

DELAWARE RIVERKEEPER NETWORK

Championing the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean, healthy, and abundant with a diversity of life





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A Year In Review

Dear Friend of the River,

The Delaware Riverkeeper Network gives voice, strength and protection to the communities and waterways of the Delaware River. Through independent advocacy, and the use of accurate facts, science and law, the Delaware Riverkeeper Network works to ensure the rich and healthy future that can only exist with a clean, healthy and free flowing river system.

If you are among those who have been following and supporting us for years, you have probably heard or read those words before. If you are among the many new members who have joined recently, you may still be learning about our work. For both our new supporters and old friends, I want to highlight a few words: *independent advocacy, accurate facts, science and law ... THIS*, this is what we do.

On any given day in 2014, you could find the people of the Delaware Riverkeeper Network investigating a pollution incident, meeting with concerned citizens, training volunteers, monitoring for pollution, and restoring degraded streams, as well as speaking truth to decisionmakers and holding them accountable when they violate the public trust.

But more and more, we are looking to our environmental laws and the courts to protect our Watershed. In 2014, our legal action yielded success with nationwide implications. Our battle against the Northeast Upgrade Pipeline project resulted in a precedent setting ruling in June in *Delaware Riverkeeper Network, et al. v. FERC*. Almost immediately, the decision — which requires the Federal Energy Regulatory Commission to strengthen its review of proposed pipeline projects — was being cited in appeals challenging other pipeline projects across the nation including the Keystone XL.

The potential for successful advocacy and legal actions is improved when you have good data and strong science on your side. To get that good data, our volunteers observed and documented over 9,800 parameters in 2014. To get strong science, we commissioned more than 20 studies and expert reports on sediment, stormwater, water temperature, fisheries, wastewater, beneficial use determinations, greenhouse gases, contaminant transport, radiation, groundwater, pipelines, and wetlands (just to list a few). Good science does not come cheaply, but it is an investment in our Watershed, and well worth the cost.

I'm sure you can already see that 2014 was a busy year for all of us here at the Delaware Riverkeeper Network. I could not begin to sum up all we are doing in just these few pages, but I am pleased to be able to share with you some important highlights from the past year.

Our members are the backbone of our organization. Members like you provide strength, resolve, and financial support for our efforts and accomplishments. You make our work possible, and I cannot thank you enough.

Thank you so much for your support.



Maya K. van Rossum
the Delaware Riverkeeper

January

The Delaware Riverkeeper Network began 2014 preparing a brief to defend the landmark decision in *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth* that established **pure water, clean air, and a healthy environment** as fundamental rights of present and future generations protected by the State Constitution. In February, the Pennsylvania Supreme Court rejected the Corbett Administration's Motion for Reconsideration.

We also provided testimony this month at a public hearing before the Pennsylvania Environmental Quality Board (the independent board that adopts all regulations for the Pennsylvania Department of Environmental Protection) on changes proposed for Pennsylvania's **oil and gas well regulations**. In addition to our own testimony at the hearing, the Delaware Riverkeeper Network helped develop talking points for the public and a 14-page working factsheet to help others be able to testify knowledgeably about some of the gaps and inadequacies of the specific regulations. In September, the Pennsylvania Department of Environmental Protection announced plans to create separate gas and oil regulations for conventional and unconventional drilling.

When the Delaware Riverkeeper Network's agency and scientific research contacts identified high levels of **perfluorononanoate (PFNA) in groundwater**, we worked to inform the public about the contamination. As a result of our efforts, the New Jersey Department of Environmental Protection (NJDEP) in January took the step of advising Paulsboro residents to use bottled water when feeding children up to the age of one. NJDEP has had the data on PFNA contamination since 2009, but the results showing elevated levels of PFNA in Paulsboro's Well No. 7 were only made public after a Delaware Riverkeeper Network Open Public Records Act request.

February

This month saw intensive preparation for the arguments we presented, on behalf of the Delaware Riverkeeper Network, the New Jersey Sierra Club and New Jersey Highlands Coalition, before the U.S. Court of Appeals for the District of Columbia. We argued that the Federal Energy Regulatory Commission's (FERC's) 2012 approval of the Tennessee Gas Pipeline Company's Northeast Upgrade Project was inappropriate because the commission had **illegally segmented its environmental review** by failing to consider three other connected and interdependent projects, and it failed to provide a meaningful analysis of the cumulative impacts of the projects. In June, the court agreed and its decision in *Delaware Riverkeeper Network, et al. v. FERC* now stands as a precedent. FERC must now look at the full breadth and the real environmental issues of the projects they review and must avoid allowing companies to engage in segmentation.

