

ATHENS, OHIO

YOUNGSTOWN, OHIO

PRE-TRIBUNAL BRIEFS, PART II

MAY 14, 2018 1:30-2:20

MR. RICK SAHLI: Good afternoon. We are now going to start our second session of discussing the pre-tribunal reports from the state of Ohio and the reports that we submitted in December of last year.

For this afternoon's agenda I have submitted, for the record before the tribunal in this matter, three different witness statements that I recorded slightly after the statements were made in the tribunal. They are three fairly different in subject matter approaches so we can cover as much as possible of the problems we're encountering here in Ohio.

The first video, each of them will be slightly less than 15 minutes long, would be from a young woman named Annie Burke. Annie lives beside a 30-year old injection well in Athens County that has a horrible record of noncompliance going back decades and yet it somehow still finds itself operating in our modern age taking out of state fracking waste into Annie's community.

Second will be from a professor in geology,
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1 Ray Beiersdorfer, he's from the Youngstown State
2 University. Ray's introduction came to him quickly one
3 morning in the midst of an earthquake caused by an
4 injection well close to his home.

5 As a professor in geology he began to study
6 the problems of earthquakes and fracking in Ohio and has
7 a lot to say about what he's uncovered.

8 The third statement will be from a woman whose
9 name is Teresa Mills. Teresa is in Columbus and she
10 works in the grassroots organization in Ohio called the
11 Buckeye Environmental Network served to work with local
12 groups and she's worked with local groups all over the
13 state of Ohio, particularly in getting them information
14 about fracking in their communities. She knows a lot
15 about the public participation problems we've had.

16 So without any more further ado I am going to
17 put up the statement of Annie Burke.

18 MR. RICK SAHLI: Good morning. I am here
19 today with Annie Burke who is going to give some
20 testimony about what her life's been in the State of
21 Ohio dealing with the problems of fracking.

22 And can we start off can you please give us
23 your full name?

24 A. My name is Annie Burke.

25 Q. And where do you live, Annie?

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1 A. I live in Hockingport, Ohio. It's in Athens
2 County, Ohio which is where I have grown up, as well as
3 my parents. And it's only less than three miles from a
4 very close injection well site.

5 Q. And what do you do for a living Annie?

6 What is your profession?

7 A. I'm a registered nurse.

8 Q. Going back to the People's Tribunal that we
9 had here in Ohio you spoke, at some length, about the
10 Ginsburg injection well. Can you describe this well for
11 us and give its history?

12 A. Yes. I actually had not realized that this
13 well existed in our area until I joined and I was
14 talking with other members and when I first saw it I was
15 just appalled at what I was seeing. It was just this
16 big open pit that looks disgusting and smells
17 disgusting. I just can't believe that that is
18 considered a protected area that is supposed to contain
19 toxins for our environment.

20 And this well is here in Athens County in
21 Alexandra Township and, as I said, it's open to any kind
22 of animals. There is a fence around it but it does not
23 look that secure to where animals could fall into it or
24 come drink out of it. I don't understand how it's not
25 putting toxins into the air.

1 It also it's really old. It's a converted
2 well. And I believe it to be, and we have seen from the
3 public records, that it's been in violation many times
4 of the few standards that govern these types of well in
5 Ohio.

6 Q. What do you mean by it's a converted well?

7 A. It's an old oil and gas well that they now use
8 to store and inject fracking waste.

9 Q. And does a converted well have to meet the
10 same standards as a new well?

11 A. My understanding is that the old well is a
12 converted well and was kind of grandfathered in so they
13 don't exactly have the same standards, which I find
14 appalling because based on the same potential for
15 contamination.

16 Just because this is an old site that some how
17 has been allowed to be used doesn't mean that it
18 couldn't also release things out into the air and water.

19 Q. You said that this waste is fully open. It is
20 exposed to the weather? Every time it rains does it fill
21 with water?

22 A. Yes. It would be exposed to rain,
23 evaporation, wind, all of that would effect it because
24 it's open.

25 It's also very close to a road. It is out in
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1 the country, driveways. There are a lot of people that
2 live nearby. There is a sheep farm down the road.
3 Passerbys. There is people visiting it to see what it
4 is experience a burning sensation in their eyes, nausea.
5 The smell, it's got a foul smell.

6 It's definitely a problem in our area.

7 Q. You mentioned that this well has a history of
8 violations.

9 A. Yes. Like I said it's been operating for over
10 30-years and many residents of Athens County have
11 reported concerns about their drinking water supply, the
12 air that they're breathing.

13 And there are reports that a person can access
14 on the Ohio Department of Natural Resources web site. I
15 am registered nurse and I'm used to reading lab reports
16 and determining that they look like they're accessible
17 for the patient or that kind of thing. And I find these
18 reports and a lot of the tests that are done to be very
19 hard to decipher, kind of intimidating.

20 So I'm kind of off the question a little bit
21 but I also think that is a problem that they say, well,
22 everything is publicly accessible but (1) you have to
23 have a special computer program, and it's not
24 inexpensive.

25 You have to be able to figure out how to
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1 access, which is not easy. I had to take a day of
2 training to figure out. And you actually have to have
3 the right program that is expensive.

4 And, in addition to the fact, that residents
5 of Athens County many of them do not have a computer or
6 access to the internet. So I feel that that is a
7 problem as to how they're getting by with things in an
8 area that is considered more disadvantaged from a
9 socio-economic standpoint.

