage treatment plant and

to rehabilitate an existing pump station in order to eliminate wet weather bypasses of untreated sewage into the Susquehanna River.

**Source:** Governor's Press Office, 7/22/2014

## **DEP Extends Alternative Fuel Vehicle Rebate Program**

**O**n July 24, 2014, the Department of Environmental Protection (DEP) announced the extension of the Alternative Fuel Vehicle Rebate program, which will continue to provide \$2,000 rebates for 500 additional large-battery system plug-in hybrid electric and battery-electric vehicles, or until Dec. 31.

"The Corbett administration remains committed to seeing the alternative fuels market grow," DEP Secretary E. Christopher Abruzzo said. "Our commitment represents an impressive total investment of \$4.35 million towards the deployment of electric vehicles in Pennsylvania since 2011."

Large-battery vehicles that have battery system capacities equal or greater than 10 kilo-watt hours (kWh), including models such as the Nissan Leaf, Ford Focus, BMW, Tesla and Chevy Volt, are eligible for the highest rebate amount of \$2,000. DEP is also extending rebates of \$1,000 for plug-in hybrid electric vehicles and battery-electric vehicles with battery system capacities of less than 10 kWh, including models such as the Toyota Prius plug-in, Ford C-Max Energi, Ford Fusion and Honda Accord.

Rebates of \$1,000 are being extended for natural gas, propane, hydrogen or fuel-cell vehicles, such as the CNG powered Honda Civic or any 2014 CNG powered car or pickup truck. CNG original equipment, manufacturer retrofits or certified conversions to CNG or propane are also eligible for the \$1,000 rebate. A \$500 rebate is available for electric motorcycles and scooters.

DEP provides these rebates as incentives to assist Pennsylvanians with the incremental cost of purchasing an alternative fuel vehicle. To qualify,

the vehicle must be registered in Pennsylvania, operated primarily in-state and be purchased no more than six months before the rebate application is submitted. The rebates are funded by the Alternative Fuels Incentive Grant Program, which is supported by a gross receipts tax on utilities.

Rebate applications and updated guidelines are available on DEP's website, [www.dep.state.pa.us](http://www.dep.state.pa.us), Keyword: Alternative Fuel Vehicle Rebates. Information on rebate availability will be updated regularly.

**Source:** DEP Press Release, 7/24/2014

## **EPA Seeks Comments on Potential Revisions to its Risk Management Program**

**O**n July 24, 2014, the U.S. Environmental Protection Agency (EPA) published a Request for Information (RFI) to seek comment on potential revisions to its Risk Management Program (RMP) regulations and related programs to modernize its regulations as required under Executive Order (EO) 13650: Improving Chemical Facility Safety and Security.

"Chemical safety and security are a shared commitment among government, industry, public interest groups and communities," said Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response. "We are reaching out to all these partners to ask for their suggestions and comments to help us improve the Risk Management Program, and in turn improve safety and security of chemical facilities."

During the 90-day comment period, EPA asks for information and data on specific regulatory elements and process safety management approaches to enhance public health and safety, and aid local fire, police, and emergency response personnel to prepare for and respond to chemical emergencies. The information received will be used when reviewing chemical hazards covered by the RMP and to determine how this program should be

expanded to improve chemical facility safety. The RFI does not commit the agency to rulemaking.

EO 13650 requires the Occupational Safety and Health Administration (OSHA) and EPA to review the chemical hazards covered by their existing risk management programs and develop options to improve those programs. OSHA issued an RFI on potential changes to its Process Safety Management (PSM) standard on December 9, 2013. EPA's RFI closely coordinates with the potential changes to OSHA's PSM program for accident prevention measures.

The RFI addresses potentially updating the list of RMP regulated substances, and adjusting threshold quantities and toxic endpoints based on Acute Exposure Guideline Level (AEGL) toxicity values. The RFI seeks comment on strengthening or clarifying several existing process safety elements under the RMP including compliance audits, maintenance of safety critical equipment, managing organizational changes, emergency response capabilities, and incident investigation. It also seeks comment on adding additional risk management program elements, such as consideration of using inherently safer technology, process safety metrics, automated monitoring of releases, emergency drills, stop work authority, and addressing facility location (siting) risks. Some of the items under consideration were discussed at the public listening sessions held on the EO or in comments received on the January 2014 EO Section 6(a) options for policy, regulations and standards modernization to improve chemical facility risk management.

To view EPA's RFI and provide public comment, visit [http://www.epa.gov/emergencies/eo\\_improving\\_chem\\_fac.htm](http://www.epa.gov/emergencies/eo_improving_chem_fac.htm)

The public will have 90 days to submit written comments online, [www.regulations.gov](http://www.regulations.gov) (the portal for federal rulemaking), or by mail.

**Source:** EPA Press Release, 7/24/2014

**#####**

***This newsletter provides general information, not legal advice as to any specific matter. It***

***should not be used as a substitute for appropriate legal advice.***