

ATTACHMENT 5



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Ryan Hancharick
Source Water & UIC Section
U.S. EPA Region 3

July 12, 2022

**Re: Comment on Permit #PAS2D702BALL, Penneco Environmental Solutions, Sedat 4A
Underground Injection Well**

Dear Mr. Hancharick,

Three Rivers Waterkeeper (3RWK) thanks you for the opportunity to submit comments on Underground Injection Control Permit Number PAS2D702BALL Authorization to Operate a Class II-D Injection Well. 3RWK was founded in 2009 and aims to improve and protect the water quality of the Allegheny, Monongahela, and Ohio Rivers. These waterways are critical to the health, vitality, and economic prosperity of our region and communities. We are both a scientific and legal advocate for the community, working to ensure that our three rivers are protected and that our waters are safe to drink, fish, swim, and enjoy. We are one of the 300 organizations that make up the global Waterkeeper Alliance and work together to connect local communities to global environmental and advocacy resources. 3RWK opposes this permit authorizing the Sedat 4A Injection Well due to the risk of both surface and groundwater contamination in Plum Borough.

The Commonwealth of Pennsylvania promises in its constitution “a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment” through its environmental rights amendment.¹ These natural resources are “the common property of all the people,”

¹ Pa. Const. art. I, § 27.

and it is the duty of the Commonwealth to “conserve and maintain them[.]”² The Sedat 4A Injection Well gambles with Plum residents’ right to pure water, disregarding their opposition to the project in favor of industrial convenience.

Plum residents and officials have worked for years to prevent Penneco from building wastewater injection wells in the borough.³ Since the older Sedat 3A Injection Well was proposed in 2016, residents have spoken out about the risks that injection wells pose both to the underground aquifers and to the streams and creeks that flow through the borough.⁴ Their concerns were unfortunately vindicated: the 3A Injection Well has already failed and violated environmental regulations, leading to persistent, ongoing water quality problems.⁵ Residents living near the Sedat 3A well have said that since the injection well began to operate, their well and spring water became discolored and cloudy, or took on strange tastes or odors.⁶ At the same time, residents’ attempts at challenging the permitting and construction of the Sedat 3A and now 4A Injection Wells have been ignored. When the Sedat 3A well was initially proposed, “at least 200 people opposed permit approval” at the July 2017 public hearing.⁷ The Borough updated its zoning ordinance to restrict oil and gas disposal wells to areas zoned for industrial use, but that too was ignored.⁸ When opponents of the injection well asked Governor Wolf to step in and protect the Borough, the governor’s response was to say that he lacked the authority to revoke the permit.⁹ In effect, the

² *Id.*

³ Joyce Hanz, *2nd Injection Well Project in Plum Faces Opposition from Residents, Borough Officials*, TribLIVE, Dec. 10, 2021, <https://triblive.com/local/valley-news-dispatch/second-injection-well-project-in-plum-faces-opposition-from-residents-borough-officials/>

⁴ Michael Divittorio, *Plum Ends Fight Against Injection Well Project*, TribLIVE, June 24, 2020, <https://triblive.com/local/valley-news-dispatch/plum-ends-fight-against-injection-well-project/>. *See also* Dillon Carr, *Plum Expresses Opposition to Injection Well*, TribLIVE, July 27, 2017, <https://archive.triblive.com/local/plum/plum-expresses-opposition-to-injection-well/>.

⁵ Joyce Hanz, *supra* note 3.

⁶ *Id.*

⁷ Michael Divittorio, *supra* note 4.

⁸ Joyce Hanz, *supra* note 3.

⁹ Dillon Carr, *Environmental Groups Call on Gov. Tom Wolf to Stop Plum Oil and Gas Disposal Well*, TribLIVE, Jan. 14, 2021, <https://triblive.com/local/plum/environmental-groups-call-on-gov-tom-wolf-to-stop-plum-oil-and-gas-disposal-well/>

permitting process used for the Sedat 3A Injection Well violated Plum residents' right to pure water as guaranteed by the Pennsylvania Constitution while also denying the state and local governments the ability to protect their residents. Despite the widespread, vocal opposition to oil and gas waste disposal in Plum Borough, the Sedat 3A well was permitted. This undemocratic process must not repeat with the Sedat 4A Injection well.

