

NEW YORK STATE  
HIGH SCHOOL  
MOCK TRIAL  
TRIAL SCRIPT

PART IV



## Case Summary

**PEOPLE v. PENN HYDRAGAS, INC., and MITCHELL TOMLEY, CEO**  
**Mayberry County Court**  
**Indictment No. 2013-23456-7**

On February 15, 2013, the defendants, Penn HydraGas, Inc., and Mitchell Tomley, Chief Executive Officer of Penn HydraGas, Inc., were indicted on one count of violating the federal Safe Drinking Water Act (SDWA), codified in New York under section 71-4001 of the Environmental Conservation Law. The defendants are accused of contaminating the water supply of the Village of Molivar in Mayberry County, located in western New York on the northern Pennsylvania border. As the principal federal law intended to ensure safe drinking water for the public, the SDWA empowers the Environmental Protection Agency (EPA) to set standards for drinking water quality for all states and localities. Except for private wells, the statute applies to every public water system in the United States that has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. The population of the Village of Molivar, according to the 2010 census, is 905.

The U.S. Justice Department declined to prosecute the case, having concluded after a cursory review that the investment of scarce resources to prosecute a case where direct proof of contamination by the defendants was lacking was not warranted. The District Attorney of Mayberry County, after some pressure from the residents of Molivar, led principally by a farmer named Mickie McDonald, and from Dr. Ryan Toolittle, producer of the documentary film *Gas Country*, sought and obtained the indictment. Mr./Ms. McDonald reached out to Dr. Toolittle after seeing *Gas Country*. The District Attorney had to step aside after it was discovered that his spouse had invested heavily in Penn HydraGas, Inc., stock that is traded over-the-counter. The State Attorney General was appointed by the governor to take over the prosecution.

Mr./Ms. McDonald owns a farm in the Village of Molivar, located on the New York-Northern Pennsylvania border. His/her residence is located on the farm land and said residence receives water from the municipal water system. Farmer McDonald also has a private well for watering his/her crops and for hydrating the farm animals. In March 2013, s/he filed a civil lawsuit against Penn HydraGas, Inc., in New York State Supreme Court, 8th Judicial District, alleging that the Eastern Pennsylvania company has contaminated his/her property with dangerous hydrocarbons. In Northern Pennsylvania near Molivar, the defendants use a high-volume horizontal hydraulic fracturing (HVHFF) process, known colloquially as fracking, to drill for natural gas. The drilling process employed by Penn HydraGas allegedly uses diesel fluids. The byproducts of the diesel fluids allegedly contaminated McDonald's water supply. Because of diversity of citizenship, the defendants made a proper motion to remove the case to federal court. The motion was granted and the case was removed to the U.S. District Court, WDNY.

McDonald's lawsuit, seeking 10 million dollars in damages, alleges that the drilling for natural gas by the Pennsylvania company caused contaminated wastewater to pollute the water supply servicing the farm and the residence. Mickie McDonald contends that three of his/her hogs and one of his/her cows died in late 2012 as a result of drinking the contaminated water. S/he also contends that his/her spouse and his/her child have become sick because of the contamination. McDonald's daughter has developed asthma and his/her spouse has constant and unexplained

headaches. McDonald now has to truck in water for their crops and animals and buy bottle water for family consumption.

Mitchell Tomley, CEO of Penn HydraGas, Inc., contends in the civil lawsuit that the plaintiff has no proof that his/her company has contaminated McDonald's water supply. Tomley further contends that the plaintiff has not shown, and is not able to show, that his/her company caused the death of his/her animals or the illnesses to his/her daughter and spouse. According to Tomley, it was not possible that Penn HydraGas could have polluted the defendant's water supply because the drilling process is carefully monitored and, in any event, the drilling is not close enough to the plaintiff's farm land to have impacted said property. Moreover, Penn HydraGas alleges that the contamination of the plaintiff's water supply, if any, was caused by the chemicals found in the fertilizers used on the crops grown on the farm that are fed to the animals. Also, Penn HydraGas assert that a large diesel fuel leak that occurred on the farm contributed to the contamination. Diesel fuel and the fertilizer chemicals are known to seep into the aquifer. Therefore, the defendant company has moved for summary judgment.

Dr. Ryan Toolittle, a geology professor at SUNY Buffalo, is an expert in the area of chemical environmental contamination. S/he received his/her undergraduate degree in chemistry from the University of Wisconsin-Madison. Dr. Toolittle earned a master's degree and a Ph.D. in geology from the University of California at Berkley. S/he is also executive producer of the widely-acclaimed documentary film *Gas Country*. The film, shown on the cable premium channel OBH, documents how HVVHF, or fracking, has harmed land and aquifers all across the country, including Northern Pennsylvania. Dr. Toolittle is set to release *Gas Country II* next year. While *Gas Country* did not mention Penn HydraGas by name, *Gas Country II* has a big exposé on the company, including interviews of several former high level employees. The defense believes that a conviction in this case would create a buzz for the *Gas Country II* film and yield huge profits for Dr. Toolittle's production company.

In addition, Dr. Toolittle is co-owner of a laboratory that has been certified by the EPA and the NYS Department of Environmental Conservation to conduct testing of drinking water. Although his/her laboratory certification was provisional, the lab was still able to analyze water samples so long as the clients were made aware of the provisional status of the lab's certification. Dr. Toolittle took samples from the McDonald well and from the Molivar water station and found that benzene, a dangerous byproducts that could come from the use of diesel fluids, was present. S/he concluded, to a reasonable degree of scientific certainty, that the benzene contamination was the result of the nearby fracking done by Penn HydraGas.

Another witness for the prosecution is Bobbie Jones, a former chemical engineer of Penn HydraGas. S/he worked for the company and the predecessor company, Natural Shalegas, for approximately twenty-five (25) years until s/he was fired in December 2010. Mr./Ms. Jones challenged the firing, but the Pennsylvania Department of Labor determined that the firing was justified. The company had accused him/her of arriving to work late on many occasions, of sleeping on the job and of being insubordinate. The insubordination charge occurred as a result of Mr./Ms. Jones' refusal to work overtime when important projects had to be completed on time. S/he sent an e-mail to the Mitchell Tomley, informing the CEO that s/he, Bobbie Jones, was not available to work overtime.

Bobbie Jones maintained that the several times s/he was found sleeping on the job; it was the result of medication s/he was taking for a thyroid problem. After his/her doctor adjusted the prescription dosage, s/he had no further problems with on-the-job sleeping. S/he also alleges that s/he was late on occasions and could not work overtime because s/he was caring for an elderly parent. S/he believes that if Mitchell Tomley wasn't so money-hungry, Mr./Ms. Tomley would understand his/her predicament and make some accommodations. In fact, s/he once heard Mitchell Tomley comment to one of his/her vice presidents, "We don't care if a few farm animals croak. Fracking is the future and we are frackin' it up." Mr./Ms. Tomley admitted to making the comment, but said it was all in jest. In any event, Mr./Ms. Jones believes s/he was fired because Mr./Ms. Tomley thought s/he, Bobbie Jones, was accumulating information about the company's illegal drilling practices and was planning to become a whistle blower. Mr./Ms. Jones admits that s/he never visited any of Penn HydraGas drilling sites and was not completely familiar with all of the drilling practices. His/her job was to work at Penn HydraGas lab next to the central office testing samples of natural gas brought to him/her for trace detection levels of impurities. Natural gas trace impurities include hydrogen, nitrogen, carbon monoxide, carbon dioxide, oxygen, mercury, water and other components.

