

RIVER RAPIDS

Quarterly Newsletter of the Delaware Riverkeeper® Network

Upcoming Events . . . Upcoming Events . . . Upcoming Events . . .



April 27

DRN's Annual Dinner
Hyatt Regency at Penn's Landing
Philadelphia, PA

May 7

DRN's Annual Native Plant Sale
Prallsville Mill
Stockton, NJ

May 21

Data to Information Workshop
Ursinus College
Collegetown, PA

June 4-5

Horseshoe Crab Outing
TBD

July 17

DRN's Annual Members' Day
Cape Henlopen State Park
Lewes, DE

August 19-20

Delaware River Music Festival
Snipes Farm
Bucks County, PA

For more news about Delaware Riverkeeper Network events, call 215-369-1188 or click on [Calendar](#) at www.delawareriverkeeper.org

This spring, go "native" . . . native plants!

A letter from the Delaware Riverkeeper

Spring is here – now is a perfect time to take some real action for the River and your local stream. Plant a tree, a shrub or a native garden.

Native plants are spectacular contributions to any garden – they provide beautiful color and habitat while at the same time cleansing pollution and encouraging rainfall to soak into the soil preventing flooding and drought. It's amazing how much good the simple act of planting a tree or shrub can do. The cascading impacts for the River of each person planting one more garden or tree are vast. We can see the impacts of removing the plants that once covered our watershed: flooding, drought, pollution, noise, homeless critters, loss of the morning music of a bird outside our window, hotter summers and colder winters, just to name a few. But the positive impacts of restoring native landscapes to our watershed can be just as dramatic. And it is something we can each contribute to protect and restore our river, our streams and our community.

This spring take a tangible step toward protecting our River, our drinking water, our quality of life, our fishing and wildlife habitat, our air quality . . . Go to one of the region's many native plant sales (ours is Saturday, May 7th) and invest in a few, or better yet lots, of native plants and create a beautiful haven in your yard, a haven that you and your neighbors will enjoy, but also one that makes a genuine and meaningful difference for our environment.

Maya K. van Rossum

The Delaware Riverkeeper



Students plant a tree at Bartram Park in Darby, PA.
Photo: D. Salas

RIVER RAPIDS

is published for members of the Delaware Riverkeeper Network

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Legal Update: River Resources Law Clinic Docket

Carole Hendrick, Senior Attorney

The River Resources Law Clinic, established in partnership with support from the George & Miriam Martin Foundation, works with law students from Temple University's Beasley School of Law to protect water resources throughout the Delaware River watershed.

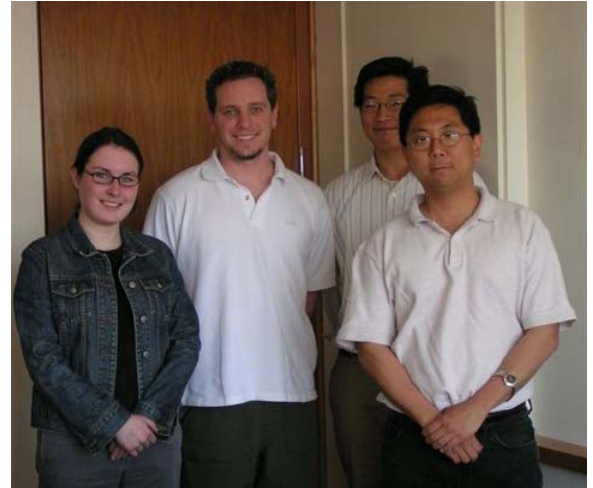
The River Resources Law Clinic (RRLC) is working to insure public access to the evaluation and assessment of environmental damages related to the Athos I oil spill as well as assuring an accurate Natural Resources Damages Assessment. RRLC has also been investigating new cases regarding the treatment of hazardous materials at sewage treatment plants.

