

## Delaware River Basin Commission

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**Carol R. Collier**

Executive Director

**Robert Tudor**

Deputy Executive Director

November 3, 2010

***Via Fax and Certified Mail, Return Receipt Requested***

Mr. James Eichstadt  
Manager of Exploration & Production  
Arbor Operating LLC  
104 South Union Street  
Traverse City, MI 49684

Re: Status of Arbor's Cabot #2 Well Following Recent Developments, Including Cancellation of State Well Permit by PADEP at Arbor's Request and Withdrawal of Arbor's Counsel from DRBC Administrative Hearing

Dear Mr. Eichstadt:

By letter dated April 21, 2010, I advised you that because Arbor's proposed Cabot #2 well project was an exploratory well and the amount of water to be used to construct it was not substantial, the project would not require Commission review. I further advised you that "prior to any type of well stimulation, hydraulic fracturing, or extraction of natural gas from the Cabot #2 well, in accordance with my [Determination of May 19, 2009], review and approval by the Commission in advance will be required." I am writing to advise you that in light of the developments set forth below, the status of Arbor's Cabot #2 well project has changed since the time of my April 21, 2010 letter and that Arbor is no longer authorized to proceed with the project.

In chronological order, the developments to which I refer include the following:

- On May 21, 2010 the Delaware Riverkeeper Network and Nockamixon Township jointly asked the Commission to hold an adjudicatory hearing on my decision allowing the Cabot #2 project to proceed without Commission review, set forth in my letter to you of April 21, 2010 cited above.
- On June 14, 2010 I issued a determination (the Supplemental Executive Director Determination or "SEDD") extending to most exploratory wells the requirement for Commission project review that had been in place for production wells since May of 2009. The SEDD, however, allowed those few exploratory well projects that had already received drilling permits from the Pennsylvania Department of Environmental Protection (PADEP) to proceed without review – i.e., it conferred "grandfathered" status on such wells.
- On July 14, 2010 the Commission agreed to hold a consolidated adjudicatory hearing in response to multiple requests for hearing relating to natural gas exploratory wells and the SEDD, including the challenge by Nockamixon Township and the Delaware Riverkeeper Network to my decision not to extend the Commission's project review requirements to the Cabot #2 well project. The Commission granted the hearing request as to Arbor's Cabot #2 project over Arbor's written objections set forth in a letter dated July 2, 2010 from George

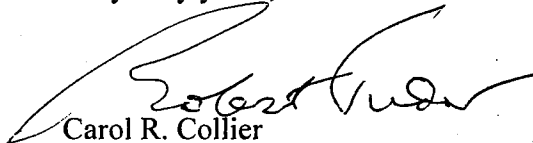
Bibikos of the K&L Gates law firm to Commission Secretary and Assistant General Counsel Pam Bush.

- After entering his appearance and participating as an "interested party" in a pre-hearing conference on September 2, 2010 on Arbor's behalf, Mr. Bibikos advised DRBC hearing officer Judge Edward N. Cahn, the other interested parties and the DRBC by letter dated September 24, 2010 that Arbor was withdrawing from the Commission's hearing. At Arbor's request, Mr. Bibikos also withdrew his appearance as attorney for Arbor.
- By letter dated October 14, 2010 (copy attached), Nockamixon Township and the Delaware Riverkeeper Network ("DRN") jointly asked Judge Cahn to issue a summary determination that Arbor's Cabot #2 well project may not proceed without review and approval by the Commission.
- In late October, the Solicitor for Nockamixon Township, Jordan Yeager, forwarded to me two letters dated October 18, 2010, documenting the cancellation at Arbor's request of Permit No. 37-017-20004-00 (renewal) issued by the Pennsylvania Department of Environmental Protection (PADEP) on April 13, 2010 for the Cabot #2 well.
- In a telephone conversation between DRBC Project Review Section Supervisor Chad Pindar and Arbor's Terry Beia on October 25, 2010, Mr. Beia confirmed that Arbor will not seek to defend the company's asserted right to construct the Cabot #2 well project without first obtaining review and approval by the DRBC.

In light of PADEP's cancellation of Arbor's drilling permit, Arbor has no present right to proceed with the Cabot #2 project. Similarly, because PADEP cancelled Arbor's drilling permit, Arbor no longer has a valid expectation that DRBC will grandfather Arbor on account of the PADEP permit. Moreover, DRBC regards Arbor's decision not to defend the challenge to its project in the pending hearing as an acknowledgement that the DRBC's project review provisions will apply to Arbor if and when Arbor decides to proceed with the project.

Consequently, this letter constitutes notice to Arbor that it may no longer rely on my letter of April 21, 2010 or the grandfathering provision of the SEDD; and that Arbor's Cabot #2 well project will be subject to all policies and regulations of the DRBC that may be in place for natural gas well projects at such time, if any, as Arbor chooses to proceed. Unless and until DRBC issues an approval to Arbor or by regulation or otherwise exempts Arbor from the project review requirement, Arbor may not proceed with any phase of the Cabot #2 well project.

Very truly yours,

  
Carol R. Collier  
Executive Director

c: John T. Hines, PADEP  
Kenneth J. Warren, Hangley Aronchick Segal & Pudlin  
Pamela M. Bush, DRBC

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