Not only would this permit jeopardize Plum residents' right to pure water as guaranteed by the Pennsylvania Constitution, but it also violates federal water quality laws. In particular, the risk posed to both ground and surface water quality raises concerns under both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Broadly, the CWA requires the acquisition of a valid NPDES permit to discharge pollutants from a point source into the surface waters of the United States.¹⁰ The United States Supreme Court held in the 2020 case *City of Maui v. Hawai'i Wildlife Fund* that the CWA "requires a permit when there is a direct discharge from a point source into navigable waters or when there is a *functional equivalent of a direct discharge*."¹¹ In *Maui*, a wastewater reclamation facility in Hawaii pumped wastewater underground, where it flowed through the groundwater out into the ocean.¹² Even though the flow of that wastewater was disrupted by the need to travel underground, the Court held that this was still in effect a discharge of waste from a point source into coastal waters.¹³ The CWA's effluent limitations still applied when point source pollution (e.g. wastewater from an injection well) traveled in a nonpoint source manner (e.g. through groundwater) into navigable waters. The fact that contaminants must flow underground before reaching navigable surface waters should not exempt the Sedat 4A Injection Well from the CWA's requirements for other point sources.

¹⁰ 40 CFR § 122.1.

¹¹ *Cty. of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462, 1476 (2020).

¹² *Id.* at 1469.

¹³ *Id.* at 1477.

The antidegradation policy established by the Clean Water Act requires that “the level of water quality necessary to protect [the stream’s] existing uses shall be maintained and protected.”¹⁴ The same antidegradation policy also requires that sufficient water quality must be maintained “to support the protection and propagation of fish, shellfish, and wildlife and recreation on and in the water.”¹⁵ Even if the State were to decide that the economic or social interests are weighty enough to justify allowing lower water quality, the State must still “assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources”¹⁶ Plum Creek and its tributaries are classified for recreational use and as a warm water fishery.¹⁷ Plum Creek itself is a tributary of the Allegheny River, which supports recreation and warm water fish, while also being widely used for navigation and as a source of drinking water.¹⁸ Although the risks to Plum residents’ surface water are most immediate, contamination from the Sedat 4A Injection Well most likely would negatively impact waters outside of the Borough’s limits. The EPA and DEP must not issue permits that carry the risk of destroying these existing uses.

Not only does the Sedat 4A Injection Well pose a serious risk to Plum Borough’s surface waters, it also risks contaminating drinking water. The SDWA requires that

[n]o owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons.¹⁹

Any drinking water contamination whatsoever would violate the SDWA, and Penneco has not shown that they can build a well in such a way that it would not contaminate the drinking water. Indeed, the history

¹⁴ 40 CFR § 131.12(a)(1).

¹⁵ 40 CFR § 131.12(a)(2).

¹⁶ *Id.*

¹⁷ 25 Pa. Code § 93.9u. *See also 2022 Pennsylvania Integrated Water Quality Report*, PA DEP, <https://storymaps.arcgis.com/stories/b9746eec807f48d99decd3a583eede12> (last visited July 11, 2022).

¹⁸ *Id.*

¹⁹ 40 CFR § 144.

of leaks from the Sedat 3A Injection Well serve as a case study for why the proposed Sedat 4A Injection Well creates a direct threat to the underground sources of drinking water that the SDWA is meant to protect.

The Sedat 3A Injection Well failed within months of its construction. Residents complained of contaminated wells and springs, and Penneco responded by providing bottled water to some residents after the initial complaints.²⁰ Beyond Plum, communities across the United States have raised alarms regarding the safety of injection wells for over a decade.²¹ More recently, in addition to the failures of the Sedat 3A well, reports of fracking wastewater contaminating surface waters in Ohio and West Virginia further support residents' concerns about the safety of injection wells.²² With the history of well failures in this region, residents might expect that this will in fact affect surface waters. Allegheny County is defined by its rivers, and contamination from another faulty injection well has the potential to spread far. This is particularly true given how infrequent integrity tests for Class II Injection Wells really are: with tests only every five years, leaks might continue for years before action is taken.