10 So, anyway, we have looked at some of the
11 reports and we have seen the mentioning of violations.
12 And there is one rule that if a well that is inoperable
13 for a certain length of time that it should be entirely
14 closed and plugged and is no longer accessible for us,
15 which we had tried to get that to occur because this
16 well was inoperable for many months. There was
17 continuous reporting and could not be used because of a
18 faulty pump.

19 So we wrote senators. We did a protest. We
20 sent letters. And they just put a new pump in there,
21 which it should have already been closed. That
22 shouldn't have happened. So these are band-aid solutions
23 to fix a bigger problem and tried to work around a
24 technicality. Like I said these reports are very
25 upsetting but we do read them.

1 Here's one. In 2016 when the well was listed
2 as not operational and had a faulty pump suddenly 60
3 barrels of waste were added to the volume tables, which
4 was not consistent with what should have been occurring
5 since it wasn't being used. It doesn't seem to
6 correspond with the rainfall during that time. There is
7 really no explanation to it.

8 And then according to the Athens Messenger
9 newspaper the ODNR spokesperson stated that 60 barrels
10 of waste were injected to the prior to the pump
11 malfunction. We could not find a record of this.

12 In my mind it was one of two things. Either
13 there's lying and using it or somebody made a mistake
14 and because they were showing a lack of attention to
15 detail in their reporting of it, either of these
16 frighten me.

17 I don't want those supposedly safeguarding me
18 but then lying about what is actually occurring at these
19 sites. Nor do I want people monitoring sites that can't
20 pay attention to dates and numbers and keep track of
21 what's going on. I don't trust any of that if they can't
22 explain to me what happened and why did that increased
23 volume occur.

24 The ODNR said that they are there to protect
25 us and the environment and the community but I don't see
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1 how that's occurring, especially at that site.

2 Q. When you mentioned there was a long period of
3 malfunction I think you referenced the role of the Ohio
4 Department of Natural Resources that if a well is not
5 functioning for 60 days they are required to shut it
6 down. And not only shut it down but also actually plug
7 the well so it can't be used again.

8 Was it not operable for more than than 60-
9 days?

10 A. Yes. I believe it was since October of 2015
11 and they put the new pump in last fall. So that's over
12 a year.

13 I'm not sure if they're actually really using
14 it even now but they technically could if there's a new
15 pump.

16 Q. I think you are also concerned, from your
17 testimony before the Ohio Tribunal, about there being
18 leaks at the site and the potential for contamination.

19 A. Yes. The whole point of these wells is to
20 contain this fluid and, hopefully, protect us.

21 And there was an inspection report that we
22 found on November 19th of 2015 and it stated that the 5-
23 foot dumpster located next to the entrance to the
24 unloading pad had large holes in the bottom. And this
25 is the dumpster that is used to dispose of the brine
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1 filters which contain a lot of the contaminant.

2 The report itself stated that that area behind
3 the dumpster is contaminated. The contaminated soil
4 must be removed and taken to an EPA landfill.

5 We looked at all of the reports for the next
6 several months and there would be a time when an
7 inspector would say still has -- everything is still in
8 place. Nothing has been removed. And a couple of times
9 they didn't mention it. So it went several months
10 before there was any clean up.

11 And then when it was finally noted that,
12 obviously, a clean up had occurred the inspector could
13 not give an answer about which USA EPA approved landfill
14 it had been taken to.

15 So we don't know for sure where it went or if
16 it went to appropriate place. Obviously it was stuff
17 that was there. It was contaminated soil for quite some
18 time. So all of that area would be contaminated.

19 And they did do stuff with the soil around it
20 but it was so much later who knows what the rain and the
21 run-off and where the contaminants would have gone into
22 to air or into the ground during these months of nobody
23 being held accountable for what little role that we do
24 have.

25 Q. Now you said you were able to access the ODNR
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1 records. Was there any record governing this supposed
2 clean up or what they had done?

3 A. All I ever saw was the inspector stated that
4 he could see that something had been done, dumpster
5 removed. There was -- looked like the soil was fresh
6 soil but, as I said, it was several months after the
7 first time, which that is like locking the barn door
8 after the cow gets out.

9 Q. And there were no details that were ever
10 presented by ODNR about the nature of the clean up.

11 Now you talked about this dumpster holding
12 brine filters. What is a brine filter and should we be
13 concerned about brine filters?

14 A. Well, just like any kind of filter it's very
15 important to the mechanisms. And if you just think
16 about how, you know, your vacuum filter catches things,
17 objects and particles of stuff that goes through, that's
18 what a brine filter would do.

19 And we believe that -- as we believe that the
20 fluid in these injection wells is hazardous, contains
21 contaminants, there would be contaminants trapped in the
22 filter.

23 Q. Now you talk about contaminants. Is there any
24 particular contaminant that worries you?

25 A. I'm very concerned about several different
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1 ones. There have been a lot of -- there have been
2 articles saying that there are different contaminants
3 found in fracking waste that alter -- the endocrine
4 disrupters which causes the cancers and birth defects.
5 It's also possible that they're radioactive which we
6 know is a problem.

7 I believe brine filters are radioactive and
8 we're just allowing them to just lay out sometimes, you
9 know, in a broken dumpster with just holes in the bottom
10 of it.

11 And people around the area aren't being told
12 that and so anybody walking by or taking a Sunday walk
13 is being exposed to this radiation.

14 I really think that is what another big
15 injustice is being perpetrated on in our county. There
16 is all these rules protecting these companies but they
17 need to protect their copyright fluid solution or
18 whatever but we're the ones that have to live it. We're
19 the ones who are breathing the air. We're the ones
20 drinking the water. We're the ones who have seen our
21 family members die of cancer from other contaminants and
22 now we're just holding our breath for them to start
23 saying what's causing the next wave because we're out
24 there being exposed.

