

C&H
Curtin & Heefner LLP
ATTORNEYS AT LAW

HERITAGE GATEWAY CENTER • 1980 SOUTH EASTON ROAD • SUITE 220 • DOYLESTOWN, PA 18901
(267) 898.0570 • (800) 773.0680 • FAX (215) 340.3929
WWW.CURTINHBEFNER.COM

JOHN W. DONAGHY
FRANK S. GUARRIERI
ALLAN D. GOULDING, JR.
MAUREEN BURKE CARLTON ▲
KRISTA P. HARPER ▲
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* LL.M. TAXATION
+ LL.M. TRIAL
▲ ALSO ADMITTED IN NJ
** ADMITTED IN NJ ONLY

WILLARD S. CURTIN
1932-1996

OF COUNSEL
EDWARD I. DOBIN
DOUGLAS H. RIBLET

WILLIAM F. HEEFNER
1951-2008

May 18, 2010

Maryanne Wesdock, Acting Secretary to the Board
Environmental Hearing Board
2nd Floor – Rachel Carson State Office Building
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

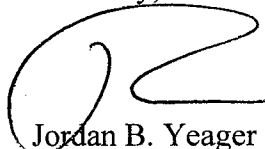
Re: Notice of Appeal – Issuance of Drill & Operate Well Permit #017-20004
Arbor Operating LLC – Auth. #827896
Cabot #2 OG Well – Site ID #718242, Sub-Facility #986952

Dear Ms. Wesdock:

Enclosed please find for filing an original and two (2) copies of a Notice of Appeal in regards to the above-referenced permit, which was issued on April 13, 2010.

If you have any questions, concerns or require any additional information, please do not hesitate to contact us. Thank you.

Sincerely,



Jordan B. Yeager
Solicitor, Nockamixon Township

cc: Connie Luckadoo, DEP Office of Chief Council
Ron Gilius, Director, Bureau of Oil and Gas Management
James Eichstadt, President, Arbor Operating LLC

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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

(717) 787-3483
Telecopier: (717) 783-4738
<http://ehb.courtapps.com>

2nd Floor – Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

Maryanne Wesdock
Acting Secretary to the Board

NOTICE OF APPEAL

1. Name, address and telephone number of Appellant:

Nockamixon Township
c/o Jordan B. Yeager, Township Solicitor
Curtin & Heefner LLP
1980 South Easton Road
Suite 220
Doylestown, PA 18901
267-898-0570

Co-Appellant:

Delaware Riverkeeper Network
300 Pond Street, 2nd Floor
Bristol, PA 19007
215-369-1188

2. Subject of your appeal:

(a) **Action of the Department for which review is sought (*a copy must be attached*):**
Renewal of Drill & Operate Well Permit

(b) **The Department's official who took the action:**

Unknown

(c) **The location of the operation or activity which is the subject of the Department's action (municipality, county):**

Nockamixon Township, Bucks County

(d) **On what date and how you received notice of the Department's action:**

April 18, 2010 via eNotice

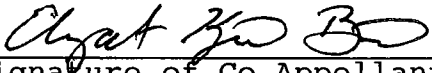
3. *Objections to the Department's action in separate, numbered paragraphs.* The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.

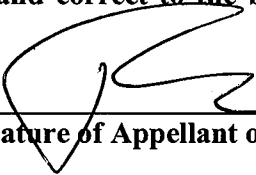
Please see attached.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

N/A

The information submitted is true and correct to the best of my information and belief.


Signature of Co-Appellant's Counsel
Telephone No.: 215-369-1188


Signature of Appellant or Appellant's Counsel
Telephone No.: 267-898-0570

If you have authorized counsel to represent you, please supply the following information (CORPORATIONS MUST BE REPRESENTED BY COUNSEL):

Co-Appellant's Counsel Info:

Elizabeth Koniers Brown
Senior Attorney
Delaware Riverkeeper Network
300 Pond Street, 2nd Floor
Bristol, PA 19007

215-369-1188 x108

Jordan B. Yeager, Township Solicitor
Name (Type or Print)

Curtin & Heefner LLP
Address

1980 South Easton Road, Suite 220

Doylestown, PA 18901

267-898-0570
(Area Code) Telephone Number

THIS FORM AND THE PROOF OF SERVICE MUST BE RECEIVED BY THE ENVIRONMENTAL HEARING BOARD WITHIN 30 DAYS AFTER YOUR RECEIPT OF NOTICE OF THE ACTION OF THE DEPARTMENT THAT YOU ARE APPEALING. MAIL OR HAND-DELIVER YOUR APPEAL AND PROOF OF SERVICE TO:

**ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received by it within the required time.

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

SUPPLEMENT TO NOCKAMIXON TOWNSHIP'S AND THE DELAWARE
RIVERKEEPER NETWORK'S NOTICE OF APPEAL

1. On or about April 13, 2010, PA DEP issued a renewed permit to Arbor Operating, LLC, granting Arbor permission to drill a gas well on the Cabot property in Nockamixon Township (Bucks County).
2. DEP has not provided to the Township a copy of the permit, and the permit has not yet been published in the PA Bulletin.
3. The Township learned about the issuance of the permit on or about April 18, 2010.
4. Delaware Riverkeeper Network ("DRN") learned about the issuance of the permit on or about May 13, 2010.
5. The Township and DRN assume that the permit mirrors Arbor's original permit.
6. The area in which the proposed drilling site is located has limited groundwater resources and lacks a public water supply.
7. Upon information and belief, the DEP has not given adequate consideration to the proposed activity's adverse impacts on water quantity.
8. The well pad site is located approximately 470 feet from Rapp Creek, which is within an Exceptional Value Watershed.
9. Upon information and belief, the DEP has not evaluated this permit under its antidegradation program.
10. Upon information and belief, the DEP has not given adequate consideration to the proposed activity's adverse effects on this EV watershed.
11. The DEP's action violates Acts 67 & 68, which provide, in relevant part, that "When a county adopts a comprehensive plan in accordance with sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances in

accordance with sections 301, 303(d) and 603(j), Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the ...permitting of infrastructure or facilities.” 53 P.S. §10619.2(a) (2010).

12. DEP has explicitly declined to even consider the Township’s zoning ordinances when reviewing Arbor’s application.
13. The DEP’s action violates the Oil & Gas Act, which requires DEP to deny issuance of a permit if such a permit would violate a statute, rule or regulation. §601.201(e)(1).
14. Permitting the use in the proposed location would violate Township zoning regulations, as oil and gas wells are not a permitted use in the zoning district where the Cabot property is located.
15. The Oil & Gas Act requires DEP to deny issuance of a permit if the permit application is incomplete. §601.201(e)(2).
16. Arbor’s application is, upon information and belief, incomplete.
17. Arbor has not demonstrated compliance with the Township Stormwater Management Ordinance (Ordinance 106), adopted in accordance with the Tincum Creek/Delaware North Act 167 Plan, which DEP has approved.
18. Ordinance 106 requires, *inter alia*, that a site specific feasibility study be completed to evaluate the potential application of infiltration-type Best Management Practices. The developer must submit calculations verifying that the post-development rates of runoff do not exceed the peak release rates prior to development for the 1, 2, 5, 10, 25, 50 and 100-year storm events. Also, the developer must address water recharge designs and calculations. (See also, Nockamixon Township Groundwater Ordinance).

19. The Department's action violates the Water Resources Planning Act, 27 Pa.C.S.A. §3103, which requires DEP to "cooperate and coordinate with ...municipalities .. for efficient planning for the maintenance and enhancement of the water resources of this Commonwealth."
20. DEP has not cooperated, coordinated, or even communicated with the Township concerning the present action.
21. In December 2007, Lynda Rebarchak, DEP's Community Relations Coordinator advised the Township that in the future copies of permits would be sent to the Township "automatically."
22. DEP has not met this obligation.
23. The Department's action fails to conform to the dictates of the State Water Plan.
24. Among other facets of the Plan, it calls for an integrated approach, which links land use decisions and water resource management, and improved coordination across agencies.
25. Within the area of the subject well, the State Water Plan calls for siting and development of uses requiring withdrawals in ways that assure adequate and sustainable water supplies without causing unacceptable impacts on in stream uses and environmental resources. The Plan also directs that local land use planning should consider cumulative impacts on the watershed.
26. The Department has not pursued an integrated approach and has not coordinated with the Township in considering cumulative impacts on the watershed.
27. The Oil & Gas Act requires the Department to consider the proposed use's impact on public resources, including but not limited to scenic rivers. §601.205(c)(2).

28. The proposed drilling site, boarding on Rapp Creek, is located within a National Wild & Scenic River Corridor.
29. Upon information and belief, the Department failed to consider the proposed use's impact on the National Wild & Scenic River Corridor.
30. The Department, upon information and belief, failed to consider the significant risk of a material diminution in stream flow and an alteration of the natural flow regime of Rapp Creek due to the proposed use and failed to evaluate the ability of Rapp Creek to support EV use in the event of such diminution and alteration.
31. The Department, upon information and belief, failed to analyze the impact of the proposed use on groundwater recharge and its impact on stream flow.
32. The Department, upon information and belief, failed to analyze the impact of groundwater withdrawals on stream flow.
33. The Department, upon information and belief, failed to analyze the impact of Erosion and Sediment Control measures and Stormwater Management measures on stream flow.
34. The proposed use is upgradient from Rapp Creek and alterations in stormwater runoff will alter stream flow.
35. The proposed use would require the use of a significant volume water resources and if such water is withdrawn from within the watershed, there is a significant credible risk of material diminution and alteration of stream flow.
36. The Department has erred to the extent that it has automatically equated any compliance with regulatory requirements with a factual determination that a permitted practice will not have an adverse impact on the stream's EV use.
37. The Township and DRN respectfully reserve the right to supplement this filing.

Authorization Search Details

[Search again](#)

Authorization ID:	827896
Permit number:	017-20004
Site:	CABOT 2 OG WELL
Client:	ARBOR OPERATING LLC
Authorization type:	Drill & Operate Well Permit
Application type:	Renewal
Authorization is for:	FACILITY
Date received:	03/11/2010
Status:	Issued 04/13/2010

Sub-Facilities for Authorization

Sub-Facility ID	Sub-Facility Name	Description	eMap PA Location
986952	CABOT 2	Well	View Map in eMapPa (IE-only)

[Log in to DEP's eNOTICE](#) to track this permit with automatic email updates