Mr./Ms. Jones was let go before amassing enough information to go to the state authorities. S/he disagreed with the state labor department's finding that his/her firing was justified. However, s/he did not seek an administrative appeal or a judicial review of the decision.

Shortly before his/her firing, Bobbie Jones became disillusioned with the natural gas exploration industry and became a member of Pennsylvania's green environmental group, Stop All Fracking Forever (SAFFE). S/he became a pariah in the eyes of business interests in Northern Pennsylvania and could not find employment anywhere in that area after his/her firing. When the position of water quality engineer for the Molivar Water Authority was posted, s/he applied, was hired and moved to Molivar in January 2012. Starting in July 2012, Bobbie Jones began to notice his/her weekly water samples had increasingly higher levels of benzene, toluene, ethylbenzene and xylene, all known toxic constituents of diesel. Mr./Ms. Jones learned in September 2012 that Penn HydraGas several months prior had started a big fracking operation in Northern Pennsylvania, just five miles from Molivar. Earlier, s/he had received by mistake an e-mail from Mr./Ms. Tomley to Larry Lyonheart, the current vice president of operations, suggesting that Lyonheart might want to consider using diesel fluids in the drilling operation as a way to lower costs. The e-mail was a reply to an e-mail Larry had sent companywide. Apparently, Bobbie Jones' personal e-mail address was still in the company's group listserve. Mr./Ms. Tomley accidentally selected REPLY-ALL, which would explain how Jones got a copy of the e-mail.

Suspicious that Penn HydraGas was polluting the water supply, Mr./Ms. Jones contacted Dr. Toolittle's lab to test the water at the station and hopefully confirm the results that Jones was getting. After Dr. Toolittle's lab confirmed that very high levels of benzene were found in the water supply, Mr./Ms. Jones contacted the Mayberry County District Attorney's Office.

Dr. Ryan Toolittle interviewed Dr. Shawn Marshall for the *Gas Country* documentary. Dr. Marshall is a geologist with the Natural Gas Institute. The Institute is the lobbying entity for the

natural gas industry and is supported completely by membership dues paid by natural gas drillers and suppliers. In *Gas Country*, Dr. Marshall advocated fiercely and unapologetically for fracking. S/he believes that “tree-hugging” environmentalists have produced no credible evidence that fracking has caused any harm. Moreover, fracking could lead to a reduction in this country’s dependency on foreign oil supplies. Dr. Toolittle believes that Dr. Marshall is just a hack for the natural gas industry and even said in *Gas Country* that, “Dr. Marshall is just full of “natural” gas, if you know what I mean.” Dr. Marshall took exception to Dr. Toolittle’s remark and refused to be interviewed for *Gas Country II*.

Billie Jo Simpleton is Deputy Director of Business Development Council of Pennsylvania. The council is a non-governmental organization whose mission is to attract new businesses and jobs to Pennsylvania. Mr./Ms. Simpleton believes that fracking has been great for the Pennsylvania economy, having produced jobs for many Pennsylvania residents and put money in the pockets of landowners who lease their property for drilling. While employed as Vice President of Operations for the predecessor company, Natural Shalegas, and for Penn HydraGas, Inc., from 2002 to 2009, s/he did not approve the use of diesel fluids in the drilling process. This opposition to using diesel fluid in the drilling process didn’t sit well with Mr./Ms. Tomley because it was cheaper to use diesel. Mr./Ms. Tomley was not unhappy when Mr./Ms. Simpleton left to take the business development job. Soon after s/he left Penn HydraGas, Mr./Ms. Simpleton suspected the company began to use diesel fluid. However, s/he did not report his/her suspicions to the authorities.

The Safe Drinking Water Act does not allow the use of diesel fluid in the drilling process without a permit issued by the Environmental Protection Agency. The permit is quite costly, which cuts into the drilling company’s profits. The high cost of the permit is to discourage drillers from seeking to use diesel fluid. Since diesel fluid is relatively cheap and makes the drilling process relatively easy, it is alleged that many drilling companies use diesel fluid without obtaining the required permits.

Mr./Ms. Tomley vehemently denies using diesel fluid. S/he also discovered that Mickie McDonald had a serious diesel fuel leak on his/her farm in April 2012. Mr./Ms. McDonald uses diesel fuel for his/her farm vehicles and equipment. His/her 200-gallon diesel fuel tank sprung a leak, spilling the fuel onto the ground. Mr./Ms. McDonald alleges that the tank was not full, but s/he does not know exactly how many gallons were spilled. The spill occurred towards the end of the month when the supply of diesel fuel is very low. S/he was expecting a new shipment of fuel at the beginning of May 2012. In any event, Mr./Ms. McDonald hired a spill recovery company to clean up the mess. S/he asserts that the recovery effort was a complete success. Nevertheless, the leak was reported to the New York State Department of Environmental Conservation (DEC) and s/he was fined. It was later learned that the cleanup company went out of business.

Mitchell Tomley is at his/her wits-end with all of the protesting by green environmentalists at Penn HydraGas headquarters and drilling sites. S/he feels that the protest signs they carry, which says “FRACK YOU,” “DON’T FRACK WITH US” and “NO FRACKING WAY,” are vile and juvenile. Mr./Ms. Tomley maintains that any contamination of McDonald’s private well and the Molivar water supply was the result of McDonald’s diesel fuel tank spill and fertilizer utilization.

S/he believes that Mr./Ms. McDonald is testifying for the prosecution and hoping for a conviction to enhance his/her recovery in the civil case.

The People must prove beyond a reasonable doubt that Penn HydraGas, Inc., and Mitchell Tomley used diesel fluid in the drilling operation near the Village of Molivar and that said drilling contaminated Molivar's drinking water supply.

## **Witnesses:**

### **For the Prosecution:**

Mickie McDonald, victim and hog and dairy farmer

Dr. Ryan Toolittle, geology professor, co-owner of an EPA-approved testing laboratory and Executive Producer of the documentary films *Gas Country* and *Gas Country II*

Bobbie Jones, former chemical engineer of Penn HydraGas, Inc., a member of Pennsylvania's and New York's green environmental group (Stop All Fracking Forever [SAFFE]) and the water quality engineer of the Village of Molivar Water Authority

### **For the Defense:**

Mitchell Tomley, defendant and CEO of Penn HydraGas, Inc.

Dr. Shawn Marshall, geologist with the Natural Gas Institute

Billie Jo Simpleton, Deputy Director of the Business Development Council of Pennsylvania and former Vice President of Operations for Penn HydraGas, Inc.

# STIPULATIONS

1. All witness statements are sworn and notarized.
2. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the stipulated facts and witness affidavits.
4. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.
5. This is a true and accurate copy of the drilling site diagram and is admissible subject to the laying of proper foundation.