25 These companies are being protected but we are
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1 not. We are not allowed to know for sure what is in
2 things. We find things out. There are ways that we
3 find out a little bit. And there have been studies of
4 certain things people get a hold of but there's all this
5 hush-hush to protect these companies.

6 They don't need to be protected. My family
7 needs to be protected.

8 Q. Do the brine filters and the concern for
9 radiation that the ODNR records show any testing that
10 was done for radioactive contamination?

11 A. No, not that I'm aware of. No, which I feel
12 is pretty standard. I don't know of them doing those
13 types of testing.

14 Q. What about the overall monitoring of the site,
15 is there any monitoring for water pollution or for air
16 pollution?

17 A. Well, interestingly, they were originally when
18 this was turned into a well for fracking waste there
19 was -- it was discussed and part of the permit was that
20 they would put in a fresh water monitoring well so there
21 could be testing and comparisons made about
22 contamination.

23 There is no well access at that site and
24 there's never going to be one because that is an extra
25 expense. And they haven't had it at all at this time
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1 why would they do it now. No one is making them do it.

2 And it just feels like another example of how
3 our government, our own ODNR, is not protecting us.
4 They are not taking the effort to make sure that there
5 are safeguards in place.

6 I don't want these wells here but right now we
7 have them and so it angers and saddens me that even
8 though we have a few rules and a few things we could do
9 to try and help mitigate the problem those aren't even
10 happening.

11 It makes me feel like my community isn't that
12 important in the eyes of the ones who are making these
13 decisions.

14 Q. So the permit requires a groundwater
15 monitoring well that's not present. The facility was
16 allowed to operate long after it was required to be
17 plugged. It had a requirement that there be a clean up
18 but the clean up was never documented in any way. That
19 must give you a lot of concern about where the loyalties
20 of the Department of Natural Resources are.

21 Did you try to speak to them about these
22 problems and what type of response did you get?

23 A. No response. Yes, I actually was very active
24 and I really thought that with the pump not being
25 operable we could get the leaks to this well shutdown
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1 and closed off or maybe at least help in one area.

2 We sent new letters to the editor,
3 newspapers. We wrote our senators. We contacted the
4 ODNR. We did all of this and the only thing that
5 happened was that this pump showed up which we weren't
6 notified.

7 I called my political representatives myself
8 and left my phone number and e-mail and I never hear
9 anything back.

10 MR. RICK SAHLI: Well, Annie, thanks for
11 your testimony today. Is there anything else that you
12 would like the world to know about the situation here in --
13 so that's the end of the first video.

14 Now we are going to do the video of Dr.
15 Beiersdorfer who is an expert geologist and Dr.
16 Beiersdorfer's video is going to start off and the audio
17 might be a little bit soft but it will, I think, soon
18 pick up for you.

19 DR. RAY BEIERSDORFER: My name is Dr. Ray
20 Beiersdorfer.

21 Q. (By Mr. Rick Sahli) And what city do you live
22 in doctor?

23 A. I live in Youngstown, Ohio.

24 Q. What are your professional credentials.

25 A. I have three degrees in Geology; a bachelor's
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1 degree, a master's and a PhD in Geology. And for the
2 past -- this is my 25th year I have been a faculty
3 member at Youngstown State University where my current
4 rank is Distinguished Professor of Geology.

5 Q. How did you first get involved with fracking
6 in Ohio, Professor?

7 A. I became aware of it due to it happening in
8 other places. I worked in the oil and gas industry
9 between my master's and PhD so I knew about fracking
10 back in the 80's which was quite different from what's
11 been happening now.

12 My real awareness stemmed from the injection
13 well that started earthquakes in 2011. In fact that
14 would have been seven years ago on St. Patrick's Day.
15 March 17th of 2011 I was sitting home at my computer and
16 I felt an earthquake. And in fact there were two that
17 morning. And then I became aware that they were related
18 to the injection well which was taking the fracking
19 waste. And so that's how I became aware.

20 Q. Well, how has the overall level of earthquake
21 activity changed in Ohio since fracking and injection
22 wells began to operate?

23 A. Yeah, from about Revolutionary War time until
24 say 2011, 2010, there have been about 120 earthquakes in
25 Ohio. Most of them were out in western Ohio near Anna.
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1 There was some up near the Great Lakes and the Cleveland
2 area. Some of those were due to human activity from a
3 Class I injection well and then sporadic earthquakes
4 along the Ohio River. But, again, about 120.

5 We now have, I would estimate, counting the
6 small ones, close to 2,000 earthquakes in this eight
7 year period mostly focused in eastern Ohio in counties
8 like where I live, Mahoney County, Trumbel County where
9 we are now, that never had a historical record of
10 earthquakes now have had hundreds of earthquakes.

11 Q. Doctor, you testified at some length during
12 the Citizens Tribunal about the North Star 1 injection
13 well in Mahoney County.

14 What occurred there that concerns you?

15 A. Well, they drilled that well in 2010 and I
16 actually first became aware of it but actually, in the
17 summer of 2010 when they were drilling it, because they
18 hit a gas pocket and I woke up in the middle of the
19 night gasping for air. There had been a small blow out
20 and people were not aware of this.

21 The police were driving around thinking there
22 was a gas leak, knocking on peoples doors. And it
23 turned out that it was that well.

24 They started injecting that December and small
25 earthquakes started that January. Again, it wasn't
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1 until March that we felt it. We then continued to have
2 sporadic large earthquakes.