In *DRN, et al, v. Mercer County Corrections Center, et al*, RRLC instituted litigation against a county prison in a case where the New Jersey Department of Environmental Protection (NJ DEP) has failed to enforce the State's Water Pollution Control and Water Supply Management Acts. The Corrections Center operates ground water wells and a municipal sewage treatment plant. Our investigation of the prison revealed that Mercer County violated both the Water Supply Management and Water Pollution Control Acts by withdrawing more water than it was permitted to withdraw and discharging treated effluent flows in excess of its wastewater treatment plant's flow limitations. NJ DEP has been aware of these violations for over seven years yet has failed to enforce the water use registration or the NJ Pollution Discharge Elimination

System (NJPDES) permit it approved for Mercer County. RRLC has completed discovery in this case and is currently preparing for trial.

The River Resources Law Clinic pursues violations of environmental protection laws when the State or Federal agencies responsible for environmental protection either cannot or will not enforce the law.

In a pending action against a NJ plant production facility disguised as a farm, RRLC has done extensive research on the provisions of that State's Right to Farm Act and how it applies to farming activities that pollute streams and/or threaten the water balance in local aquifers. Our concern is two-fold. First, is NJ DEP failing to enforce the statutes and regulations promulgated to protect water resources because the violator is a farmer? Second, is there recourse in the State Court system when an underlying policy of protecting farming activities at all costs appears to be controlling environmental protection activities? These questions require serious consideration in our efforts to protect the River and plan for future activities that could potentially fall under the broad definition of "farming" exemptions under the State regulations or local environmental statutes. Our goal is to enforce the Clean Water Act and protect the Delaware River.



RRLC student interns pictured, left to right, are Kelly Griffin, Mark Francis, Mike Chung, and Phil Seo. Missing from Spring 2005 group is Leigh Rende. Also missing is Virgil Mabalay from Fall 2004. Photo: C. Hendrick.

RRLC is also collaborating with Rutgers Environmental Law Clinic as intervenors in the Builder's Association appeal of New Jersey's final stormwater management rules. RRLC is working to make sure that these important, precedent setting regulations withstand the legal challenge and remain in force.

RRLC is also investigating issues involving violations of the Endangered Species Act as well as the preparation of a petition to list the increasingly rare Red Knot migratory shore bird.

Third year law students at Temple University Beasley School of Law have been instrumental in these efforts. Thanks go to Virgil Mabalay (Fall 2004), Mike Chung, Mark Francis, Kelly Griffin, Phillip Seo, and Leigh Rende (Spring 2005). We couldn't do it without you!

Eroding banks? Falling trees? Learn how to help your stream

DRN's Restoration Program has funding to assist watershed organizations, landowners, and municipalities with stream restoration. If you know of, or own, a stream that is experiencing problems, email dan@delawareriverkeeper.org to set up a **free** site assessment.

UPDATE ON Athos I oil spill

The Delaware Riverkeeper Network, the New Jersey Audubon Society and the American Littoral Society recently joined together to call for legislation to enhance the prevention of, and response to, future oil spills on the Delaware River. We called on Federal and State legislators to immediately pass legislation that includes:

- The establishment of a Citizen's Advisory Committee and an Oversight Committee focused on identifying and securing local policies, regulations, programs and strategies for the prevention of and enhanced response to future oil spills,
- The removal of, or a significant increase in the level of, liability limits for owners and operators responsible for oil spills, and
- The phase-out of single-hulled tankers more quickly than the current 2015 deadline in the Oil Pollution Act (OPA).

Subsequently, Congressman Frank LoBiondo (R - NJ) introduced legislation to the House of Representatives to amend the Oil Pollution Act (OPA). The legislation, HR1412, represents a step forward, but it falls short of properly responding to the Athos I oil spill and ensuring protection of our Delaware River from such catastrophes in the future.

HR1412 calls for increased liability limits on all tankers in the event of an oil spill and includes higher limits for single-hulled tankers, as compared to double-hulled tankers, to encourage voluntary phase-out of single-hulled tankers before 2015. But even the increased liability limits simply aren't high enough.

We question the appropriateness of providing any limits on liability, i.e., letting the tanker owners responsible for an oil spill get out of paying the full costs of clean-up and restitution for economic and environ-

mental harms caused. To the extent the legislation continues to provide liability limits, we question why it does not also provide a mechanism for replenishing the Oil Spill Liability Trust Fund, which pays for the costs of clean-up and harms when they exceed the liability cap (a fund that will quickly become depleted as the costs of oil spills around the nation increase). Either we need to lift the liability cap entirely, or we must ensure that there is a way to pay for costs that exceed the cap. HR1412 only provides protection for those responsible for a spill; it does not provide funds to compensate the public for harms suffered when a spill occurs.

