

**Enforcement of Marcellus Shale Drilling Violations by  
Pennsylvania Department of Environmental Protection  
Jan. 1, 2011 – Dec. 31, 2011**

An examination of the violations issued to natural gas drilling operators by the Pennsylvania Department of Environmental Protection (DEP) provides us with insight into specific operating activities that violate the law and threaten our health and environment. However, this only tells us part of the story. What has been missing is analysis of DEP’s level of enforcement activity in response to these violations, and whether DEP is being successful in holding violators accountable for their actions.

In 2011 43 different natural gas drilling companies were cited 1,192 times for operating activities that violated various environmental laws. Below is an analysis of the enforcement actions taken by DEP in response to these activities.

<b>Total Violations for 2011</b>	1,192
<b>Notice of Violation Issued</b> <i>(35% of total violations)</i>	421
<b>Consent Order &amp; Agreements Issued</b> <i>(0.05% of total violations)</i>	7
<b>Consent Assessment of Civil Penalties Issued</b> <i>(6% of total violations)</i>	80
<b>Violations Receiving No Enforcement Action</b> <i>(63% of total violations)</i>	753
<b>Violations Receiving No Fines</b> <i>(93% of total violations)</i>	1,105
<b>Total Fines Collected</b>	\$2,452,988

*Source: PA Department of Environmental Protection website as of May 1, 2012  
Definitions: Please see Glossary on Pg. 4, definitions taken from DEP website*

**Lack of Penalties**

More than 9 out of every 10 violations by Marcellus Shale gas drilling companies resulted in no fines from DEP. Of the 508 enforcement actions taken only 87 or 17% carried a monetary penalty. A large share of the total fines collected was

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from 10 violations by Chesapeake Appalachia Inc, who paid \$1,353,602 or 55% of the total fines collected.

## Inconsistent Fines

There are numerous cases where DEP assessed a fine to one company for a violation but not to another who commits an identical violation.

8 fines ranging from \$3,500-\$190,000 were issued for pits and tanks not being constructed with sufficient capacity to contain pollution substances (78.56). An additional 93 incidents for the same violation received no fine.

6 fines ranging from \$4,750-\$18,025 were issued for failing to properly control or dispose of industrial or residual waste to prevent pollution of the waters of the Commonwealth (78.54). An additional 62 incidents for the same violation received no fine.

12 fines ranging from \$6,000-\$190,000 were issued for the discharge of pollution material into waters of Commonwealth (401CSL). An additional 41 incidents for the same violation received no fine.

DEP's inconsistency raises concern over whether they are holding companies accountable and deterring them from operating in a manner that threatens our health, safety, and environment.

## Serious Violations Overlooked

The cementing and casing of a gas well is one of the most important steps in the drilling process, ensuring groundwater aquifers are protected. DEP ruled that the contamination of drinking water wells in Dimock was the result of a bad cement job. DEP issued 119 violations for three types of violations, 1) failure to report defective, insufficient, or improperly cemented casing, 2) inadequate, insufficient, and/or improperly installed cement, and 3) improper casing to protect fresh groundwater (207B, 78.83, 78.84, 78.85, 78.86). **Despite the stakes, DEP only issued fines for 17 of the 119 cementing/casing violations.**

Surface water is one of the primary sources of drinking water for roughly 84% of Pennsylvanians. There were 4 violations issued by DEP for drilling within 100ft of surface water without obtaining a variance (205B). DEP only issued 1 fine for \$10,534.

Susquehanna and Lycoming County were the biggest victims of DEP's inconsistencies and lax enforcement. Both counties ranked first and second among counties for total violations with 293 and 186 respectively. These violations covered a wide range of areas from improper casing, to improper construction of tanks or pits, to discharge of industrial waste to waters of the

Commonwealth. **Of the combined violations in Susquehanna and Lycoming Counties, DEP issued only 119 enforcement actions, all notices of violation, and NONE of them carried any fines.**

### **Conclusions and Recommendations:**

In 2011, the Department of Environmental Protection (DEP) continued to aggressively issue violations to oil and gas companies for operating activities that violated the law. However, these violation citations had “little teeth” behind them, as less than half received an enforcement action and only 7% carried monetary fines. DEP issued fines in an inconsistent manner, and overlooked serious violations of environmental rules. This analysis raises serious concern as to whether DEP is holding industry accountable for their actions and deterring them from operating in an irresponsible way.

Having laws that protect the environment and health of citizens are only effective if they enforced through issuing violations to those who break them and violations are only effective if they are accompanied by punishments that provide resolution to the situation and deter future illegal actions. If DEP is to effectively carry out its 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, they must provide a strong and consistent approach to all facets of oversight.