3 In fact we had eight and a half months of, you
4 know, noticeable earthquakes that were felt and that
5 were reported and -- but what woke me up was that the
6 ODNR our, Ohio Department of Natural Resources was, at
7 that point, was denying any connection between these
8 earthquakes in close proximity to this well and the
9 well.

10 And my 80-year old neighbor saw the
11 connection. My freshman students saw the connection.
12 Yet our state regulators were denying that there was any
13 connection. They continued.

14 There was an earthquake on December 24th,
15 Christmas Eve, and fortunately the Columbia University
16 which, at ODNR's request, put up four portable
17 seismometers. They were able to figure out exactly
18 where the focus or hydrocenter was, close proximity to
19 the bottom of the well. They shut the well down on
20 December 30th. And the next day, New Year's Eve around
21 3:30 in the afternoon, there was a magnitude 4.0, which
22 caused localized damage. After that the earthquakes
23 continued and at least 566 earthquakes from that well.

24 That well should have been shutdown within 60-
25 days after they shut it down back in 2012. Here we are
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1 in 2018, seven years, six years after, and they still
2 haven't plugged that well down.

3 Q. So what did ODNR do, the state regulator,
4 about these earthquakes? And has what they've done
5 been, in any way, effective?

6 A. Well, they've gotten worse. We've continued
7 to have earthquakes. And so that was 2011 during that
8 year.

9 In 2014 we had two issues. We had a well --
10 a fracking well in Poland, Ohio, southeast of
11 Youngstown, that started to have earthquakes. They had
12 77 earthquakes on a fault that was three football fields
13 in length, 300 meters in length, which ODNR then called
14 a microfault. A microfault is something you need a
15 microscope to see.

16 Yet this thing was 300 meters in length, 77
17 earthquakes, and they had admitted that it was due to
18 fracking and that wound up getting a lot of
19 international and national attention because supposedly
20 this was the first place in the United States where
21 fracking had caused the earthquakes. Turned out that
22 wasn't true.

23 It turned out in the prior year, in 2013,
24 October of 2013, there had been over 400 earthquakes in
25 Harrison County in southern Ohio due to fracking. ODNR
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1 kept that secret. None of them were big enough to get
2 on the regional US Geological Survey Network and let the
3 world know about them.

4 But the paper that finally was published and
5 came out said that ODNR had deployed their portable
6 seismometers to this site, meaning they knew about it,
7 yet they kept it secret. They didn't put it on their
8 web site.

9 Their rules. If it's a felt earthquake or
10 it's a magnitude 2.0 or larger it should be on their web
11 site for recent events. They kept it off their web
12 site. Eventually they did put it on after the
13 publication had come out and I nagged them via e-mail
14 why isn't this on? Why isn't this on?

15 Also after the Poland earthquakes they had
16 announced that any new fracking permits within three
17 miles of a known fault were going to have special permit
18 regulations and/or requirements.

19 I've gone subsequently and found wells that
20 were permitted within a mile of a known fault and they
21 had no special permit restrictions on them. I actually
22 got, from the head of oil and gas at ODNR, Rick Simmers,
23 in writing that they were not even following their own
24 rules. And so that has continued.

25 There's now at least a half a dozen fracking
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1 sites down in southern Ohio in Harrison County that have
2 caused earthquakes. I doubt very much -- I haven't yet
3 gone and checked -- but I doubt very much if they even
4 have any of these special permit conditions.

5 We also here in Trumbull County in 2014 we had
6 a well that they drilled 2.9 miles from a high risk dam,
7 the reservoir for the drinking water supply for up to, I
8 think, 400,000 people, including my own water supply,
9 they put that in. They drilled two wells.

10 They had started having earthquakes there.
11 Again, ODNR kept them secret until one was large enough
12 to get on the -- so the regional network and let the
13 world know about it and that one wound up causing 108
14 earthquakes under -- on two different faults.

15 And I just recently -- a pre-publication came
16 out this very week about earthquakes due to injection
17 wells -- an injection well in Washington County in
18 southeastern, near Marietta, that had caused over 300.
19 I think about 318 earthquakes in a complicated series of
20 several faults.

21 So things have not gotten better. Just the
22 more that we're finding out about it we're realizing how
23 bad it actually is.

24 Q. Has the Department of Natural Resources ever
25 prepared a study or given any comprehensive report to
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1 the people of the state about this problem?

2 A. They -- after the Youngstown earthquakes, so
3 that was the first -- you know, papers -- let me back
4 that up.

5 The Ashtabula Class I injection well there was
6 some publications, not by the state to my knowledge, but
7 by scientists from Lamont-Doherty Earth Observatory. So
8 there was some publications about that injection well.

9 After the Youngstown they prepared a rather
10 lengthy preliminary report. They never did a final
11 report. And then the next one were public.

12 After the Poland earthquakes all they did was
13 a press release. I contacted them and said after the
14 Youngstown you did a report. Is there going to be a
15 report?

16 They said no. It was just -- there was just
17 the press release. I had to do a public records request
18 to get more further information about that because they
19 were not going to be forthcoming.

20 Just last year there was a -- just a notice
21 that a well had been shutdown because of seismic
22 activity. Nothing other than a statement.

23 I contacted ODNR and I wanted the well number,
24 the API number for the well. They wouldn't even give me
25 that.

1 So it's gotten worse. From preliminary report
2 to a press release and now just a statement and they
3 won't even tell you which well it is.

4 I suspect they didn't tell me which well it
5 was because I was going to go back and look at permit
6 conditions and see that, again, they were violating
7 their own rules from April of 2014.