HR1412 provides economic incentives to encourage greater use of double-hulled tankers, which are less vulnerable to oil spill catastrophes. However, current law allows the continued use of single-hulled vessels until 2015, leaving our River vulnerable to the threat of spills for 10 long years. Approximately 70% of the oil that comes into the northeast comes up the Delaware River, making it more vulnerable to oil spills than other river systems and entitling it to a greater level of protection. Any amendment to the OPA should work to secure use of double-hulled tankers on the Delaware River at the earliest date possible, certainly earlier than required under current law.

The proposed legislation calls for study of the impacts of the Athos I oil spill, but it limits that study to monitoring and evaluation of the environmental effects of submerged oil. Certainly, submerged oil is an important threat that needs to be evaluated and addressed, but monitoring should not be limited to one discrete aspect of the spill. The Athos I oil spill resulted in multiple

Maya van Rossum, the Delaware Riverkeeper
harmful effects on our River: oil soaked sediments, sublethal effects on the environment and short- and long-term habitat and water quality impacts. We must study these effects in total. There has never been a comprehensive, scientific study into the effects of oil spills on the Delaware River system. We must conduct a full, in-depth study now so we can better understand the ramifications of this spill, identify effective restoration needs, and respond better to future catastrophes.

HR1412 calls for funding of new clean-up technologies related to submerged oil, but it fails to put in place safeguards to ensure that the Delaware River doesn't become a testing ground for inappropriate and harmful techniques. The proposed legislation, which allows and funds new and emerging practices (including dispersants that fail to remove oil from the system), must include a provision establishing a Public Oversight Technical Committee. This committee is essential to ensure public involvement, scientific oversight and guidance for new practices that are developed and utilized on our River.

HR 1412 would create the Delaware River and Bay Oil Spill Advisory Committee to consider approaches for avoiding spills in the future, but this committee would only have a one-year life span. Moreover, appointments would under-represent the environment and the general public while drawing heavily on port insiders. The scope of the committee would not extend to future emerging clean-up practices or to the legislative fixes that could prevent oil spills and improve spill responses.

Although HR1412 contains some good elements, it falls short of where we need to be to protect the River from oil spills and the subsequent environmental degradation.

Battle over island's future continues

Petty's Island, the 4th largest island in the Delaware River, is located between the cities of Philadelphia and Camden. State and local conservation organizations in New Jersey are working feverishly to preserve not only the island's current natural resources, which include a bald eagle's nest, a heron rookery, upland forests and wetlands, but also the Eden that the island could become if these 400 acres are fully restored as the island's current owner proposes. Unfortunately, threatened and endangered species and the River may lose out if plans to condemn the island for redevelopment move forward.

Using New Jersey's tried and true formula of pay-to-play, Cherokee Investment Partners, the redeveloper of record, has skillfully won the backing of elected officials and political power brokers. Cherokee's plan for the island includes more than 700 homes, an 18-hole golf course and manicured lawns (prime goose habitat).

For 100 years, Petty's Island has been an industrial site. Today, the island suffers from soil and water contamination. But to say the island has minimal natural resource value, as NJ's highest-ranking environmental official Commissioner Brad Campbell, has repeatedly stated, is to be blind to what the island can become in a few short years. Citgo Petroleum, the owner of Petty's Island, is legally obligated to clean up the contamination, remove the acres of asphalt, the oil tanks and piping and to restore the island. But Citgo has also offered to donate the island as permanent public open space and establish a \$2 million stewardship fund for long-term maintenance.

Both Pennsauken Township and Camden County have significant open space deficiencies. So what is Cherokee's plan to offset these deficiencies? Construct a golf course, on the site of the heron rookery, dangerously close to the eagle's nest. Cherokee even suggests that

Fred Stine, Citizen Action Coordinator
"stocking fish in the shallow ponds located on the golf course [will] improve eagle habitat." The company asserts that its clean-up will be more thorough than Citgo's and will meet higher standards. But Cherokee's clean-up would utilize the same engineering controls and remedial activities, in accordance with state environmental standards, that Citgo has promised to implement. Both plans propose "capping" or covering the contamination. The difference is that because Cherokee's plan calls for hundreds of people living on the island, much more fill - likely river dredge spoils - will need to be dumped than if the island were to remain open space. And Cherokee's plan will mean more impervious surfaces and compacted soils than are present today while Citgo's plan would reforest the island.