STATE OF NEW YORK  
COUNTY COURT : MAYBERRY COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2013-23456-7

PENN HYDRAGAS, INC., and  
MITCHELL TOMLEY, CEO,

Defendants,

THE GRAND JURY OF THE COUNTY OF MAYBERRY, by this indictment, charges PENN HYDRAGAS, INC., and MITCHELL TOMLEY, CEO, the defendants, with violating the federal Safe Drinking Water Act and section 71-4001 of the Environmental Conservation Law, when PENN HYDRAGAS, INC., and MITCHELL TOMLEY, CEO, the defendants, in or about the month of May 2012 and thereafter, with reckless disregard, contaminated the drinking water supply of the Village of Molivar, County of Mayberry, State of New York, by the use of diesel fluids in the defendants' high-volume horizontal hydraulic fracturing (HVHFF) drilling process.

*Mortimer Snerd*

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MORTIMER SNERD  
District Attorney of Mayberry County



**NEW YORK STATE  
HIGH SCHOOL  
MOCK TRIAL  
AFFIDAVITS**



## Affidavit of Mickie McDonald

1. My name is Mickie McDonald. I am forty-five years old. I live on a farm with my spouse and fifteen year-old daughter Molly. The farm, located on Saunders Settlement Road in the Village of Molivar, has been in my family for more than one hundred years. When my parents passed away in a horrific vehicle accident six years ago, I moved back to take care of the farm. At the time of the accident, I was residing in Manhattan. My spouse had a very lucrative job as an investment banker on Wall Street. I was an associate professor in the management department at small college in Queens. My spouse was somewhat reluctant to make such a dramatic move, but at the time in 2007 the stock market was tanking and huge layoffs at all of the investment houses were expected. So, we decided to move to the farm. We had always talked about cutting back and leading a simpler life at some point in the future, like running a bed and breakfast place. The death of my parents just accelerated the date for transitioning to a new life. Besides, the farm is a great place for us to raise our daughter.
2. On the farm, we raise hogs that we sell to local and regional butchers. We have cows and sell milk to the refiner in Erie County that produces milk that's sold under store brand names like Kegman's and Pops Market. We also grow corn and alfalfa that are sold all over western New York. The farm uses well water for hydrating the animals and for watering the crops. For our residence, we receive water from the Village of Molivar Water Authority.
3. Beginning in June 2012, I began to notice that some of my hogs and cows were lethargic and were not feeding as usual. Several of the animals were throwing up frequently and sleeping excessively during the day. Then in September 2012, three of my hogs and one of my cows died. I did not know what to do. So, one day in October 2012, I happened to talk to my neighbor, Farmer Bob, who lives five miles up Saunders Settlement Road, about the problem with my animals. He told me to have my well water checked.
4. I had recently seen the documentary film *Gas Country*. I later learned that the producer of the film, Dr. Ryan Toolittle, is a professor at SUNY Buffalo and also owns a laboratory that is certified to test drinking water systems. So, I called the lab in late October 2012 and made arrangements for testing my well water and the water going into the house. I was informed at that time that the lab's licensing was only provisional, but that was a temporary situation and Dr. Toolittle's lab consistently produced valid data and ran the lab in full compliance with all policy mandates. Dr. Toolittle himself/herself came out personally to perform the testing. Dr. Toolittle phoned me in mid-November 2012 to deliver the test results. As I suspected, after having talked to Farmer Bob, the test results confirmed that my well water and the water servicing my house was contaminated. Dr. Toolittle found high levels of benzene in both water supplies.
5. I decided to sue Penn HydraGas, Inc., for contaminating my water supplies. So, in March 2013, my attorneys filed a civil lawsuit against the company in State Supreme Court, alleging that Penn HydraGas contaminated my property with dangerous levels of benzene. The company is fracking for natural gas in northern Pennsylvania six miles or

so from my farm. It is the only company doing any fracking around here. Dr. Toolittle suspects Penn HydraGas is using diesel fluids in its drilling process. It is the diesel fluids that have contaminated my property and water supply.

6. I am seeking 10 million dollars in damages on the civil case. In the complaint, my attorneys allege that the drilling for natural gas by Penn HydraGas caused contaminated wastewater to pollute my well water and the water supply going to my house. The contamination led to the deaths of three of my hogs and one of my cows. Other animals on my farm are very sick and close to death. Also, since Penn HydraGas started drilling near my farm, my daughter has developed asthma and my spouse now has constant and unexplained headaches. I now have to truck in water for my crops and my animals. I also have to buy bottled water for my family's consumption. It will take millions of dollars to clean up the mess Penn HydraGas has caused. Without a massive cleanup, we will have to abandon the farm and the property will become a wasteland.
7. The attorneys for Penn HydraGas finagled the system to get the civil case moved to the federal district court in Buffalo. It appears that the civil case is languishing there, pending the outcome of the criminal case. I need the money now to start the cleanup effort. None of the loan companies are willing to advance us money (referred to by my lawyers as a non-recourse loan); probably because the loan companies don't believe that my lawsuit has any merit.
8. After learning in mid-November 2012 that my well water and drinking water supplies were contaminated, I contacted the Village of Molivar Water Authority in early December 2012. Mr./Ms. Bobbie Jones, the water quality engineer, said s/he started some weekly testing of water samples in July 2012 and found increasingly higher levels of benzene, toluene, ethylbenzene and xylene each time. Mr./Ms. Jones said s/he just needed confirmation of his/her results. I told him/her all about Dr. Toolittle's lab. Mr./Ms. Jones was concerned about the provisional certification of the lab, but said s/he would still contact Dr. Toolittle. In passing, Mr./Ms. Jones mentioned that the aquifer for the Molivar water supply runs under my farm.
9. Because so many things were happening at the time, I forgot to mention to Bobbie Jones that I had a diesel fuel leak on my farm in April 2012. Anyway, I believe it was just a small spill and it was quickly cleaned up. The cleanup company, I believe was called Larry, Moe and Curley Quick Response Recovery, recently went out of business. I was completely happy with the work that had been done. Besides, Dr. Toolittle cannot state definitively one way or the other that the diesel spill was enough to harm my well water or the Molivar drinking water supply.
10. In January 2013, Bobbie Jones called to let me know that Dr. Toolittle confirmed that dangerously high levels of benzene were found in the Moliver water supply. There were only trace (non-dangerous) amounts of the other hydrocarbons. Mr./Ms. Jones said s/he would now contact the EPA and the U.S. Justice Department to discuss how to proceed against Penn HydraGas.