**Clean Water Action recommends the following actions** must be taken by the Commonwealth and DEP to consistently enforce violations and stop giving companies so much leeway when it comes to resolving their crimes:

1. DEP should enact and implement a consistent policy of minimum penalties for significant violations by the oil and gas industry, including cementing/casing violations, illegal disposal of wastewater, and frac pit leaks. Violations issued for activities that are a direct threat to the environment and health of the community must not be resolved through only quick fix. These are serious threats that require stiff penalties to ensure they don’t happen again.
2. DEP must enact harsher punishments for those operators who demonstrate a track record of continued irresponsible behavior. Repeat violators clearly need a greater deterrent to ensure compliance with the law.
3. Penalties for violations should take into account the economic gain of not complying with environmental laws. The oil and gas industry is one of the most profitable set of companies on the planet, but they should not be making profit at the expense of Pennsylvania’s health and environment.
4. Penalties for violations should have a goal of deterring future violations, and the enormous profits of the gas industry should be taken into account in these determinations. Companies should not consider paying fines a ‘cost of doing

business' in Pennsylvania. DEP should also consider non-monetary actions, especially for repeat violators, such as barring companies from receiving additional gas drilling permits.

5. While DEP has devoted resources to increasing inspection of gas drilling operations, it apparently did not devote additional resources to the enforcement of violations found by those inspectors. DEP should increase their budget for enforcement of violations by the Marcellus Shale gas drilling industry. Gov. Corbett and the state legislature should likewise stop cutting DEP's budget every year and provide additional resources for the protection of Pennsylvania residents and the environment.

## **Glossary:**

**Notice of Violation:** is the first step in formal enforcement action and may be applied to municipalities, local agencies and individuals. An NOV is sent within 14 calendar days of determining that a violation has occurred and that enforcement action is warranted. Representing an official notification or documentation of a violation, it rarely includes direct consequences, but rather, contains suggested or expected corrective actions that the recipient may take to avoid further action by DEP and cautions about consequences of inaction. An NOV documents a "history" of noncompliance and is used to support stronger enforcement actions. It is specifically written to be an initial enforcement action that is not appealable by the recipient.

**Consent Assessment of Civil Penalties:** Individuals, local agencies and municipalities may be assessed civil penalties for violations, and municipalities may specifically receive a CPA for failing to submit required planning. Two guidance documents specifically address CPA procedures and practice, Act 537 Program Guidance; Civil Penalty Assessment Processing, DEP ID: 362-4180-005 provides a consistent internal method for processing CPA actions and the second, Act 537 Program Guidance; Calculating Civil Penalty Assessment Amounts, DEP ID: 362-4180-004 provides for consistency when calculating appropriate CPA amounts.

**Consent Order & Agreements:** Is a negotiated agreement that is binding on all signature parties. It documents formal contractual arrangements between the parties and normally includes activities to be completed, a schedule for completion of those activities and stipulates specific penalties for failure to comply. Negotiation of a CO&A normally involves DEP technical, compliance, legal and management staff.

<b>Name</b>	<b>Fine Total</b>	<b>Fined Violations (# of fined violations)</b>
Atlas	\$112,500	Failure to notify DEP of an incident, properly construct a pit or tank, & prevent release of pollution substance. (3)
BLX	\$1,000	Failure to submit well records. (1)
Carrizo	\$82,524	Failure to properly construct a pit or tank & properly store or transport waste. (4)
Chesapeake	\$1,353,602	Failure to properly construct a pit or tank, post pit approval number, comply with order, & properly store or transport waste. Illegal discharge of waste. (10)
Chevron	\$65,250	Illegal discharge of waste. Failure to properly control or dispose of waste & prevent E&S. (11)
Chief	\$13,000	Failure to properly construct a pit or tank, properly control or dispose of waste, & properly store or transport waste. (3)
CNX	\$25,000	Improper cement casing. (1)
Energy Corp	\$14,128	Failure to submit completion report & prevent E&S. (2)
EXCO	\$171,240	Failure to comply with permit, submit well record, plug a well, properly control or dispose of waste, & store or transport waste. Impoundment not structurally sound. Illegal discharge of waste. (8)
MDS	\$10,000	Failure to submit well record & completion report. (2)
Novus	\$66,933	Failure to prevent E&S, notify DEP of an incident. Illegal discharge of waste. (3)
Patriot	\$2,000	Failure to submit well record & completion report. (2)
Phillips	\$11,000	Failure to restore well site, prevent E&S, properly construct a pit or tank. (3)
Range Resources	\$94,125	Failure to submit well record, properly store or transport waste, properly control or dispose of waste (7)
SM Energy	\$1,500	Failure to submit well record. (3)
Snyder Bros	\$7,250	Improper coal protective casing and cementing procedures (1)
Talisman	\$154,436	Failure to adopt pollution prevention measures, properly construct a pit or tank, store or transport waste. (3)
Tanglewood	\$9,000	Failure to submit well record & completion report. (2)
Triana	\$98,000	Failure to adopt pollution prevention measures, prevent E&S, & achieve stabilization of earth disturbance. Illegal discharge of waste. (10)

Ultra Resources	\$120,000	Residual Waste mismanaged. Solid waste handled contrary to rules and regulation. Failure to post info at drill site. (3)
WPX	\$38,500	Failure to implement BMPs, maintain impoundment 2” freeboards, & submit well record. (4)
XTO	\$2,000	Failure to submit well record. (1)