8 Q. The report, the preliminary report that you
9 mentioned, can I go on-line today and look at that data
10 and try to find at least what the state has tried to put
11 together about it?

12 A. Yeah, it was available on-line. I haven't
13 checked recently. And so I think I checked last summer
14 and it still wasn't available but I haven't checked if
15 it was available.

16 I would imagine it is unless they scrubbed it
17 from their web site.

18 Q. Well, could you please sum up for me,
19 Professor, your opinion on what the Department of
20 Natural Resources record has been on fracking
21 regulation?

22 A. I think it's been very poor particularly with
23 these induced earthquakes. They are not doing their due
24 diligence. They are going ahead and requiring the
25 operators to prove that there is no fault.

1 We know now that there is a series of faults
2 deep in the basement in here, in the geologic basement,
3 9,000 feet below the surface. They are not requiring --
4 they're allowing the companies just to go right ahead
5 and monitor things. I believe in the proportionairy
6 principle, especially after.

7 There is some evidence that this is happening
8 yet they are not doing that and I feel that they have
9 really dropped the ball in terms of protecting public
10 health and safety.

11 Q. With all this history of earthquakes in
12 northeast Ohio and injection wells and, I guess, other
13 parts of the state with production wells, is ODNR still
14 authorizing injection wells in these areas of known
15 activity, known earthquakes?

16 A. Well, right here where we're sitting in
17 Brookfield, Ohio they've actually already permitted two,
18 and they have three more that the company has applied
19 for. These poor citizens are going to get five
20 injection wells.

21 I've looked at what the proposed volumes for
22 that and applied it to a formula from seismologists from
23 the U.S. Geological Survey where, according to their
24 work, there's a relationship between the amount of
25 fluids you pump underground and the energy associated
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1 with those fluids.

2 And then if there is an earthquake -- again,
3 it's a gamble, if there's a fault there that energy is
4 going to get released. And the calculations, based on
5 the proposed injection volumes from here, they're going
6 to have anywhere -- over a magnitude 5.00 earthquake if
7 there's a fault and if it all gets released in one
8 seismic event.

9 They're basically doing some sort of perverse
10 science experiment with the citizens of Brookfield,
11 Ohio. So, no, they are not doing their due diligence
12 and they are not protecting public health and safety.

13 They had a public comments period. I provided
14 them with that information. I have not heard anything
15 back from them and, frankly, I don't expect to hear
16 anything back from them.

17 MR. RICK SAHLI: That is the second
18 statement from Dr. Beiersdorfer.

19 Now I would like to show you the third and
20 last statement that I have for you today from Teresa
21 Mills about public participation in Ohio

22 TERESA MILLS

23 Q. (By Mr. Sahli) And who do you work for or how
24 is it that you work with these communities?

25 A. Well I have been an activist, an environmental
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1 activist for 30-years, so I have a lot of experience. I
2 do represent two organizations. Statewide I represent
3 the Buckeye Environmental Network and nationally I work
4 with the Center For Health, Environment and Justice,
5 which is -- was started by Lois Gibbs from Love Canal
6 fame.

7 Q. You said that you had a large concern about
8 the environmental justice impacts of fracking in Ohio.

9 What is environmental justice and what are
10 those impacts that concern you?

11 A. To me environmental justice and human rights
12 should go hand-in-hand. Environmental justice is the
13 equal treatment of the population.

14 No one population should be over-burdened more
15 than another population when it comes to environmental
16 stresses. And there is no bigger stress in the state of
17 Ohio right now than fracking to our local communities.

18 Q. Well, what are those impacts that effect
19 environmental justice from fracking?

20 A. Well, what I see not only the health impacts
21 and the psychological impacts that occur with fracking
22 and injection wells but there is a huge human rights
23 violation in the state of Ohio that is being supported
24 by US EPA. And that is there is a total lack of citizen
25 participation in the permitting process, both with the
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1 production wells and the oil and gas wells.

2 It's a human rights violation to not have a
3 say in what goes on in your own community. What goes on
4 right next door. An injection well or a production well
5 can be 150-feet from a domicile, someone's house. I know
6 earlier people said 1800 feet or 1800 yards. They can
7 be as close as 150 feet.

8 When it comes to production wells you will not
9 know that there is a production well being proposed for
10 your community unless you see (1) the ravaging of the
11 land preparing for the well pad or (2) all of a sudden a
12 rig shows up in your sky.

13 Other than that you have no indication that a
14 production well is being proposed. You have no
15 opportunity to comment on any permit and that is for
16 production wells.

17 Injection wells there is a phony 15-day
18 comment period, a public notice, which is very
19 inadequate. They expect people to be able to read an
20 application. It's not a permit. It's just the
21 application, which is like two or three pages, and be
22 able to make a technical comment on an application.

23 I want to make a technical comment on a
24 permit, not an application, because by the time the
25 permit is issued there could be changes that I never get
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1 to comment on a permit. All I get to comment on is the
2 application. That is an injustice that is a human
3 rights violation.

4 Q. You said that the 15-day comment period is
5 ineffective. Why?

6 A. Typically most citizens would not have the
7 technical expertise to be able to technically comment on
8 a permit. And even if they had had the ability to hire
9 a technical person within 15 days that is not going to
10 happen. And the information in an application does not
11 give the technical person the ability to comment.

12 And in the permit application there's supposed
13 to be an area of confinement. So there's supposed to be
14 a confining zone.

