

March 14, 2013

Ms. Susan Hedman  
Regional Administrator  
US EPA Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590  
312-886-1493  
Fax: 312-886-4235

Dear Administrator Hedman:

The undersigned Ohio citizens and citizens' groups, state and national organizations respectfully request that your agency perform a full audit and investigation of the Ohio Department of Natural Resources' (ODNR) Underground Injection Control (UIC) program. We request that your audit and investigation go beyond your typical audit of the Agency.

Our request stems, in part, from the recent state and federal investigations launched into the illegal dumping of liquid oil and gas waste into a storm drain accessing an unnamed tributary of the Mahoning River in Youngstown, Ohio, by Mr. Ben Lupo, his employees, and associates. Per a review by the Youngstown Vindicator (copy of article enclosed), Mr. Lupo's companies have a lengthy history of more than 100 violations at injection and extraction wells across Ohio and Pennsylvania. ODNR-UIC regulators' continued granting of permits to Mr. Lupo and his operations, in spite of his lengthy history of violations, is alone an indictment of the state's handling of the program.

The actions by Mr. Lupo, and lack of appropriate and adequate consequences by ODNR, are just the latest in a long line of egregious problems with ODNR regulation of UIC that citizens have found while reviewing inspection records. Attached is a history of the Athens County Ginsburg well violations as compiled by a local citizens' group that was so concerned about this well that it engaged in civil disobedience at the well site in June 2012. We are sure that you are aware that even Ohio Governor John Kasich has requested an investigation into why Mr. Lupo continued to be issued permits in spite of ongoing violations of Ohio law. We, as citizens, do not believe that it is in the interest of the state for the agency responsible for issuing these permits to be the agency that investigates its own serious lack of enforcement and oversight over these permits.

ODNR's UIC violation and enforcement history records make it clear that ODNR's UIC unit is not in compliance with federal law, nor with the conditions under which the federal government granted primacy to Ohio's UIC program. The congressional history of the selective choice of states which would earn "primacy" for environmental programs shows that this state authority was considered an earned, not an automatic, role. The state had to earn the privilege to be on the front lines of environmental safety and maintain that front line role by effective and timely enforcement. We regret that Ohio's administration of the nationwide program has become so gravely lacking that federal controls must be put back in place. The people of Ohio depend on public servants who are fully committed to protection of Ohioans and Ohio's health. The recent policy choices of Ohio's officials, as reflected in their failings and refusals to act, have included intolerable impunity for polluting industries. This impunity must be eradicated by an end to the primacy granted by USEPA, since primacy was granted based on a record and level of trust that have been repeatedly and egregiously broken by ODNR over decades. Industry donors to state officials' electoral campaigns have had a voice far greater than that of Ohio citizens. The time for return to the uniform application of real federal controls has been reached. Primacy as a concept was good; primacy in practice has failed the people of Ohio.

The undersigned therefore also request that you suspend the State of Ohio's primacy over the permitting of new Class II injection wells and over management and oversight of current Class II wells until a full federal audit and investigation into the Ohio UIC program has been completed.

We emphasize to you that by "full" audit, we mean an audit that is far more rigorous and meaningful than what your Region's UIC staff has been performing in Ohio. We urge you to examine your Region's last two audits performed in October, 2005, and October, 2009, because they will swiftly convince you that the current auditing process is broken. The most obvious and compelling evidence in this regard is that your Region's 2009 audit is over 80% a direct cut-and-paste from the 2005 audit without changes! Not only was no apparent effort put into the 2009 audit, but these superficial audits heaped such excessive, uncritical praise on ODNR's barely staffed program (less than four full time equivalents) that the audits appeared to have been written by ODNR itself rather than by independent professionals performing a serious oversight function. We believe that the lack of effective oversight by Region V over ODNR's UIC program demonstrated by these audits is a substantial contributing factor to ODNR's inability to deter even the state's most notorious operators or to garner even minimal public confidence.

Lastly, the undersigned request that USEPA hold a public hearing at the conclusion of the requested audit and investigation to discuss your agency findings with the public, and provide citizens an opportunity to offer their assessment of your findings.

We look forward to your written response to this request.

Sincerely,

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See attached for signatories.

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Garry Hood  
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Darla Bruno  
Lebanon, NH  
(formerly of Stark County, Jackson Twp.)

## Attachment

Appalachia Resist history of Ginsburg well records  
(available online at [appalachiaresist.wordpress.com](http://appalachiaresist.wordpress.com), accessed 2-20-13)

...though the ODNR has ordered that the Ginsburg well be “Properly plugged and abandoned”, numerous times, the Ginsburg well has been found to be operating while under suspension.

The Ginsburg injection well has been repeatedly out of compliance, citing spills, improper cleaning and maintenance, failure to pass Mechanical integrity tests, and failure to properly regulate fluid levels in the impoundment tank. The following is a summary of a few of the more glaring examples of this well’s history of noncompliance. For a more detailed record, please also see the complete documents we have posted.

### **HISTORY OF GINSBURG WELL NONCOMPLIANCE**

December 9th 1986. The ODNR Chief of the Division of Oil and Gas ordered that the Ginsburg Well “cease all injection operations at the Ginsburg Well #1” due to its failure of the Mechanical Integrity Test (MIT) required by the ODNR. By June 15th 1987, the well was still non operational and fluids were still sitting in the open pit “Impoundment facility”. The ODNR Chief of the division of oil and gas ordered that the Ginsburg Well be “Plugged and abandoned” within 30 days and that proper restoration of the land be completed within 6 months. The ODNR reported that the condition of the well “represents an imminent danger to public health or safety, or is likely to result in immediate substantial damage to natural resources.” At that time, Royal Petroleum Properties owned the well. They appealed the ODNR’s order, stating that the company had “substantial investments in the subject well” and was being deprived of its property rights without due process of the law.