11. My attorneys informed me on February 18, 2013 that Penn HydraGas and Mitchell Tomley, CEO, were indicted on February 15, 2013, charged with one count of violating the federal Safe Drinking Water Act as adopted by New York State pursuant to section 71-4001 of the Environmental Conservation Law. The company and the CEO were accused of contaminating the water resources of the Village of Molivar. My attorneys said a conviction would be great for the civil case we eventually filed in March 2013.
12. According to my attorneys, the U.S. Justice Department declined to prosecute the case, having concluded after a quick look at everything that the investment of scarce resources to prosecute a case where direct proof of contamination was lacking was not warranted. Well, I was not about to let the Justice Department decision be the end of this matter. So, I contacted some local residents and Dr. Toolittle to put some pressure on the District Attorney of Mayberry County to seek an indictment. The District Attorney with great reluctance did obtain the indictment. However, the District Attorney had to step aside after it was discovered that his spouse had invested heavily in Penn HydraGas stock. The State Attorney General had to be appointed by the governor to take over the prosecution.
13. I don't care that Dr. Toolittle's new film *Gas Country II* may benefit financially from finding benzene in my water supplies. That is not my concern. I'll do whatever it takes to get Penn HydraGas and Mitchell Tomley to pay for what they have done to my family and my farm.

To the best of my knowledge the above is true.

DATED: Molivar, New York  
October 21, 2013

*Mickie McDonald*

Mickie McDonald



## Affidavit of Dr. Ryan Toolittle

1. My name is Ryan Toolittle and I am 59 years old. I live in Sardinia, New York, which is located about half-way between Buffalo and Molivar.
2. I received my B.S. in chemistry from the University of Wisconsin-Madison in 1976. I earned my master's degree in ecology and environment in 1979, from the University of California at Berkeley, where I was also awarded a Ph.D. in geology, in 1985. I am presently a professor at SUNY Buffalo, and an expert in chemical environmental contamination.
3. I am also the co-owner of a laboratory which has been certified by the Environmental Protection Agency ("EPA") and the New York State Department of Environmental Conservation to analyze drinking water samples for compliance purposes. Our licensing is provisional, based upon alleged deficiencies in our lab, despite which we have demonstrated the ability to consistently produce valid data within the acceptance limits specified in the National Primary Drinking Water Regulations and in full accordance with the policy mandated by the state certification authority. Nonetheless, due to this provisional certification, we are required to notify our clients of this "downgraded" status, which I believe is unwarranted and am fighting to correct.
4. Further, I am the Executive Producer of the widely-acclaimed documentary film, *Gas Country*, which is shown on the premier cable channel OBH. The film documents how the high-volume horizontal hydraulic fracturing process, also known as "HVHHF" or "fracking," and used to drill for natural gas, has harmed land and aquifers all across our country, including Northern Pennsylvania, where Penn HydraGas has recently started a fracking operation.
5. I am set to release *Gas Country II* in 2015. Although the initial documentary did not mention Penn HydraGas, Inc., by name, *Gas Country II* includes a huge exposé on Penn HydraGas and its CEO, Mitchell Tomley, including interviews of several former high-level employees.
6. Sure, I realize that some people think that I'm testifying for the prosecution to get publicity for my upcoming film release. And of course, it would be great for my new movie to make a lot of money, especially because I intend to donate some of the profits to SAFFE, Stop All Fracking Forever. What more appropriate cause is there? It's the same as my having helped Mr./Ms. McDonald and other residents persuade the district attorney to indict Penn HydraGas for what they were doing; before it was too little, too late!
7. In late October 2012, I was contacted by Mickie McDonald, a farmer who was gravely concerned about his/her family's recent illnesses, and the deteriorating condition and some deaths of his/her livestock. Mr./Ms. McDonald wanted the well on his/her property and the water going into his/her house tested.

8. I arranged to personally go to the McDonald farm and took samples from the well myself. I also took samples from the water faucets in the farm house. McDonald's house gets its water from the Molivar water station. The source of the water for the well and for the Molivar water station is the aquifer that runs under the farm.
9. Mr./Ms. McDonald told me that fertilizers containing chemicals are used on the crops grown on the farm, which are consumed by people and fed to the animals. However, following the conduct of thorough and extensive testing procedures, I found, as to both the well and the water going into the house, that byproducts that could only come from diesel fluid were present. I also determined that the drilling being done by Penn HydraGas had caused this contamination.
10. Our lab used the “purge and trap” method to prepare the water samples. Then, utilizing the gas chromatography technique along with mass spectrometry, we were able to determine that a dangerous level of benzene was present in the farm’s well water and in the water servicing the McDonald’s house provided by the Molivar Water Authority. Specifically, I found high levels or concentrations of benzene, a hydrocarbon that result from fracking. I also detected trace amounts of other hydrocarbons produced by fracking; toluene, ethylbenzene and xylene, although those particular levels are not considered “dangerous.”
11. At this point, I should add when I initially went to his/her property, Mr./Ms. McDonald informed me that s/he kept diesel fuel used for farm vehicles and equipment in a 200 gallon tank on the property, which had sprung a leak in late April 2012, causing some fuel to spill into the ground. Although Mr./Ms. McDonald was not sure how much was spilled, s/he was certain that the tank was not full at the time of the incident. S/he also told me that a spill recovery company had successfully cleaned it up. I was not able to reach anyone at the recovery company because it went out of business.
12. As stated previously, Penn HydraGas had been conducting fracking operations in Northern Pennsylvania, at a location near the Village of Molivar. I learned from an EPA blog posting that there was a crack in the cement casing of Penn HydraGas' well bore at that site in June 2012. This breach was right in the aquifer providing drinking water for the village and probably involved a significant emission of diesel fluid.
13. In December 2012, I was contacted by Bobbie Jones, the Water Quality Engineer for the Molivar Water Authority. Mr./Ms. Jones, whom I interviewed for *Gas Country*, contacted me to test the water at the Molivar water station. S/he had noticed over the past few months that his/her weekly samples had increasingly higher levels of benzene, toluene, ethylbenzene and xylene; all known toxic constituents of diesel fluid. Mr./Ms. Jones was aware of Penn HydraGas’ fracking operation near Molivar. Ms./Mr. Jones was hoping that my lab would confirm his/her results. My testing in fact did confirm that, based on a reasonable degree of scientific certainty, the benzene contamination of the Molivar water resources was caused by the high-volume horizontal hydraulic fracturing done by Penn HydraGas at its drilling site near Molivar. At the water authority’s request, I prepared a written report. I have not yet prepared a report regarding the contamination I found on the farm and inside the McDonald house.