15 Q. That's a geologic term.

16 A. Yes. Sorry. Yes, that's a geological term.
17 But that's not stated in the permit application but
18 there is supposed to be a confinement zone. Okay.

19 So when I looked at the torched wells, the
20 wells -- the technique wells, I noticed that there was
21 no confinement zone listed. So I called and made an
22 appointment with a geologist from Ohio University and I
23 actually had to do a PowerPoint of what I saw in order
24 to be able to convey it, to convey my concerns to the
25 geologist.

1 Because what I was seeing was there was no
2 confinement zone, solid confinement zone. And she
3 agreed with me that it was already a fractured
4 confinement zone.

5 Q. So you've got a complicated geologic
6 situation.

7 A. Right.

8 Q. And you're got 15-days to analyze and develop
9 comments.

10 A. Right. Absolutely.

11 And as a citizen, you know, not as a technical
12 expert -- most people can't hire technical experts and
13 they don't realize, you know, well let me call the
14 university and see if they've got someone that can at
15 least look at this. You can't do that in 15-days.

16 Q. And you only have 15-days if you see the legal
17 notice --

18 A. Absolutely.

19 Q. -- in the newspaper.

20 A. Absolutely. If you see the legal notice and
21 you understand what that legal notice is saying then
22 that makes a difference.

23 Q. Now fracking in Ohio is mostly in the
24 southeastern part of the state. That's where the shale
25 clay is located geologically. It's also pretty
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1 well-known that southeastern Ohio is also considered
2 Appalachian.

3 A. Right.

4 Q. And that is an area of significant economic
5 disadvantage compared with much of the rest of the
6 state. Does that factor into your concerns about the
7 environmental justice?

8 A. It does factor into my concerns a great deal.
9 And one of the reasons is because it factors into my
10 concerns but nobody else's. I mean not -- I'm not
11 talking about citizens but I'm talking about
12 governmental agencies that are supposed to be -- you
13 know, especially federal government that are supposed to
14 be under, you know, Clinton's executive order on
15 environmental justice.

16 All of these things should be taken into
17 consideration and the state of Ohio does not consider
18 environmental injustice whatsoever.

19 Q. Have you notified the US EPA and the
20 Environmental Justice Office about your concerns about
21 the disparate impacts on this area?

22 A. Yes, we did. We notified US EPA several
23 times. We've gone to them asking them to do several
24 things and they've just brushed us off.

25 So we did take a step and sent a letter to the
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1 Office of Environmental Justice in Washington D.C., a
2 lengthy letter, quoting the laws, quoting where Ohio
3 Department of Natural Resources were in violation of
4 federal laws. And to our great, great disappointment
5 the Office of Environmental Justice also blew us off.

6 So that is one of the reasons -- we have
7 tried every step that I can think of. I tried all the
8 tricks in my book and I'm just to the point is I don't
9 know what to do any more.

10 So that was why we initiated the original Ohio
11 Tribunals to give citizens a chance to have their say.

12 You know, we're not sure what's going to
13 happen with that yet but during the tribunals citizens
14 were crying. And I went out into the hallway and the
15 one lady said, you don't understand. This is the first
16 time I feel that someone really cared and someone
17 listened to me. That is shameful. That is absolutely
18 shameful.

19 We should not have to, you know, spend our
20 money to hold tribunals when it should be the obligation
21 of the state of Ohio and the federal government to
22 protect us. They should be protecting our right to
23 participation and they should be protecting our right to
24 information. And we have none of that.

25 Q. Is there any federal law that applies to the
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1 production wells that are being fracked?

2 A. No, not that I can think of. Because unlike
3 injection wells there is federal laws that production
4 wells I think those are just regulated by the state.
5 And, you know, with the captured agency of the Ohio
6 Department of Natural Resources who are in bed with the
7 petroleum industry, you know, what do they expect.

8 You know, they're going to be -- they know
9 what side their -- what's the saying, they know what
10 side their bread is buttered on.

11 Q. I know that saying.

12 A. So they're not going to go against anything
13 that the oil and gas industry wants and the citizens are
14 the ones to suffer.

15 Q. You said that there's a federal oversight
16 layer that at least addresses injection wells.

17 A. Right.

18 Q. Now I assume with all of the explosion in
19 fracking in the last few years there's been a lot of
20 activities and changes and improvements in that federal
21 law. Would I be correct in thinking that?

22 A. You would totally be wrong on that. Ohio
23 received primacy in 1983 to regulate injection wells.
24 And that was under statute or code -- it's not a code --
25 it's 1425 which was 30-years ago and their rules or
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1 their laws have not changed in 30-years.

2 Actually it was just a guidance that was
3 written. Those have not been updated in 30-years even
4 though the injection wells and the production waste has
5 changed greatly with the addition of chemicals, with the
6 addition of the radioactive, you know, isotopes in the
7 waste and the lack of just caring.

8 Again, we wrote the letter under 1425 and
9 here's what -- what really bothered me, one of the
10 things that bothered me about this, if you look at the
11 next state over, Pennsylvania. Pennsylvania is not --
12 they did not settle for primacy under -- I can't
13 remember the title or the code, but Ohio did.

14 So Pennsylvania is regulated by both the
15 federal EPA and the Pennsylvania Department of
16 Environmental Protection. So it takes much longer. The
17 requirements are much more strict and stringent than
18 they are in Ohio.

19 When you come to Ohio, you know, it's like we
20 might as well go to the corner of Broad and High where
21 the state house is and just hand out permits willy-nilly
22 because that's what they're doing.

