

January 3, 2015

Re: aPATTO26224

To: oilandgas@dnr.state.oh.us

CC: Ms. Susan Hedman, Regional Administrator, USEPA Region 5 hedman.susan@epa.gov, Senator Lou Gentile Steven.Blalock@ohiosenate.gov, State Representative Debbie Phillips, Rep94@ohiohouse.gov

Dear Chief Simmers,

I write in protest of the K&H #3 Class II injection Well aPatto26664 permit application for Troy Township Athens County. My comments are "substantive" in regard to public health issues that are already plaguing our communities from the drilling of and injection into Class II Wells.

"Substantive" is not defined in OAC 1501:9-3-06(H)(2)(c), the rule that determines when a public hearing is required. It is not defined in the Revised Code or elsewhere in ODNR's rules. Therefore, R.C. 1.42 requires that "substantive" be given its common usage meaning. The Merriam-Webster Online Dictionary defines "substantive" as follows: "involving matters of major or practical importance to all concerned." Although the chief is granted discretion to determine whether comments received from the public are "substantive" and require a public hearing, the fact that the chief has denied repeatedly the public's requests for a hearing based on matters of major or practical importance to all concerned, to include concerns for their health and safety, demonstrates a systemic abuse of that discretion. It is NOT possible for the chief to exercise his discretion responsibly and without abuse while at the same time dismissing hundreds of substantive objections and comments without meaningful review. The OAC requires a public hearing if ANY comment is relevant to the health and safety of the public or otherwise is substantive. Under these circumstances, the chief has no discretion to deny the public's requests for a hearing.

The threats posed by all three K&H wells, which are unreasonably close together, must be considered cumulatively. The threat to our safety and health mounts with every barrel of toxic waste injected into our ground. K&H proposes to triple the amount of production water and other oilfield wastes injected in one location. For that reason alone, the permit must be denied.

All of the concerns in the permits for K&H wells #1 and #2 are still unanswered. Of major concern is the fact that the geological study in the application for K&H #1 remains a cut and paste document prepared by ODNR and not a consultant hired by Jeff Harper. ODNR is evaluating its own out of date data which does not reflect current geological conditions of the exact locations of the wells. K&H Well #2 was on constant 0 annulus pressure for inspection after inspection, with no answers for that condition. During the drilling process in January 2014, water was unexpectedly hit at a depth of 1432 feet. This caused a spill creating 20 tons (or more) of contaminated soils which had to be ordered to be removed from the site. The accident resulted in a \$50,000 fine. K&H #3 is in the same watershed and downstream from #2. There is NO assurance that there was no contamination from that accident as ODNR does not test for the contaminants that were involved in the drilling process.

The drilling process for these wells cannot protect USDW as required by law when EPA and ODNR use different standards for fluids and substances used for the drilling process into a USDW. The initial

process requires no casing. I have great concern of chemicals such as 2- Butoxyethanol being used for drilling through USDW's. This chemical has been found in water wells near drilling sites for horizontal wells. It has contaminated drinking water sources, so why is it being used in the drilling process for Class II Wells? Mr. Harper filed a report for the use of this additive in his drilling of the K&H#2 Well. Moreover, after the fact, like many or most other operators, Mr. Harper is likely to report the use of many other harmful substances, whether as drilling fluids or additives, that are forbidden by federal law to be used in USDW.

There is something new in the Well#3 permit application. Mr. Harper is asking for some sort of "strainer basket" addition in the storage tank area. What are these? They have not appeared in prior applications. The hand drawn apparatus looks amateur at best and not something used in practice of off-loading. Perhaps Mr. Harper is attempting to be relieved from stringent rules for off-loading produced toxic waste.

This application is asking for a maximum bbl amount of 12,000 barrels of waste! The total waste per day will now be 18,000 bbls a day for the 3 K&H wells! Mr. Harper only pays ODNR on 500,000 per well per year. That amount will be reached on well #3 before 6 months of its first year. How absurd is that rule in light of the fact that ODNR does not have enough inspectors. This well site could have a full time inspector for itself with fees generated by it! You do not monitor air quality as it is not required by law. Let me tell you, the odor coming from the existing off -loading site for these wells is sometimes overwhelming. The fact that there is odor that can be detected from the parking lot across the road is of major concern for the VOC's being discharged from the tanks, during the off-loading or the piping of the toxic radioactive waste.