The Delaware Riverkeeper Network and other environmental advocates fighting this battle recognize that Citgo will reap tax benefits, reduced tort liability and gain positive PR if its plans for Petty's Island come to pass. Regardless, on this issue, Citgo's choice is the right one for the River, the natural resources and the people that will have access to the restored park that the island can become.

Protecting Petty's Island in and of itself is important to the River's health. But, as municipalities throughout South Jersey rediscover their waterfronts and redevelop land once thought to have little value, the redevelopment of Petty's Island could set a dangerous precedent. If NJ's Department of Environmental Protection allows a 400-acre island, home to threatened and endangered species, to be taken for redevelopment, what will they allow along the rest of the River's waterfront?



Digitally enhanced image of what Petty's can look like once restored. Photo: B. Shinn

UPDATE ON: Proposal to dump nerve agent waste into the River

Tracy Carluccio, Director, Special Projects

The U.S. Army is still hoping to bring VX nerve agent waste from Indiana to DuPont's facility in Deepwater, NJ, for disposal in the Delaware River. The plan to transport VX waste from the Newport Indiana Chemical Weapons Facility by tank truck on public highways across four states every day for two to three years has been the subject of intense controversy and debate since early 2004. Public opposition to the proposal has been overwhelming and the Delaware Riverkeeper Network has been leading efforts to defeat the plan.

After the 1997 signing of the Chemical Weapons Treaty, a commission was formed in Indiana that concluded it was safest to destroy the Newport facility's VX nerve agent by a treatment process on site in Indiana.

This proposal, studied and accepted by the Newport community as the safest option, is also the disposal plan supported by DRN. Congress dedicated funds to build the treatment system there, but it was never constructed. The Governors of New Jersey and Delaware as well as most of the region's Congressional representatives oppose the Army's

proposal and have urged the agency to abandon the plan.

Congress commissioned the Centers for Disease Control and Prevention (CDC) to evaluate the safety of the plan. The CDC also asked the U.S. Environmental Protection Agency (EPA) to review the proposal. The CDC, which released its report on April 6, 2005, found that studies conducted by DuPont for the Army were inadequate and did not contain the information necessary to determine whether and to what degree the aquatic ecosystem might be harmed by the discharge of VX waste.

For its part, the EPA stated that results from the DuPont study are not acceptable and that DuPont's conclusions were invalid. The EPA found that the DuPont study did not take into consideration the impacts on aquatic organisms through ingestion or exposure of the amount of VX nerve agent asserted to remain in the waste (20 ppb). Noting that other studies have found VX in and around those amounts to be toxic to the point of death for species, specifically for striped bass and white perch, the EPA reported that the "discharge of even small amounts of VX nerve

agent remaining in the hydrolysate effluent to the Delaware River could have potentially adverse effects on aquatic organisms since this effluent is planned to be discharged about two times per day for approximately two years."

The Dupont study did not include all the dangerous compounds proposed for discharge, some of which pose a greater potential for toxicity than the VX waste. The EPA found nothing to demonstrate that Dupont is capable of treating VX nerve agent or the other compounds that may be present in the VX waste, stating "if they were present in the effluent, they would go untreated and be directly discharged into the Delaware River." Further, the VX waste may contain a number of environmentally dangerous compounds, which are in no way regulated by Dupont's current discharge permit.

DRN will continue its efforts to stop the transport of VX waste to the Delaware River Valley. To find out more and learn what you can do, click on "What's Hot" at www.delawareriverkeeper.org. An **Action Alert** and **VX Fact Sheet** are also available from our website.