23 But -- so, actually, the federal EPA is
24 encouraging, and there is a word I'm looking for,
25 perpetuating.

1 Q. Perpetuating, yes.

2 A. Perpetuating at the environmental justice
3 itself because of the difference in the regulations
4 between Pennsylvania and Ohio.

5 Pennsylvania has a handful or two handfuls of
6 injection wells. And their statement always is well,
7 we'll, just send our waste to Ohio.

8 So the EPA, US EPA, is creating their own
9 environmental justice issue by the way they have issued
10 primacy.

11 Q. So how many wells, injection wells are there
12 in Pennsylvania and how many in Ohio?

13 A. Well, they've just issued a couple more
14 permits. I think they may have 11.

15 Q. 11?

16 A. 11.

17 Q. And Ohio has --

18 A. And Ohio has 238 permits that have been
19 issued. But back in 2011 when we first were inundated
20 with fracking we had 144. So from 2011 to 2018 we went
21 from 144 up to 238.

22 Q. And the federal government designates counties
23 as being Appalachian.

24 A. Right.

25 Q. From all those injection wells do you know,
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1 approximately, what percentage of those are in the
2 economically disadvantaged Appalachian counties?

3 A. Yes. And there's 32 Appalachian counties and
4 out of those 32 I think 23 have injection wells but
5 those 23 counties take in 3/4 of the injection waste.

6 Q. Let me try to summarize this, Teresa.

7 There's no federal law overseeing the fracking
8 production wells.

9 A. No.

10 Q. The federal law that pertains to injection
11 wells dates back to the 1980's and hasn't been updated
12 at all in Ohio since the advent of the fracking
13 revolution?

14 A. Correct.

15 Q. And the most economically disadvantaged, the
16 most politically disadvantaged portion of Ohio is
17 getting over 3/4 of the fracking waste.

18 A. Right. Right.

19 Q. And you think there's an environmental justice
20 issue involved in those three facts.

21 A. Absolutely. Absolutely.

22 And one thing is in Athens, where we are right
23 now, in Athens County, Athens County ranks No. 1 in the
24 state for poverty, for being at poverty.

25 So it's not the people they're working for.

1 You know, it's -- so when -- like with production wells
2 and injection wells I see a lot of counties where some
3 citizens will say, well, it's jobs, you know.

4 And now we have an industry that goes in and
5 what I call buys out the local politicians by the
6 promise of, well, we'll give you some money to update
7 your fire department or we'll give you money to build a
8 building. Or, in Columbiana County they bought them a
9 truck, a police car, and a crime dog.

10 So there's a lot of citizens when they see
11 that, they think, well, it's good for the community.

12 Well, it's not good for community. That's
13 like dangling a radioactive carrot in front of a hungry
14 rabbit and expect it not to eat that carrot.

15 It's an injustice. These are human rights
16 violations and this needs to stop before there is so
17 much disease and so many cancers that it would be too
18 late.

19 MR. RICK SAHLI: That is the end of our
20 three statements. And I think we have about 10 minutes
21 left, maybe, to have questions.

22 Francis, perhaps you would like to ask your
23 question again that you tried to ask earlier.

24 MR. FRANCESCO MARTONE: I was referring
25 back to one of the statements that were made during the
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1 first presentation before the last break related to the
2 media smear campaign against environmental organizations
3 and the environmental NGOs. That these are basically
4 one on of the first, let's say, signals of the worrying
5 tendency that is actually repeating itself in many
6 situations where there are strong resistors or strong
7 resistance on the ground against large scale
8 infrastructure projects, especially the fracking
9 industry.

10 And I was wondering whether this is just
11 something that is confined to media misrepresentation or
12 slandering of environmental activists or if this is also
13 followed by some consistent behavior by police, for
14 instance, in terms of intimidation or restricting the
15 capacity of initiative or environmental groups?

16 Is there any signal that this kind of smear
17 campaigns actually lead to criminalization of the
18 environmental rights defenders and to some specific
19 police control over territories and the demonstration of
20 the case like at Standing Rock.

21 MR. RICK SAHLI: I think in the fracking
22 situation, while there is intimidation by the state and
23 I think with the expressions of hostility that
24 regulators constantly give the citizens there, they're
25 definitely trying to push the citizens away and get them
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1 not to care.

2 There's only one incident where the police
3 were involved that was similar to your concerns and that
4 was when the Department of Natural Resources had a
5 public information meeting that they very tightly
6 controlled, and I've heard from several people who were
7 at that meeting police presence was extremely large.
8 Especially for a small rural area to have a lot of
9 police is somewhat unique.

10 In addition to just the police themselves,
11 they had guard dogs. So here you come out to meet with
12 your state officials and you're met with guard dogs
13 before you can ask your questions. That is as close as
14 I've seen.

15 Often times with my clients, claims, oh hey,
16 if you continue on to question our activity, if you hurt
17 our profits, we'll bring a lawsuit against your client
18 for interference with our contract rights.

19 And to which I say, fine, go ahead because
20 we'll countersue you for trying to intimidate us and
21 exercise of our free speech rights.

22 And I have had that conversation more often
23 than I would like to think of and there has never yet
24 been a lawsuit filed because they realize it's still
25 free speech right and is far different than what any

1 court wants to go to suppress.

2 So up until the current administration in the
3 White House I was not really concerned about those
4 matters, Francis. But this new administration that's
5 gone so much further than any other one, the fact that
6 the reach of that new president of ours seems to be
7 heading throughout the entire republican party, while
8 we're entering another campaign season and it seems like
9 so many candidates are falling over themselves in their
10 fealty to the new president, that we're on path that may
11 lead to the type of concerns that you just said.