14. Let me explain the difference between diesel **fuel** and diesel **fluid**. Diesel fuel is what goes into tanks to power a diesel vehicle. Regardless of the amount of any such spill at the McDonald farm, my scientific findings confirm that it was not enough to have caused the subject contamination to both the McDonald well and the aquifer which provides water to Molivar residents and runs under McDonald's farm. Diesel fluid, on the other hand, is the "chemical cocktail" consisting of water, sand, and 1% of diesel that's used in the fracking process to release the natural gas trapped in shale rock. This fracking operation is what produces the hydrocarbon byproducts I mentioned earlier.
15. Diesel fluid is relatively inexpensive. However, no one is allowed to use it in the drilling process without a permit issued by the EPA, which is expensive to secure. I'm sure that's because of the serious dangers HVHFF presents. That's why I think it's extremely reckless that Penn HydraGas and other companies do it, without a permit no less!
16. My concerns about fracking and its potential harm to the environment led me to produce my first documentary. In fact, during the investigation for that film, anonymous sources revealed that around 2009, Mitchell Tomley, the CEO of Penn HydraGas, was pressuring its operations unit to be more productive and to lower costs by using diesel in the drilling operation.
17. Although I do believe that Mr./Ms. Tomley and Penn HydraGas are trying to save the world from political turmoil by decreasing our dependency on foreign oil, they are killing the earth in the process. So, thanks a lot Mr./Ms. Tomley! For nothing! Particularly since there are renewable energy resource alternatives that use wind, solar and biofuels.
18. I interviewed Dr. Shawn Marshall for my first documentary *Gas Country*. S/he is a real hack, a "paper" geologist who got his/her Ph.D. online. S/he works for the Natural Gas Institute, which is the lobbying entity for the industry and is funded entirely by money from natural gas drillers and suppliers, polluters all. In *Gas Country*, Dr. Marshall unabashedly advocated for fracking, proclaiming that "tree-hugging" environmentalists have produced no credible evidence that fracking causes any harm. Can you believe s/he also tried to justify fracking as a solution to reducing our country's dependency on foreign oil supplies? Then again, why wouldn't s/he? That's what s/he gets paid a huge amount of money to do! As I said in *Gas Country*, Dr. Marshall is just full of "natural gas," if you know what I mean. S/he probably refused to be interviewed for *Gas Country II* because s/he ran out of gas!

To the best of my knowledge the above is true.

Dated: Sardinia, New York  
December 21, 2013

*Dr. Ryan Toolittle*

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Ryan Toolittle, Ph.D.



## Affidavit of Bobbie Jones

1. My name is Bobbie Jones. I am 52 years old, and I reside at 22 Town Line Rd. in Molivar, New York. I graduated from University of Pittsburgh in 1983 with a B.S. degree in chemistry. I serve as the Water Quality Engineer for the Molivar Water Authority, a position I have served in since January 2012. Molivar is a quaint little village with a population of approximately 905 residents, according to the 2010 census.
2. From 1985 until 2010, I was a chemical engineer employed by Natural Shalegas and then the successor company, Penn HydraGas, Inc. In December 2010, I was terminated by Penn HydraGas. I believe that my termination was because the company's CEO, Mitchell Tomley, who bought Natural Shalegas in 2005 and changed the name to Penn HydraGas, Inc., discovered that I was accumulating information that Penn HydraGas was using diesel fluid in its drilling operations without a permit.
3. While I did not accumulate enough evidence of the illegal drilling to go to the Environmental Protection Agency, I did overhear Mr./Ms. Tomley say that s/he "didn't care if a few farm animals croaked, because fracking is the future." And then, after I was terminated, I happened to receive an email sent companywide wherein Tomley indicated that s/he thought using a more "cost effective" drilling solution should be considered. Penn HydraGas apparently deleted my work email address, but they must have overlooked my personal email address. Some of us were allowed to use personal email addresses. I printed this email and saved it.
4. Penn HydraGas claims that it fired me because of tardiness, insubordination, and falling asleep on the job. After 25 years, they claim that all of a sudden I wasn't a good employee. Now, I admit that I was late a few times. I also had a problem with my thyroid at one point that caused me to doze off, but that was fixed with new medication long before I was fired. As far as insubordination goes, it's almost like they entrapped me. They knew that my father was sick and that I was caring for him alone, yet they still demanded more and more overtime from me. Eventually, I had to say enough is enough and refuse. I think that any reasonable employer would have taken these things into consideration, but apparently the Pennsylvania Department of Labor disagrees. However, I did not appeal the labor department's decision, but not because I didn't believe my case had merit. I just wanted to move on with my life.
5. To tell the truth, part of the problem was that I was fed up and disillusioned with the whole industry. Right about the time that I overheard Tomley practically bragging about his/her contempt for the environment, I saw *Gas Country*. After that, it was hard to go get up and to work for those money-hungry polluters.

6. I spent a good part of my life supporting Penn HydraGas and its ilk. When the company was called Natural Shalegas, I had significant input into the development of the chemical cocktail that our frackers are supposed to be using. That made it all the harder to take when I found out that Penn HydraGas was using diesel. While I never visited any of the drilling sites, I was well aware of what Tomley was up to. Just take a look at that email Tomley sent. So, the way I look at it, I've simply decided to use my knowledge, time, and effort to fight for the environment instead of business. For me, it's good versus evil, and I chose good.
7. So, in June 2010 when I was still working at Penn HydraGas and before I was fired, I became a member of the Pennsylvania chapter of Stop All Fracking Forever (SAFFE). This did not sit well with Mr./Ms. Tomley and the other business interests in northern Pennsylvania. I became a pariah in their eyes such that after Mr./Ms. Tomley fired me, I could not find work anywhere in northern Pennsylvania.
8. In addition to my position with the Molivar Water Authority, I'm also heavily involved with the New York chapter of SAFFE that I started in late January 2012, shortly after taking the water authority position. And despite all the resistance from business interests, we are making a dent in the fracking industry, just not fast enough. I'm pretty sure that the growing public resistance to their way of doing business is beginning to cut into profits. That's probably why they are cutting corners. Just wait until the public gets a look at *Gas Country II*. Dr. Toolittle interviewed me and even arranged a special pre-screening for SAFFE members. It's pretty compelling stuff.
9. In July 2012, not long after I started as the Water Quality Engineer, I began seeing the levels of toxins like benzene, toluene, ethylbenzene and xylene rise. Sure enough, not far down the road, Penn HydraGas had just started another fracking operation. It's not that I'm finding these chemicals that is so surprising, I know a company like Penn HydraGas will do just about anything to keep its profits high, but it was like someone was putting diesel straight into the tap water.
10. Farmer Mickie McDonald contacted me in early December 2012 to report that his/her well water and drinking water supplies were contaminated. I told him/her about the increasingly higher levels of benzene, toluene, ethylbenzene and xylene that I was finding each week since July. I told Mr./Ms. McDonald that I just needed to confirm my results. Mr./Ms. McDonald told me about Dr. Toolittle's lab. Dr. Toolittle never mentioned to me that s/he had a testing lab when I was interviewed for his/her documentary. I was a little concerned about the provisional certification of Toolittle's lab, but I contacted him/her anyway. In passing, I mentioned to Mr./Ms. McDonald that the aquifer for the Molivar water supply runs under his/her farm. By the way, I don't remember Mr./Ms. McDonald ever telling me about the diesel fuel leak on his/her farm. I believe I heard it from Dr. Toolittle, but it is something that Mr./Ms. McDonald

should have told me. Anyway, Dr. Toolittle's lab confirmed my findings, i.e., that a very high level of benzene is present in the Molivar water supply, but only trace amounts of other hydrocarbons.