The company further claimed that the shut-down order was “arbitrary and capricious”, and not reasonably related to the state’s legitimate interest in protecting the health and safety of its citizens or natural resources.

June 24th 1987. A well inspector notes that, although the well is under ordered suspension the barrel meter shows a 266.6 barrel increase since the last visit, evidence that the well was still being used for injection.

September 23rd 1988. Dr. Pough, a veterinarian and resident living in the neighborhood of the Ginsburg well contacted ODNR to report that his horses had become sick after drinking from the creek on his property. Dr. Pough said he had “done studies on fish and various animals in the area and found them to have cancerous tumors.” Two days later, inspector Robert Martin visited the site. He noted a 6’ x 6’ stain on the lower side of the Ginsburg well’s impoundment tank, indicating that there had been a spill, and that used filters by the impoundment tank were improperly stored, with “half of them in a plastic container, and half on a plastic bag.”

1988 – 2000. No inspection record was found relating to these years. There is no indication of use, nor is there any indication that remediation, repair, or oversight of the well took place.

2000. An inspector noted, “This well is idle, and incapable of injecting brine. This (sic) is no pressure on the injec. or annulus of well, weeds are growing up in the storage pit area. Poor equipment at site, talked to Leo Altier, he said well was going to be sold at Sherriff’s Office in

Athens County on 12/13/2000 at 10:00 am.” In these missing years, the well changed hands 4 times, finally falling into the hands of Carper well service.

2002. In its inspection reports, the ODNR repeatedly ordered Ginsburg well owners to “clean up all oily soil around tank, and storage impoundment. Seed, mulch, and lime bare area below well on Well site”, to the point where the inspectors started typing it in capital letters.

April 22<sup>nd</sup>, 2003. An inspector arrived to find that a ditch had been dug across the lease road to the well. He contacted Mr. Carper and was told that “Athens County had cut the ditch across the road to stop trucks from entering the site.”

April 17<sup>th</sup> 2006. The Ginsburg well again failed to pass a MIT. The injection pump had been removed. The well owner was ordered to submit a plan within ten days, and complete it within 45 or plug the well within 90 days.

December, 2006. By the end of that year, the Ginsburg well was still not in compliance. It had not passed an MIT, nor had the well been plugged.

February 21<sup>st</sup>, 2007. An inspector notes, “The well remains in noncompliance.” Yet the well continued to operate. During each inspection of the well the pit was found full, and the owner was ordered to take a load out of the pit ASAP. Despite the order to do so within 90 days, the well was never plugged.

June 17<sup>th</sup>, 2008. An inspector “witnessed the installation of the packer and tubing.”

June 28<sup>th</sup>, 2008. Ginsburg well failed a pressure test, then passed it three days later.

August 24<sup>th</sup>, 2010. An inspector noted an oil skim on water in the dike area, and zero pressure on the annulus.

November 29<sup>th</sup>, 2011. An inspector noted that “Company gauges had seized up and I was unable to remove them for the test. Company’s gauges read 385 psi on annulus and 30 psi on injection.

On April 2<sup>nd</sup> 2012, Evidence of the failure of the annulus was recorded. “Opened 4 1/2” annulus and released pressure. 2 7/8” annulus dropped at the same rate. Left 4 1/2” annulus valve open and pressured up the 2 7/8” annulus, both annulus spaces have communication. Put gauge on the 8 5/8” annulus gauge read 59 psi. Closed 4 1/2” annulus and tested to 310 psi for 15 minutes no loss. 1 1/2” injection tubing was pressurized with 500 psi. Contacted Tom Tomastik Underground Injection Control Geologist. Torn said to monitor the well at this time. There is no evidence of communication out side of the 4 1/2” casing.”

#### SOME QUESTIONS

1. Why are shut down and repair orders by the ODNR never enforced?
2. After being cited for safety violations, why does the well repeatedly resume operation without addressing ODNR orders?
3. Is the ODNR merely suggesting that the well owner comply with safety regulations?
4. Why is there no further documentation of ODNR follow-up on the 1988 case of the possible contamination of Dr. Pough’s creek? This seems particularly odd when considering Royal Petroleum’s 1987 claim that the state’s shut-down order was not legitimately related to health and safety. Wouldn’t Pough’s report of possible creek contamination and cancer in fish and animals go a long way to

prove the threat to public health and safety? Why would the ODNR fail to look into this?

5. Why does it appear that the well was not inspected for years at a time? Where are the missing records?
6. Why did "Athens County" cut a ditch across the road to block access to the well, when this would usually be the ODNR's jurisdiction? Did they see the well as a public health and safety issue?
7. Why are the pressure checking valves always corroding so fast, and what does this mean about the injectate's ability to corrode?
8. Why have government relations with non-complying well owners been timid, but their relations with protesters at this well have been so aggressive? Why do they take a position of non-enforcement with well violations, and a position of heavy enforcement (felony charges for non-violent civil disobedience) with community protest of these violations?

## **CONCLUSION**

So, why is the Ginsburg well still operating and accepting more out-of-state waste than ever from horizontally fracked wells in Pennsylvania, and West Virginia? Why doesn't the ODNR enforce its order to "plug and abandon"? After looking at the years of violations reports for this well, there can only be one reason that the Ginsburg Well is still open: the fact that the ODNR budget for oil and gas inspectors is funded (literally) per barrel of brine. If the ODNR stops the flow of toxic waste into our state, then they stop the flow of money into their department.