12 MR. FRANCESCO MARTONE: Thank you.

13 MR. GILL BOEHRINGER: Yes, Gill Boehringer
14 here.

15 Actually Francesco asked the question that I
16 was going to ask. I think it's important for us to
17 state, on the basis of research that I've done and
18 others, that being a human rights activist or a
19 supporter or a lawyer is a very dangerous activity
20 around the world.

21 In the Philippines, for example, where I
22 mainly do my research, environmental activists are being
23 killed all of the time. It's one of the most dangerous
24 countries in the world but also lawyers and journalists
25 and others who are trying to protect the public and the
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1 rights of nature.

2 So I guess I would have to say to you, Rick,
3 it must be very frustrating for you to do the work that
4 you're doing and receive the rubbish that you get from
5 the corporations and the government agencies but at
6 least you're not being disappeared or killed as of
7 today.

8 I wanted to also maybe follow-up on what Louis
9 was asking this morning and that is you mentioned that
10 in civil cases it's very difficult for systemic reasons
11 and other reasons. I was wondering if any criminal
12 sanctions are available and have they been brought
13 against the corporations -- I think I know the answer --
14 as result of their operations and/or corruption, tax
15 evasion and other things of that sort, which might be
16 connected with their operations in fracking?

17 MR. RICK SAHLI: There was one example of
18 a successful criminal prosecution but it was brought by
19 the U.S. Attorneys' Office in the northern part of Ohio.

20 This involved a company that was transporting
21 fracking waste water and they were supposed to take it
22 to a treatment or disposal facilities and neighbors of
23 the truck garage where they would be stored began to
24 notice that there were strange odors in that garage and
25 certainly began to grow concerned. And they noticed
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1 that the trucks were dumping fracking water into the
2 local river, which was very close to Youngstown.

3 And someone passed that word along to the ODNR
4 and ODNR actually sent investigators out there. Those
5 investigators got information and sent it to the U.S.
6 Attorneys office, frankly, because I don't think that
7 they trusted the state prosecutors in any type of a
8 criminal case.

9 They caught them red-handed. They did get a
10 conviction and agreed to a sentence but that was the
11 only time that involved some pretty alarming
12 circumstances.

13 Meanwhile we've had spills, kind of routine at
14 some of these sites, but it's the industry itself,
15 legitimate part of the industry doing that. And that's
16 not where we're seeing enforcement.

17 We see explosions. That's not where we see
18 enforcement. So they were very unsafe conditions a lot
19 of the times with the explosions.

20 MR. GILL BOEHRINGER: I wanted to follow
21 that up, if I may. I noticed that in your report you
22 refer to the Guiding Principles on Business and Human
23 Rights. Many critics of the infamous, I would say,
24 pillars, state protection, business respect for rights
25 and providing access to justice, many critics of those
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1 so called pillars, believe that while they sound good,
2 and who could deny that, nevertheless, they are really
3 failing and almost inevitably likely to fail because of
4 what has happened through the market globalization and,
5 in particular, the dominance of corporations over states
6 and their agencies. Would you like to --

7 MR. RICK SAHLI: That was my staff that
8 came in. It's dinner time.

9 MR. GILL BOEHRINGER: We're in trouble
10 now, mate.

11 Would you like to comment on the principles
12 and what might be done to advance the establishment of
13 norms and implementation?

14 MR. RICK SAHLI: I agree with the
15 reservations. I mean the statements -- just one moment
16 please.

17 MR. GILL BOEHRINGER: Must be a warning.

18 MR. RICK SAHLI: The statements do make
19 appropriate comments about the role of nongovernmental
20 actors. The corporations need to be brought into the
21 system of accountability as well.

22 As in so many areas the real force you're in
23 opposition to is a corporate force and not a
24 governmental force.

25 That's certainly the case in Ohio. What we
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1 often have in Ohio is government acts as a sponge that
2 stands between the community and the corporate actor.
3 So that they take the rage of the public, they take the
4 worry and the corporation stays high and dry.

5 The problem here in the United States and in
6 our discussion of legislative enactments that we've had
7 in Ohio have been essentially dictated by the oil and
8 gas industry and our legislature has been little more
9 than a stenographer to write it down and pass it into
10 law.

11 When industry has that level of control over
12 the governing process I don't think saying nice words
13 about corporations being responsible are going to get us
14 very far.

15 The United States of America has a huge
16 problem now with campaign finance. It's something I
17 have seen in the environmental movement for at least 25-
18 years.

19 Now with our Citizens United case that lets
20 corporate money go directly into the political system
21 and to be untraceable how everybody, I think, sees what
22 I've been able to see in the environmental movement what
23 the sale of a government is.

24 More than the legislature it's the courts too.

25 I used to have a pretty good success rate in court and
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1 I've seen it's peter-out over the years and, frankly, I
2 don't think that petering-out is due to my becoming a
3 worse lawyer as I gain more experience.

4 We can't talk about corporations playing nice
5 when they are in as much control of this system or in
6 this much control of the media and how it gets described
7 to the public. We need more aggressive steps than that.

8 That is my view, Gill.

9 MR. GILL BOEHRINGER: I think many would
10 agree with you.

11 MR. RICK SAHLI: Well, it's been a
12 pleasure. You've shown a lot of patience to listen to
13 the Ohio story. I appreciate that patience very much
14 and I wish you Godspeed and enjoy your upcoming week and
15 I look forward to speaking to you close to the end of
16 the process and I wish you well.

17 Thank you much.

18

19 [youtube.com/watch?v=zBjGpVDDBW8]

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