Data to Information Workshop: Using Monitoring Data to Protect & Restore Streams

Location: Ursinus College, Collegeville, PA

Time: 9:00AM - 4:00PM

Registration Deadline: May 9th, 2005

Presenters: DRN, Alliance for Aquatic Resource Monitoring, Pennsylvania Organization for Watersheds and Rivers, Stroud Water Research Center

Workshop Sponsor: Consortium for Scientific Assistance to Watersheds (C-SAW)

Date: Saturday, May 21, 2005

Cost: \$10.00



This hands-on workshop will focus on assisting watershed groups who are collecting water quality data and need some help and ideas as to how to organize, summarize, interpret, and present their findings, steps that are critical to making your data work for your group and your watershed. Workshop topics include:

- Water quality databases and data storage,
- Graphing and summarizing your data,
- Utilizing your data to benefit your stream, and
- Presenting your data to data users and the public.

For more information, email faith@delawareriverkeeper.org.

Take part in a prehistoric event: Horseshoe crab outing

Faith Zerbe, Monitoring Coordinator



For nearly 300 million years, the horseshoe crab, *Limulus polyphemus*, has thrived in the Delaware Bay. These prehistoric arthropods were roaming the bay's shallow beaches 100 million years before the dinosaurs arrived on the scene. Today, the largest population of horseshoe crabs in the world can be found right here in the Delaware Bay. During May and June, horseshoe crabs converge along bay beaches in the dark of night to spawn in large numbers.

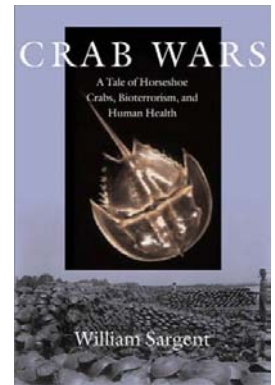
If you'd like to learn more about these wonderful creatures, observe their mating rituals by moonlight, monitor their numbers and overturn stranded crabs who need a helping hand, **join the Delaware Riverkeeper Network on June 4th and 5th**. After spending Saturday

night monitoring, we will camp out nearby, and devote the next morning to rescuing stranded crabs from the hot sun. We will also be inspecting the crabs for signs of oiling from the Athos I oil spill.

This monitoring event is part of a regional horseshoe crab census that has been conducted annually by the University of Delaware and Limuli Laboratories since 1990. Volunteer monitors help the University of Delaware and Limuli Labs collect valuable data on the status of the Delaware Bay horseshoe crab population. The census is ongoing in May and June. To sign up to help Delaware Riverkeeper Network on June 4th and 5th, contact faith@delawareriverkeeper.org.

Space for this event is limited and you must register by May 7. If you can't join us on June 4th and 5th, but still want to get involved, visit <http://www.ocean.udel.edu/mas/bhall/hscensus/index.html>. If you are able to visit Delaware Bay beaches in the mornings in May and June to observe the condition of horseshoe crabs, contact Faith. Your observations could be used to determine the extent of impacts from the Athos I oil spill.

Want to know more about horseshoe crabs?



Consider reading William Sargent's *Crab Wars*. In this book, Sargent, who has written extensively about science and the environment, addresses the battle over horseshoe crabs and the lucrative biotech industry that is based on its blood. This book is available for purchase from DRN for \$24.95 (plus \$4.00 shipping and handling).

To order, call our Washington Crossing office, 215-369-1188 and be sure to have your Visa or MasterCard ready. Be sure to ask for your 10% membership discount.

Also available from the Delaware Riverkeeper Network: *Along the Delaware*, by Richard C. Albert and Carrie E. Albert, \$19.99, plus shipping and handling.



Members' Day 2005

Mark your calendars for **Sunday, July 17, 2005**, our Annual Members' Day down the shore. Don't miss out on the fun this year!

Last year we had a great time despite reports of rain farther north in the watershed. The weather in Cape May and Cape Henlopen was perfect - sunny, but not too hot. From the beach, we were able to watch pods of dolphins swimming by.

Again this year, our day will begin with a trip across the estuary on the **Cape May - Lewes Ferry**. From Lewes, we'll travel by bus to **Cape Henlopen State Park** for a day on the bay. We'll have a picnic lunch in the Pavilion just across the dunes from the beach.

After lunch, you will be free to explore any of the nature trails that run through the park. The Nature Center also has a small aquarium and a "Please Touch" exhibit for children.