11. With such a clear link between the timing of the rising toxins and the Penn HydraGas operation, I had to report it. It wasn't anything personal, but I went to the D.A. and told him what I had seen, both while I was at Penn HydraGas and then at the Water Authority. I will admit, however, that the publicity this trial has brought to fracking has sure been good for SAFFE. Donations are up 50%. Even Dr. Toolittle has promised to give SAFFE some of the proceeds from *Gas Country II* to help fund our environmental initiatives.
12. The charges that I misappropriated SAFFE funds for personal use are completely unfounded. The environmental polluters accuse me of using SAFFE money for personal travel. That is not true. As the head of the New York chapter of SAFFE, I travel to conventions put on by the Tierra Club, a worldwide environmental organization. SAFFE is affiliated with the Tierra Club. It is true that some of the conventions are held in places like Paris, Copenhagen, Rio de Janeiro and San Francisco. I have to go where the conventions are held to represent my chapter. So what if I stay longer and make a vacation out of the trip? After the conventions are over, I spend my personal money during the extra time I might stay at a location.
13. The polluters are always trying to distract us from the real issues. I'm not testifying just because it might be beneficial for SAFFE; I'm testifying to expose the truth about Penn HydraGas and Mr./Ms. Tomley.

DATED: Molivar, New York  
October 29, 2013



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Bobbie Jones



## Affidavit of Mitchell Tomley

1. My name is Mitchell Tomley. I reside in Jim Thorpe, Pennsylvania. I am the Chief Executive Officer of Penn HydraGas, Inc., a public company that is traded over the counter. Our company headquarters are located in eastern Pennsylvania. I am 57 years old. I obtained a bachelor's degree in physics and mechanical engineering from SUNY Stony Brook in 1973. I also hold an MBA from Wharton School of the University of Pennsylvania and have served as an adjunct faculty member there since 1998. I teach aspiring executives how to develop and assess techniques to comply with governmental regulations while maintaining the highest possible profitability. In addition, I worked on Wall Street for a division of a hedge fund specializing in oil and gas futures. I was quite successful and, not bragging, I made a ton of money.
2. I left the hedge fund in 2004 and in 2005 I bought a small fracking operation from a Mr. Larkin called Natural Shalegas. The company was renamed Penn HydraGas, Inc., and we significantly expanded the natural gas drilling operations.
3. Our company designs and operates high-volume horizontal hydraulic fracturing systems (HVHHF). Basically, HVHHF, also known by (much to my dismay) the silly term "fracking," is simply a drilling method used to extract natural gas or oil from rock by breaking, or fracturing, the rock by use of a pressurized liquid, also known as a drilling fluid. The process itself has been around since 1947, and the first commercially successful applications were in 1949, shortly after World War II.
4. We started a project in Northern Pennsylvania, about five miles from the Village of Molivar in New York, in early May 2012. On February 15, 2013, my company and I were indicted on one count of violating the Federal Safe Drinking Water Act. The claim is that somehow I personally, and Penn HydraGas, polluted the aquifer servicing the Moliver public water system. Apparently some farmer named Mickie McDonald lost three hogs and a cow in September 2012. Also, his/her spouse and daughter developed some maladies. Anyway, it is my understanding that s/he uses well water for his/her plants and animals.
5. My attorneys tell me that the U.S. Justice Department had dropped this case, having concluded after a cursory review that it would be a waste of scarce resources to prosecute a case where there was no direct proof that we had contaminated anything. However, the District Attorney of Mayberry County, probably because of pressure from McDonald and the so-called "environmentalists," sought and obtained the indictment against us. Our lawyers told us not to worry about it; an indictment means nothing. One famous New York judge even said a zealous prosecutor could indict a ham sandwich.
6. The good District Attorney Mortimer Snerd had to step aside when he remembered that his wife had invested heavily in Penn HydraGas stock. The State Attorney General was appointed by the governor to take over the prosecution. The AG should come to the same conclusion as the Justice Department and drop this nonsense case.

7. The HVHHF business has become quite profitable in recent years, due to technological advances, and, I must admit, the willingness of governmental and non-governmental organizations to cooperate with us. What's in it for them? HVHHF creates jobs. We also pay a lot of money to lease property from people whose property values have declined, in some areas quite drastically. We are doing our part to reduce this nation's dependency on foreign sources of oil, which can only help our national security. Bottom line is that we provide a lot of money, especially to people in distressed economies, many of whom can't afford to keep their property and can't sell it, while at the same time helping our nation take charge of our energy needs.
8. I wish that people would learn a little about the process before they jump to conclusions that our company intends to pollute the world, kill animals, and poison the water supply. I get very annoyed by the protesters at our headquarters and some of our sites, and I am especially offended by their juvenile double-entendre slogans and puns. In fact, I once commented to one of our vice presidents, "We don't care if a few farm animals croak. Fracking is the future and we are frackin' it up." I was joking, of course.
9. Sure there is an environmental impact, but everything has benefits and risks. The mixture that we inject into the well bore, and the contents of the storage ponds, if not properly monitored and contained, can seep into aquifers providing drinking water. But, drilling is carefully monitored, and we are subject to numerous federal, state and local regulations wherever we do business. We hire people to make sure we comply with the law in as fiscally responsible a way as we can.
10. We spent years of engineering time and millions of R&D money developing our proprietary drilling fluid, and our formula is a trade secret that is covered by numerous patents. The formula itself is never revealed to anyone except government regulators.
11. It would be a lot cheaper to use diesel fluid in Penn HydraGas' drilling process. Our former vice president of operations, Billie Jo Simpleton, simply wouldn't approve diesel fluid for use in our operations under any circumstances. That was a frustration for me since I bought the company in 2005. I was not unhappy to see Simpleton move on to other ventures. But Simpleton certainly wasn't the only obstacle: the EPA permit to use diesel fluid is quite costly, just to discourage drillers from using it.
12. Larry Lyonheart, our current Vice President of Operations, is solely responsible for manufacturing the drilling fluid. He used to report to me on a regular basis. Unfortunately, he was involved in a serious motor vehicle accident and is in a coma. He is not likely to recover.
13. Like Simpleton, Larry is a scientist without much business sense. We had many animated discussions about the drilling fluid, and we frequently and respectfully disagreed with each other. As CEO, the final decisions, though, are mine. I have seen the email that was supposed to be deleted, and I confirm that yes, I did send it to Larry when I was on vacation in September 2011. The email was a reply to an email Larry had sent companywide. Apparently, Bobbie Jones' personal email address was still in the company's group email address. I accidentally selected REPLY-ALL, which would explain how Jones got a copy of the email.

