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Senate of Pennsylvania

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PUBLIC HEALTH & WELFARE

June 21, 2011

The Honorable Jim Cawley
Lieutenant Governor
Chair, Marcellus Shale Advisory Commission
200 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Cawley:

Many people believe that Marcellus Shale natural gas drilling is the most significant issue facing the 20th Senatorial District. Pennsylvania is faced with the challenges of finding the right balance between environmental protection and economic benefit with regard to gas drilling. The citizens of the northeast hold a full range of views, from those who want to realize the maximum economic benefit, to those who want a drilling ban. My district also includes both the Susquehanna River Basin Commission and the Delaware River Basin Commission, each of which has different powers and different approaches to drilling.

With so much drilling activity occurring and more to come, we must have sufficient standards and safeguards in place to protect public health and the environment. The following recommendations are based upon extensive community input I have received over the past two years.

Infrastructure

Pipeline Safety

As you know, while the federal Office of Pipeline and Hazardous Materials Safety Administration (PHMSA) has jurisdiction over all pipeline facilities, it relies on agreements with each state to inspect and enforce federal pipeline safety regulations. Currently, the Pennsylvania Public Utility Commission (PUC) is only authorized to enforce regulations for pipeline operators with public utility status. These lines need to be registered so that we know where they are, and the PUC must be authorized with the appropriate safety jurisdiction over pipelines. The Senate has passed Senate Bill 325, which I sponsored, to accomplish this. Additionally, PHMSA does not regulate Class 1 gathering lines, which are located in rural areas where most of the Marcellus Shale drilling is taking place. I plan to introduce legislation to grant the PUC safety oversight of these lines as well.

PA One Call

Gathering lines and some intrastate lines that are not currently regulated by the PUC are not included in the PA One Call System. All lines, including Class 1 gathering lines, should be subject to this requirement so that these lines are protected during excavation, demolition, or similar work.

Local Road Bonding

Bluestone quarry operators, milk haulers and loggers are concerned about potential impacts and increased costs to their operations as a result of increased bonds. State roads cannot be bonded, so any repairs needed must be paid for through already insufficient transportation funding allocated for each district. The commission should consider a mechanism to allow for quick infrastructure repairs rather than forcing projects to go through the lengthy TIP process.

Public Health, Safety and Environmental Protection

Water Quality and Safety

Disposal of wastewater into our public water systems should be prohibited by regulation and a requirement established to track wastewater from pickup to treatment so that we know where this water is at all times. Setbacks from public water supplies should be increased. I have previously introduced legislation on this issue and will be submitting a revised plan in the near future.

One of the most consistent complaints from the public is the reluctance of companies to divulge the mix of chemicals used to frack each well. That information is necessary for emergency response but should also be available to the community-at-large. Because all of the chemicals used have been reported to DEP, it does not seem to interfere with any interests to disclose the mix for each well.

Water monitoring and testing before and after drilling should be required. If baseline testing prior to drilling is not required to establish water quality, operators will continually be at fault and there will be endless disputes and litigation. A baseline water well testing requirement will diminish the debate.

State Agency Staffing

Sufficient DEP staff to properly review and enforce gas drilling is essential. Drilling is taking place in areas that are environmentally sensitive and in places close to critical watersheds. As more inspectors are deployed to monitor more drilling sites, we must ensure there is comparable thoroughness to the inspections and consistent application of penalties for violations.

We have repeatedly been assured that the increasing number of DEP inspectors and stronger regulatory standards would provide sufficient protection for our water, air and land. As more drilling accidents occur, Pennsylvania still appears to be lacking on both the upfront prevention of problems and the long-term oversight to properly protect our communities and the environment. Reports of relaxed permitting reviews undermine effective enforcement. Thorough, rigorous reviews are necessary before drilling is permitted and proper enforcement of standards after drilling has commenced are crucial to protect our water supplies. Inspectors need to be familiar with the areas where drilling is taking place.

Online reporting of the chemical mix of fracking fluid and the tracking of wastewater, as well as online reporting of violations and permit denials and the reasons for each, should be required.

Land Use

Metering and Compressor Stations

Decisions on where to locate facilities must take into account common sense safety considerations, not just cost and convenience. State guidelines should be established for the siting of metering and compressor stations, limiting construction near critical infrastructure, requiring appropriate ingress and egress, and establishing a statewide registry for emergency response purposes. I am currently drafting legislation to address these issues.

Housing

As natural gas employees move into the region, local residents face fewer housing options. Additionally, housing prices have become unaffordable for many. A partnership between the gas industry and local housing authorities in counties where there is a drilling presence should be established to create an affordable housing fund for low and moderate-income residents.

Local Impacts and Emergency Response

Emergency Response and Public Safety

Communities have seen too many instances where various companies have fallen short on the safety standards and technology they use and on the disclosures they make. In order to fulfill the state's responsibility for the safety of local communities, oil and gas companies should be required to develop and file emergency response plans with DEP, PEMA and local emergency management agencies. I have sponsored legislation to accomplish this, Senate Bill 995, which was recently approved by the Senate Appropriations Committee.

Additionally, the heavy truck traffic resulting from equipment and fracking material being shipped to well sites raises the possibility of collisions, turnovers and spills. Small, rural communities in the region do not have the resources to purchase special equipment for their volunteers. A special fund should be established for these communities to purchase the appropriate equipment.

Funding should be provided to ensure that state-run training sessions are continued uninterrupted so that our local responders are properly trained. Community safety, public health, and water quality are put at risk if there are any holes in emergency planning.

Local Impact Fee

My position on an impact fee or severance tax is clear—the bulk of the revenue must be directed to environmental protection, emergency response, roads, and for future considerations. The revenue properly directed can provide the means for anticipating and addressing legitimate community concerns about issues ranging from water quality to road maintenance. I oppose efforts to remove local control in the decision-making process.

Domestic Use of Natural Gas

There is one thing on which both proponents and opponents of drilling agree. If drilling is taking place in the Commonwealth, the gas needs to be used in the Commonwealth rather than exported. The commission should establish reasonable incentives for the domestic consumption of gas drilled locally.

Because of the extreme diversity of views on drilling and the emotional intensity on both sides of the issue, the work of the commission will not be universally regarded. However, it is vitally important that the recommendations to the greatest extent possible address the many legitimate and practical concerns that have been raised by individuals and community groups. The laws, policies and regulations that Pennsylvania puts in place must treat environmental protection and economic benefit equally.

My staff and I are available for further discussions regarding any legislative remedies you are considering, beyond those which I am already advancing.

Sincerely,

A handwritten signature in black ink that reads "Lisa Baker". The signature is written in a cursive, flowing style.

Lisa Baker
Senator