Bird watching platforms, an observation tower and the beach will provide for a great day of fun and exploration. A modern bathhouse with showers is located near the Pavilion.

For more information on the cost of attending Member's Day, or to make reservations, contact Tim White at 215-369-1188 or email tim@delawareriverkeeper.org.

Restoring a stream near you

Dan Salas, Restoration Manager

Each year spring invites us outside to enjoy the weather (be it sunny or rainy). This year, the Delaware Riverkeeper Network's Riparian Restoration Program has projects spread throughout the watershed. There's probably a project near you. We can always use a helping hand - setting up, planting, seeding, staking, cleaning up, and more. If you're interested in any of these projects, email dan@delawariverkeeper.org for more information.

Date	Project Name	Location	Stream	Project Partners	Project Type
April 23	Edgmont Country Club Riparian Buffer	Edgmont, PA	Unnamed tributary	Chester-Ridley-Crum Watershed Association, Edgmont Country Club	Buffer restoration
May 16 – 18 (or) May 23 – 25	Kemper Park Restoration	Warminster, PA	Little Neshaminy Creek	Warminster Township	Buffer restoration
TBA	Brookside Country Club Stream Restoration	Pottstown, PA	Sprogles Run	Brookside Country Club, Montgomery County Conservation District	Dam removal and stabilization
TBA	Cedar Creek Park Riparian Buffer	Allentown, PA	Cedar Creek	City of Allentown, Lehigh County Conservation District	Riparian buffer planting
TBA	Mill Creek Park	Willingboro, NJ	Rancocas Creek	Burlington County Soil and Water Conservation District	Bioengineering stabilization/ Aquatic habitat restoration
TBA	Misphillion River Stabilization	Milford, DE	Misphillion River	City of Milford, DE Department of Natural Resources and Environmental Control	Bioengineering stabilization
TBA	Saddlers Woods Restoration	Oaklyn, NJ	Saddlers Run	Haddon Township, Saddlers Woods Conservation Association	Stormwater and Restoration Assessment

Save the dates:

August 19th & 20 . . .for . . .The Delaware River Music Festival



The name may be changed, but you will still hear the same great music at this year's music festival, only more of it! This year, you can enjoy two days of beautiful bluegrass and new grass sounds at Snipes Farm in Falls Township, Bucks County.

Last year's headliner, Railroad Earth, will be with us once again, along with some new bands and old friends. Of course, we will again be having refreshments, a fresh food grill and craft tables.

Come on out and join us! Call our Washington Crossing office, 215-369-1188, for more information.

The Delaware Riverkeeper® Network

on the web at www.delawariverkeeper.org

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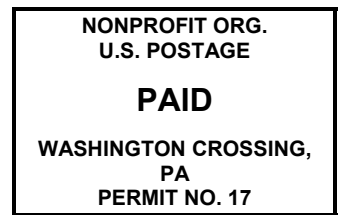
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Don't miss . . . **Our Annual Native Plant Sale**

Saturday, May 7
9:00 AM to 1:00 PM
at Prallsville Mill
on Route 29 in Stockton, NJ.

The Delaware Riverkeeper Network's 6th Annual Native Plant Sale offers herbaceous plants, ferns, grasses, shrubs and trees, all gathered from regional nurseries. Our riparian restoration staff and plant experts will be on hand to offer expert advice on choosing, planting, & growing native species.

New this year will be a selection of plants chosen by DRN staff for two different backyard projects: a native habitat for butterflies, and a rain garden collection. Also new this year is a special "Collectors' Table" where rare and hard to find native species will be featured, such as *Fothergilla gardenii*, a gorgeous white flowering shrub and *Franklinia alatamaha*, the famous and beautiful Franklin tree, saved from extinction by John and William Bartram.

A full plant list (with planting tips) and catalog for the sale is on our website: www.delawariverkeeper.org. Also, rain barrels can be viewed on the website and ordered ahead of time for home delivery.

Prallsville Mill is conveniently located on Route 29 at the north end of Stockton in the Delaware & Raritan Canal Park, just five minutes north of New Hope, PA and Lambertville, NJ, making a great day trip for out-of-towners. For more information, please call us at 215-369-1188.



Franklinia alatamaha
[adapted from W. Bartram, 1788]