



May 21, 2010

VIA ELECTRONIC MAIL

Pamela Bush, Commission Secretary
Delaware River Basin Commission
P.O. Box 7360
West Trenton, New Jersey

Re: Request for a Hearing – Arbor Operating LLC’s Cabot #2 exploratory well in Nockamixon Township

Dear Commission Secretary Bush,

Delaware Riverkeeper Network and Nockamixon Township (Bucks County, PA) request a hearing regarding the Delaware River Basin Commission’s (the Commission or DRBC) decision to not require a specific review of Arbor Operating LLC’s Cabot #2 gas well in Nockamixon Township.

According to § 2.6.1(A) of the Commission’s Rules of Practice and Procedure (RPP), administrative hearings of contested cases are allowed arising under Article 3, whether a project substantially affects water resources, or Article 5, decisions of the executive director concerning water quality cases. Contested cases are defined as “a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved.” RPP § 2.6.1(B). The letter written by the Commission on April 21, 2010 makes a decision on the Arbor docket, therefore this is a contested case.

This hearing is requested in accordance with the § 2.6.1(C) of the RPP. This section reads in part:

Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this article provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision.

Delaware Riverkeeper Network
300 Pond Street, Second Floor
Bristol, PA 19007
tel: (215) 369-1188
fax: (215) 369-1181
drkn@delawareriverkeeper.org
www.delawareriverkeeper.org

The Specific Action or Decision for Which a Hearing is Requested

The Delaware Riverkeeper Network (DRN) specifically requests a hearing regarding the Commission's decision to allow Arbor Operating LLC's Cabot #2 gas well in Nockamixon Township to move forward without DRBC review. The decision was made in a letter to Arbor, which said that "because the proposed well is an exploratory well and the amount of water to be used to construct the well is not substantial, the Commission has determined that the project does not require a specific review at this stage."

The Date of the Action or Decision

The Commission ended its review of the Cabot #2 Arbor well via letter to Arbor Resources LLC dated April 21, 2010. This hearing request is timely, because it is made within 30 days of the letter, as required by RPP § 2.6.1(C).

The interest of Delaware Riverkeeper Network and Nockamixon Township

The Commission's approval of the exploratory well in the Delaware River Watershed concerns the DRN because of the well's potential to harm the Delaware River, its tributaries and its Watershed.

As you know, DRN petitioned DRBC to grant the Upper and Middle Delaware Wild and Scenic River segments Special Protection Waters (SPW) status. DRBC took this action in 1992. In 2001, DRN again petitioned DRBC to classify the Lower Delaware as SPW. As a result of DRN's efforts, the DRBC permanently designated the Lower Delaware as Significant Resource Waters, a type of SPW, in July 2008. DRN also requested in its 2001 petition that DRBC fulfill the requirements for prioritization of the Upper and Middle Delaware Wild and Scenic River segments. The entire non-tidal Delaware River is now protected by SPW antidegradation regulations. Not only was DRN directly involved in applying SPW status to the non-tidal Delaware, but the Delaware Riverkeeper, DRN, and DRN's members all enjoy the water quality values of the Delaware River, particularly within the drainage area of SPW.

The Delaware Riverkeeper is a full-time privately-funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its tributaries and habitats. The Delaware Riverkeeper regularly visits the Delaware River for personal and professional reasons and her use and enjoyment of the River will be adversely affected by any change in water quality due to natural gas extraction projects within the drainage area of SPW. She will also be adversely affected by any associated public perception of a water quality impact due to natural gas extraction projects.

DRN is 501(c)(3) organization established in 1988 to protect and restore the Delaware River, its tributaries and habitats. To achieve these goals, DRN organizes and implements streambank restorations, a volunteer monitoring program, educational

programs, environmental advocacy initiatives, recreational activities and environmental law enforcement efforts throughout the entire Delaware River watershed – an area which includes portions of New York, New Jersey, Pennsylvania and Delaware. The DRN is a membership organization with over 7,000 members throughout the watershed. Thus, the protection and improvement of water quality in the watershed is germane to DRN's mission and purpose.

DRN also has an interest in supporting the Determination on behalf of our members, many of whom live within the drainage area of SPW, or use the area for recreational, professional, or aesthetic use. DRN members canoe, birdwatch, hike, and participate in other recreational activities throughout the watershed, particularly within the drainage area of SPW. Our members will be adversely affected by any change in water quality due to natural gas extraction projects within the drainage area of SPW, as well as from the associated public perception of a water quality impact due to natural gas extraction projects.

DRN has frequently communicated with DRBC and the public regarding shale gas drilling in the Delaware River Watershed, the Executive Director Determination ("EDD") of May 19, 2009 and DRBC's May 6, 2010 decision to review Natural Gas Well Pad Projects after adoption of new regulations. On May 3, 2010, DRN wrote to DRBC with specific concerns regarding DRBC's position on exploratory wells.

Nockamixon Township is a municipality in Bucks County, Pennsylvania, located along the Delaware River, within the Delaware River Watershed and the drainage area of SPW. The Township's residents, property owners, businesses and visitors use and enjoy the water quality values of the Delaware River, particularly within the drainage area of SPW.

The Township has responsibility and authority under Pennsylvania law to protect the health, safety and welfare of the community. This responsibility and authority is derived, in part, from Article I, Section 27 of the Pennsylvania Constitution, which provides that, "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of the resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

The Township, its residents, property owners, businesses and visitors will be adversely affected by any change in water quality due to natural gas extraction projects within the drainage area of SPW, as well as from the associated public perception of a water quality impact due to natural gas extraction projects.