14. It's true that I wanted Larry to give further consideration to using diesel fluid. Our company's board of directors authorizes big bonuses to employees who bring projects in under budget or with higher profitability. I am always in communication with our top people to enhance the bottom line, usually by confidential email.
15. I have heard that companies use diesel fluid without obtaining the permit because diesel fluid is cheap and easy to use in the drilling process. But, our lawyers tell me that the prosecutor has not discovered any direct proof that Penn HydraGas ever used diesel fluid. I acknowledge that EPA inspectors found several unopened drums containing diesel fluid in our warehouse nine months ago. These drums were ordered by mistake. We just have not gotten around to returning the diesel fluid to the distributor.
16. The techniques we use at the project near Molivar are typical. First, we created a well bore, basically a deep vertical hole. Then we line the well bore with a cement casing, which protects the equipment and our workers. Cement is quick, easy, and cheap.
17. Penn HydraGas uses our patented proprietary mixture of water, sand and chemicals, which is lowered into the well bore and injected at high pressure horizontally, to create small fractures (typically less than 1mm, or about as wide as your pinky finger), along which fluids such as gas may migrate to the well. We then reduce the hydraulic pressure by moving the mixture to storage ponds.
18. Since our equipment and employees are regularly in and out of the well bore, we usually notice cracks in the cement casing pretty quickly, and if they need repairs, we are able to do them promptly. That's only good business. It's in our best interests to detect leaks quickly, because our proprietary mixture is expensive, and we don't want a competitor to have access to a sample and reverse-engineer it.
19. Sometime in June 2012, my people did report a leak in the casing at the project near Molivar. In accordance with Penn HydraGas' policies and best practices protocol, I ordered the field supervisor to prepare a diagram of the project for company files, showing the breach before it was repaired. I'm pretty sure, but not certain, that it was caught very early on, and that there probably wasn't a leakage of any significant amount.
20. One of the prosecution's witnesses is Mickie McDonald. Yes, the same farmer who is suing our company in a civil lawsuit for \$10 million in damages. S/he claims damages for four dead animals, and has alleged that his/her spouse has headaches and their daughter has asthma because of contaminated water. Headaches and asthma? Probably two of the top ten conditions in the entire country. Really?! Even if McDonald isn't making the whole thing up, there is no way s/he can prove our company caused the animals' death or any illnesses. The drilling operation is simply too far away in my opinion to have any effect on any water system servicing the McDonalds – public or private. Anyway, my attorneys have filed a summary judgment motion seeking dismissal of the civil case. I expect a favorable decision on the motion after this silly criminal case is over.
21. All kinds of things can migrate through rock and into aquifers – acid rain, fertilizers, chemical spills, even storm water runoff from asphalt highways. It's pretty easy to point at us, but the fact is we can't be blamed for everything! Not that government and certain greedy people haven't tried!

22. What McDonald probably didn't tell the EPA was that s/he has used chemical fertilizers, probably for years, which can leach into the aquifers. McDonald probably also failed to mention a large leak from the farm's diesel tank. McDonald used some cleanup company called Larry, Moe and Curley Quick Response Recovery to clean up the mess. I'm told the company went out of business. Diesel fuel can also leach into the aquifer. The chemical fertilizer usage and the diesel fuel leak are the logical explanations for any problems with Molivar's water quality.
23. Bobbie Jones worked at our company and the predecessor company for 25 years as a chemical engineer. You shouldn't believe anything s/he has to say. Jones showed up late for work on numerous occasions, was found sleeping on the job several times, and refused to work overtime when important projects needed to be completed. What a disaster. Jones had every excuse in the book and then some: medication, caring for an elderly parent, you name it. Finally we had enough and fired him/her in December 2010.
24. Besides that, Bobbie Jones knows nothing about our drilling procedures. S/he was never at our drilling sites. His/her job was to work at our lab next to our central office testing samples of natural gas brought to him/her for trace detection levels of impurities. Natural gas trace impurities include hydrogen, nitrogen, carbon monoxide, carbon dioxide, oxygen, mercury, water and other components. The fact that Jones got "employee of the month" awards several times means nothing. In 2003, s/he got it from his/her good friend Mr. Larkin and before I bought the company from Larkin. S/he got it again in 2006, a year after I took over, before we really knew what type of worker s/he really was. S/he was never happy that Mr. Larkin sold the company.
25. Jones claimed the firing was because s/he was amassing information to be a "whistleblower." Ridiculous. Jones wasn't at work enough, or awake enough, to do his/her own job, much less take on the extra project of assembling information against us except for leaking a confidential email. Jones tried to collect unemployment, but the Pennsylvania Department of Labor ruled that we were right and that the firing was justified. That's probably why Jones didn't try to appeal the labor department's decision.
26. I guess Jones is still angry about the firing and the labor department decision. Bobbie Jones has been a thorn in our side since June 2010 when s/he became a member of the Pennsylvania chapter of the so-called "environmental" group SAFFE, whose sole mission is to stop HVHHF completely. I would not be surprised if Bobbie Jones is asleep at the switch at his/her new job with the Village of Molivar as a water quality engineer, and is sleeping through the village's problems, trying to pin them on us!

Dated: Jim Thorpe, Pennsylvania  
October 31, 2013

*Mitchell Tomley*

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Mitchell Tomley

## Affidavit of Shawn Marshall

1. My name is Shawn Marshall and I am 52 years old. I divide my time between homes in London, New York, which is about 30 miles northeast of the Village of Molivar, and Washington, D.C.
2. I received my B.S. in geology from Northern South Dakota College in 1983. Thereafter, I attended University of Nexus, an online institution, where I received a master's of science in biology in 1985 and a Ph.D. in ecology and environment in 1990. I put up my credentials against any of those other Ph.D.'s who went to the over-priced and fancy-named brick and mortar schools.
3. I currently work as a Geologist for the Natural Gas Institute (NGI) which is a lobbying organization. The NGI is funded by membership dues paid by individuals and companies in the natural gas industry, like drillers and suppliers. Penn HydraGas, Inc., is a dues paying member of NGI and we have considered asking Mitchell Tomley to join our board of directors. S/he is probably too busy now running the company and protecting the company from baseless charges.
4. I disagree with the EPA and other purported "scientists" who believe that the use of diesel fluids harms the environment. I haven't seen any credible evidence to support the theory that fracking has caused any harm.
5. In my opinion, fracking is completely safe and causes no harm to the soil or the ground water supply; there is research to support my view. The federal government did a study that showed that fracking does not contaminate the drinking water supply. The Associated Press reported on the study in a July 18, 2013, article titled, "DOE study: Fracking chemicals didn't taint water." The study monitored the drilling sites for a year and found that drilling fluids remained about a mile away from drinking water supplies.
6. The environmental extremist groups like SAFFE ignore the science showing conclusively that fracking is safe and that natural gas exploration is beneficial to our economic prosperity. In fact, rather than be harmful to society, fracking could lead to a reduction in the country's dependency on foreign oil supplies. This natural gas can create electricity and heat, income from tax revenues and new jobs. SAFFE is only concerned about distorting the truth and raising money from the gullible public.
7. Even if some of the chemicals used in fracking, like diesel fluids, are not healthy for plant and animal life, they are kept away from the human water supply. Indeed, fracking allows the industry to access natural gas, which is an environmentally-friendly, clean-burning fuel, in places where conventional drilling may not work.
8. Fracking is safe and beneficial to the economy, but I always encourage NGI Institute members to obtain the proper permits before using diesel fluids. Anyway, it is probably

just government over-regulation to restrict the use of diesel fluids in drilling operations. These wells are typically miles away from aquifers and other water supplies. I don't know exactly how far away the Penn HydraGas' well was from the Molivar aquifer, but I would be surprised if the drilling operation had any effect on the village's water supply. These people like SAFFE and its environmental cohorts are just making stuff up! Anyway, I heard that there was a large diesel fuel leak on the McDonald farm and the company that supposedly did the cleanup work went out of business. If anything, the diesel fuel leak and the sloppy cleanup work were probably the cause of the contamination to McDonald's well water and the Molivar water supply.