In addition to violating federal laws, the Sedat 4A Injection Well would also violate the Pennsylvania Clean Streams Law. Unlike the CWA, the Clean Streams Law explicitly includes “underground water” as a part of the “waters of the Commonwealth” to be protected under the law. Additionally, the Clean Streams Law contains specific provisions relating to pollution resulting from underground wastewater disposal. The DEP is obligated to “consider the disposal of wastes . . . into the

²⁰ Joyce Hanz, *supra* note 3.

²¹ Abrahm Lustgarten, *Injection Wells: The Poison Beneath Us*, ProPublica, June 21, 2012, <https://www.propublica.org/article/injection-wells-the-poison-beneath-us>.

²² Julie Grant, *In Ohio, Regulators Respond to Suspected Frack Waste Spewing from Unused Gas Well, Causing Fish Kill*, StateImpact Pennsylvania, February 5, 2021, <https://stateimpact.npr.org/pennsylvania/2021/02/05/in-ohio-regulators-respond-to-suspected-frack-waste-spewing-from-unused-gas-well-causing-fish-kill/>. See also *Study: Fracking Didn't Impact West Virginia Groundwater, But Wastewater Spills Pollute Streams*, StateImpact Pennsylvania, April 24, 2017, <https://stateimpact.npr.org/pennsylvania/2017/04/24/study-fracking-didnt-impact-west-virginia-groundwater-but-wastewater-spills-pollute-streams/>.

underground as potential pollution[.]”²³ In particular, three types of underground discharges are prohibited:

- (1) Discharge of inadequately treated wastes, except coal fines, into the underground workings of active or abandoned mines.
- (2) Discharge of wastes into abandoned wells.
- (3) Disposal of wastes into underground horizons unless the disposal is for an abatement of pollution and the applicant can show by the log of the strata penetrated and by the stratigraphic structure of the region that it is improbable that the disposal would be prejudicial to the public interest and is acceptable to the Department.²⁴

Southwest Pennsylvania has a centuries-long history of coal mining. Plum Borough itself is situated on land marked forever by mining and drilling operations.²⁵ The preponderance of abandoned mines in the area increases the risk that leaking wastewater could flow into mines or abandoned wells, functionally behaving as a discharge violating 25 Pa. Code § 91.51(b)(1)-(2). The channels created by these mines and wells only increase the permeability of the geologic features meant to trap the wastewater underground, and thereby increase the risk of contamination.²⁶ Furthermore, we believe that the Sedat 4A Injection Well would also violate 25 Pa. Code § 91.51(b)(3), because placing Plum Borough’s streams and drinking water at risk of contamination by toxic and radioactive fracking brine would indeed be prejudicial to the public interest.

In summary, we oppose this permit for the Sedat 4A Injection Well because it violates the rights of Plum residents under the Pennsylvania Constitution and under both state and federal laws. Penneco has clearly violated similar permits in the past and they have not shown that they are taking the interests of the community into consideration. The people of Plum oppose the creation of a new well, just as they opposed the creation of the Sedat 3A Injection Well back in 2017. The EPA must consider both the failure

²³ 25 Pa. Code § 91.51(a).

²⁴ 25 Pa. Code § 91.51(b).

²⁵ See Jake Flannick, *State Works to Extinguish Longtime Underground Mine Fire in Plum*, Pittsburgh Post-Gazette, Apr. 7, 2017, <https://www.post-gazette.com/local/east/2017/04/07/Plum-underground-mine-fire-being-extinguished/stories/201703310144>.

²⁶ Abrahm Lustgarten, *supra* note 21.



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of the Sedat 3A Injection Well and the scope of Penn Borough's mobilization against the creation of any more injection wells. We believe therefore that the EPA must deny Underground Injection Control Permit Number PAS2D702BALL authorizing the Sedat 4A Injection Well.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in green ink that reads "Heather Hulton VanTassel".

Heather Hulton VanTassel, PhD

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