What is the backup plan if something happens at the offloading facility? Where will the waste go? Where does the radioactive drill cuttings and other waste that cannot be injected go? This is not part of the permit process and yet it is an enormous concern to the community!

You have received HUNDREDS of letters from concerned citizens, requests from the Athens County Commissioners, for a public hearing to put our concerns on the record before the state of Ohio. Chief Simmers, your interpretation of your statutory power is painful to the citizens of Ohio who hold faith in the public process as our right.

You must grant a public hearing which will give us more time to prepare statements for the record which then must be answered by you on the safety of this well application.

Before the Oil and Gas Commission recently in ACFAN's appeal from the permit issued for K&H #2, ODNR for the first time ever took the position that two permits are required by the Revised Code for each injection well. Before then, ODNR followed its rules, which do not allow for two permits. Before the Commission, ODNR said the first permit is for drilling and is issued pursuant to RC 1509.05 and RC 1509.06. ODNR argued the second permit is issued pursuant to RC 1509.22 for operation of the injection well. (In the *Chesapeake Exploration* case, the Supreme Court of Ohio held that an injection well permit issued pursuant to RC 1509.22 can be appealed to the Oil and Gas Commission.) ODNR argued to the Commission that the K&H #2 permit from which the appeal had been taken was issued pursuant to RC 1509.05 and RC 1509.06 for drilling only and therefore was not appealable. The Commission agreed. That decision is on appeal. The purported second K&H #2 permit for operation of the injection well was issued by ODNR surreptitiously, and it has never been reported to the public. ACFAN learned of the issuance of the purported permit only as a result of a public records request. Nevertheless, ODNR withheld the information about the purported second permit from ACFAN until after the 30-day period for appeal had expired. The public at large still has not been given notice of the issuance of the second purported permit for K&H #2.

Once again, K&H has filed a single application, presumably for a purported injection well drilling permit for K&H #3 pursuant to RC 1509.05 and 1509.06 (not appealable) and a purported injection well operations permit for K&H #3 pursuant to RC 1509.22 (appealable). As a result, I have the following *extremely* substantive comments:

1. If ODNR intends to consider the issuance of two permits for the K&H #3 Well, each permit issued must be identified as having been issued pursuant to RC 1509.05 and 1509.06 or RC 1509.22. Federal and Ohio Due Process demand this.
2. If a purported permit is issued pursuant to RC 1509.05 and 1509.06 for the K&H #3 Well, it cannot address any of the issues set forth in RC 1509.22 and rules adopted with reference to RC 1509.22. If that permit does address any RC 1509.22 issues (including those set forth in rules adopted with reference to RC 1509.22), then the RC 1509.22 issues will be appealable upon the issuance of the permit addressing them.
3. If ODNR chooses to address some RC 1509.22 issues in one permit and other RC 1509.22 issues in the second permit, both permits will be appealable for the purpose of addressing the RC 1509.22 issues addressed in each.
4. If ODNR intends to proceed with a consolidated application process for two permits, K&H has failed to pay the application fees required. An application for a permit issued pursuant to RC 1509.05 and 1509.06 requires a \$500.00 application fee. An application for a permit issued pursuant to RC 1509.22 requires a \$1,000.00 application fee. Allowing K&H to pay only \$1,000.00 for two permits exposes ODNR's purported two-injection well permit scheme as a sham.

The rights of members of the public and those aggrieved by ODNR's permit decisions pursuant to RC 1509.22 and the rules adopted with reference to RC 1509.22 to petition administrative agencies and the courts are paramount. They are protected by the First Amendment to the United States Constitution and many other procedural and substantive guarantees found in the federal and Ohio constitutions. Nothing could be more substantive. The public needs and demands a public hearing to address the procedure ODNR intends to follow with respect to the K&H #3 application and its anticipated intention to issue two injection well permits.

Sincerely,

Roxanne Groff
Bern Township Trustee
Amesville, Ohio