9. I am familiar with the allegations in *People v. Penn HydraGas, Inc., et al.* I am also familiar with one of the prosecution's witnesses, Dr. Ryan Toolittle. I was interviewed about fracking in Dr. Toolittle's documentary, *Gas Country*. I told Dr. Toolittle, in plain terms, that I support fracking. I did not appreciate that Dr. Toolittle's editing made me appear so extreme, nor did I appreciate that Dr. Toolittle disputed my credentials, showing his/her juvenile wit by saying in the film that I was "just full of 'natural' gas." Accordingly, I declined to appear in *Gas Country II*. I will not help Dr. Toolittle gain more money and publicity via his/her baseless anti-fracking documentaries. S/he seems far more concerned with selling a story than science.
10. Now, I am aware that there was a breach in the cement casing of one of Penn HydraGas' wells near Molivar. I admit that a crack can present a problem and allow drilling fluid to escape into the surrounding environment. Although the breach was very close to the Molivar drinking water resources, I am told the crack was discovered early and the leak was minimal. But, no one really knows for sure, even Dr. Toolittle. Toolittle owns a lab that tests drinking water systems, but the lab is not fully certified. So, you can't trust any test results from that quack. Anyway, I just hope Penn HydraGas and my good friend Mitchell Tomley were not using diesel fluid without a permit.

To the best of my knowledge, the above is true.

Dated: London, New York  
November 13, 2013

Shawn Marshall, B.S., M.S., Ph.D.

Shawn Marshall, B.S., M.S., Ph.D.

## Affidavit of Billie Jo Simpleton

1. My name is Billie Jo Simpleton. I am 34 years old, and I reside at 35 Nittany Lion Lane in Harrisburg, Pennsylvania, where I have served as the Deputy Director of the Business Development Council of Pennsylvania since 2009.
2. The Business Development Council of Pennsylvania is a not-for-profit corporation whose mission is to foster job creation and economic development in the Keystone State. The Business Development Council enthusiastically supports hydraulic fracturing as an enterprise that will put the United States on the road to energy self-sufficiency, and free our nation from its long-standing dependence on oil imported from foreign countries. Perhaps even more important to Pennsylvania, hydraulic fracturing has brought and will continue to bring to our State thousands of high-paying jobs, particularly in rural communities that have received the resulting benefits of increased population and property tax revenue to fund vital public services. Simply put, hydraulic fracturing is a “win-win” for our State, its economy, and its citizens. By the way, I really dislike the term “fracking” that the environmental groups use when they refer to hydraulic fracturing.
3. Unfortunately, some detractors have sought to scare the public about the alleged environmental effects of hydraulic fracturing. Such scare tactics do not at all concern the Business Development Council. They are unsupported by any credible research that would demonstrate a cause-and-effect relationship between hydraulic fracturing and purported environmental harm. As such, they should not stand in the way of the expansion of hydraulic fracturing and the economic benefits that it generates.
4. I earned my bachelor of science degree in mechanical engineering from Michigan State University in East Lansing, Michigan, in 2002. Upon my graduation, I accepted a position as a manager in the operations unit of the Natural Shalegas Company, which was engaged in hydraulic fracturing ventures in northern Pennsylvania, near Bradford. Over the course of my five years as a manager, Natural Shalegas and its successor, Penn HydraGas, Inc., experienced a threefold increase in profits as a result of the success of mining several new gas wells in McKean and Potter Counties.
5. In 2005, after Mitchell Tomley purchased Natural Shalegas’ drilling operation and renamed the company Penn HydraGas, I was promoted to the position of Vice President of Operations. In that capacity, I oversaw all of Penn HydraGas’ hydraulic fracturing enterprises throughout northern Pennsylvania. I am confident that the success of the company’s mining in McKean and Potter Counties earned me this promotion.

6. In order for Pennsylvania's residents to reap the benefits of hydraulic fracturing, it must take place with safety as a first priority. For that reason, I have always opposed the use of diesel fluids in Natural Shalegas' and Penn HydraGas' drilling operations. Diesel is undisputedly unsafe for consumption, and its use in hydraulic fracturing – though more cost-effective – has the potential to contaminate groundwater supplies upon which plants, animals, and humans rely.
7. I know that Mitchell Tomley disagreed with my reticence to use diesel fluid in Penn HydraGas' hydraulic fracturing activities. Mitchell Tomley did say once that s/he did not object to such use of diesel because s/he didn't "care if a few farm animals" would "croak," and because "fracking is the future" and Penn HydraGas was "fracking it up," but s/he made these statements in jest. In deference to my opposition, Penn HydraGas never used diesel in its drilling operations while I was employed there.
8. I decided to leave Penn HydraGas in 2009 not only because the Deputy Director position at the Business Development Council offered me a 25% increase in my salary, but also because I wanted to move closer to my parents who reside in nearby Hershey. (Living closer to my favorite amusement park is also a plus!)
9. When I told Mitchell Tomley that I would leave Penn HydraGas for my new opportunity at the Business Development Council, Mitchell did not express disappointment and did not ask me to stay. Mitchell simply wished me well in my future endeavors. Any suggestion that I departed from Penn HydraGas because Mitchell pressured the Operations unit to increase productivity or to use diesel fluid in drilling, however, is not at all true. Mitchell Tomley gave me nothing but positive feedback concerning the Operations unit's performance as long as we worked together, and never asked me to betray my convictions by authorizing the use of diesel.
10. Given Mitchell Tomley's support for using diesel in hydraulic fracturing, it would not surprise me if Penn HydraGas did so after I left, and I suspect that it did under Mitchell's continued leadership. This is only a guess on my part. I have no evidence to prove my suspicion, and I have never reported it to any authorities. Mitchell did tell me on several occasions, however, that s/he did not believe the use of diesel in drilling would harm the environment and that even if it did, s/he did not particularly care because it would reduce costs.
11. So-called environmental "activists" like Bobbie Jones just don't get it. They go around stirring up controversies about hydraulic fracturing just to raise money for their dishonest environmental groups. I've known Bobbie Jones since the time we worked at Natural

Shalegas and then Penn HydraGas. S/he was weird, always snooping around and making everybody uncomfortable, except those times s/he was sleeping on the job.

12. Now, Bobbie Jones is running some local green environmental group miscalled SAFFE. I heard that s/he was accused of misspending SAFFE funds to finance his/her fancy lifestyle. S/he takes these lavish junkets to some of the swankiest places around the world, all on SAFFE's dime. These groups like SAFFE get their money by trashing energy producers involved in legitimate activities like clean coal production and hydraulic fracturing. The more controversy Bobbie Jones and his/her ilk can stir up about hydraulic fracturing the more money these organizations take in. And Bobbie Jones travels the world! Nice!! The Attorney General might want to spend some time looking into that.

DATED: Harrisburg, Pennsylvania  
November 4, 2013

*Billie Jo Simpleton*

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Billie Jo Simpleton