Summary Statement of Basis for the Hearing

This request for a hearing is made because the Cabot #2 well pad is not intended solely for exploratory purposes and may have a substantial effect on the water resources of the basin, yet the Commission has determined not to review the project. The

Commission's April 21 letter to Arbor states that "because the proposed well is an exploratory well ... the Commission has determined that the project does not require a specific review at this stage. I note however that prior to any type of well stimulation, hydraulic fracturing, or extraction of natural gas from the Cabot #2 well, in accordance with my May 19 Determination, review and approval by the Commission in advance will be required."

The Delaware Riverkeeper Network and Nockamixon Township assert that this response is inconsistent with the EDD and with prior communications taken by DRBC. DRBC's position does not take into account the potential environmental harm to the Delaware River from the development of this test well pad and those similarly situated, such as the H.L. Rutledge gas well ("the Rutledge well") being developed by Newfield for Hess Corporation in Wayne County, PA.¹ Moreover, DRBC action has signaled a policy shift on so-called exploratory wells in general which should trigger a broad review of their exclusion from the EDD.

Inconsistent with the EDD:

The Commission's EDD eliminated the review thresholds for gas extraction projects in the Delaware River Basin's Special Protection Waters. However, because "water withdrawals, wastewater disposal, and other activities" associated with natural gas extraction could affect the quality of Special Protection Waters, the Director of the Commission required review of any gas extraction project, "regardless of the amount of water withdrawn or the capacity of domestic sewage treatment facilities accepting fracking wastewater." In DRBC's own language in the EDD, "Wells intended solely for exploratory purposes" were not covered by this determination, however a "project" was deemed to include any "well intended for eventual production...." Yet in communications to Arbor, DRBC states that "prior to any type of well stimulation, hydraulic fracturing, or extraction of natural gas from the Cabot #2 well, in accordance with my May 19 Determination, review and approval by the Commission in advance will be required." The Arbor well is set up for eventual production, as DRBC itself notes.

Inconsistent with Prior Communications with Arbor:

The Commission communicated with Arbor on August 4, 2009, regarding the company's application to DRBC for the proposed Cabot #2 well. At that time, the Commission affirmed that the well "...is covered under the Executive Director Determination." The Commission goes on to state:

As Arbor has stated that they propose to develop the well if a viable quantity of natural gas is discovered, the well is not therefore being drilled solely for exploratory purposes and is again covered under the Executive Director Determination. The well may not be covered under the determination if a cap and plug plan is submitted to the Commission and it is affirmed that the well will be properly abandoned upon completion and collection of necessary exploratory data.

¹ Referenced in May 3, 2010 letter from DRN to DRBC.

The Commission continued, "If the well will be used solely for exploratory purposes, then an appropriate cap and plug plan must be submitted to the Commission affirming that the well will be properly abandoned upon completion and collection of necessary scientific data." Therefore, the Commission determined in August 2009 that the Cabot 2 well was covered by the Executive Director Determination. DRN and Nockamixon are unaware of the submission of any cap and plug plan and/or information that affirms that the well will be properly abandoned, as required by the Commission.

It is unclear what the disposition is of the groundwater withdrawal application that was submitted to the Commission by Arbor on April 15, 2009 and whether this application will be considered for approval by the Commission.

Environmental Impacts:

Section 3.8 of the Delaware River Basin Compact provides in part: "No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission...."

The Arbor well pad, as well as others such as the Rutledge well could result in "wastewater disposal and other activities," nonpoint source pollution and stormwater runoff, point source pollution to ground and surface water, adverse impacts on the sustainability of water supplies, and the diminishment and/or alteration of the flow of the receiving tributaries and the Delaware River, which has the potential to result in degradation and pollution that could affect the quality of the Special Protection Waters

Review of Exploratory Wells Generally:

DRN and Nockamixon advocate that the Commission include all natural gas projects, including so-called exploratory wells, as reviewable projects under the EDD due to the potential for adverse impacts and degradation to the water resources of the Delaware River Basin and the water quality of SPW. The EDD states that "For this purpose a project encompasses the drilling pad upon which a well intended for eventual production is located, all appurtenant facilities and activities related thereto and all locations of water withdrawals used or to be used to supply water to the project." The well pad for all exploratory wells, the appurtenant facilities such as roads and ponds, and activities such as well drilling and handling of drilling muds and other potentially hazardous materials, have the potential for adverse impacts and degradation of the Basin's water resources and the water quality of SPW.

At the time of the EDD, DRN understood "exploratory wells" to be non-permanent, and would not entail the significant impacts on natural resources as a well pad designed for production – for example, an exploratory well would not implicate the use of pits. That is to say, DRN understood that exploratory wells would have a limited environmental impact. It appears, however, that DRBC has transformed its approach to shale gas well review, thus creating a staged approach to gas production. This approach improperly segments the considerations of water and/or natural resource impacts and creates the opportunity for well pads to create irreversible environmental harms prior to any DRBC

review. Overall, DRN believes that DRBC's new approach warrants a hearing and/or review of DRBC's exclusion of exploratory wells from the EDD.

Other Basis for Review:

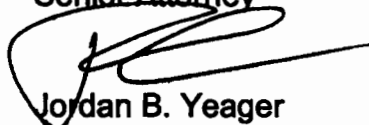
In addition, the Cabot #2 exploratory well is in the Special Protection Waters region of the Delaware River Basin. Because it is in the Special Protection Waters and therefore concerns water quality, the Delaware Riverkeeper Network and Nockamixon would like to also request a hearing under the RPP § 2.5.

We appreciate your attention to this hearing request. Please do not hesitate to contact us with any questions.

Respectfully submitted,



Elizabeth Kohiers Brown
Senior Attorney



Jordan B. Yeager
Curtin & Heefner LLP
Solicitor, Nockamixon Township