When Bristol Township in Pennsylvania was asked to issue variances that would have paved the way for construction of an **industrial hazardous waste incinerator** adjacent to the Delaware River, we pushed back. We educated the community and encouraged our members, friends, families and neighbors to let decisionmakers know that incineration is not a safe process and that residents from both Pennsylvania and New Jersey were opposed to this inappropriate land use. On February 19th, the application for variances was withdrawn without prejudice.

March

We testified at the Pennsylvania Environmental Quality Board's March meeting to ask for more time and more study for our **Upper Perkiomen upgrade petition**. This petition, submitted in 2007, sought Exceptional Value (EV) status for all waters above the Green Lane Reservoir. We were unsuccessful, but our advocacy and our testimony secured an unprecedented waiver of the two year wait time to submit new data and/or a new or revised petition, a waiver we took advantage of in February 2015 to submit a petition seeking EV status for the Perkiomen's Hosensack tributary.

This month, we also **presented a forum** on *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth* that provided an overview of how Pennsylvania's 2013 oil and gas act (Act 13) came to be passed, how and why the legal challenge was formulated, and the implications for environmental, municipal, and legislative decision making going forward.

The Delaware Riverkeeper Network also worked with many partner organizations to hold the **16th annual Watershed Congress**. The 2014 program featured a keynote panel discussion, 21 concurrent and six poster sessions covering a broad range of watershed topics, and 20 exhibits by watershed organizations, environmental consulting firms and government agencies. Registration for Saturday's program totaled 224. Participants and presenters hailed from throughout Pennsylvania and from as far away as Pittstown, New Jersey; Rockville, Maryland; and Lewes, Delaware.

April

As a result of Delaware Riverkeeper Network advocacy and exposure of the presence of PFNA in drinking water in Gloucester County, New Jersey's Drinking Water Quality Institute and its Health Effects Subcommittee were reconvened after not meeting since 2010. The resumption of meetings would yield, in 2015, a recommendation to establish a maximum contaminant limit of 0.013 parts per billion as the **safe health limit for PFNA in drinking water**. If implemented, New Jersey would be the first state to set a limit for PFNA.

Also in April, the federal Agency for Toxic Substances Disease Registry responded to the Delaware Riverkeeper Network's petition and agreed to undertake, along with the New Jersey Department of Health, a **human health effects investigation** around Paulsboro.

The Delaware Riverkeeper Network produced four videos on the 2013 restoration of horseshoe crab spawning habitat restoration undertaken in the wake of Hurricane Sandy. We created a **30-minute documentary** from these videos which was screened in New Jersey this April by Greener New Jersey Productions and the American Littoral Society.

May

The Delaware Riverkeeper Network took part in, and helped organize, an important public lobby day in support of the **New York moratorium on shale gas**. Later, in June, we encouraged calls to New York lawmakers in support of the moratorium. These efforts met with success when the New York Assembly passed a two-year moratorium on fracking in the state. We were happy to work with the community and colleagues to call for a permanent ban. The New York Senate declined to act on the legislation. In December, fracking was banned in New York State by the Cuomo administration after investigative research, careful examination of the science and consideration of the public.

In May, we also worked against fracking on the national stage with partners in the Extreme Energy Extraction Collaborative (E3C), through which we learn from each other's successes and challenges. The Delaware Riverkeeper Network participated in EC3's 2014 Summit in Albuquerque, New Mexico, and we were involved in planning for a 2015 summit which was held in Biloxi, Mississippi.

We worked with partners — Manomet Center for Conservation Sciences, American Littoral Society, and Celebrate Delaware Bay — to identify monitoring opportunities to fill the growing void in **horseshoe crab population data**. We secured approval from the U.S. Fish and Wildlife Service (USFWS) for a tagging program. The Delaware Riverkeeper Network focused its efforts on two beaches in New Jersey where we tagged over 1,000 horseshoe crabs.



June

Earlier in 2014, the Delaware Riverkeeper Network requested records and data associated with a Pennsylvania Department of Environmental Protection (PADEP) study of the **potential radioactivity of oil and gas drilling waste materials**. We also requested a NORM (Naturally Occurring Radioactive Materials) study from 1994. PADEP turned over the 1994 study and 294 pages of records and, but withheld 57,308 pages of information claiming that public disclosure of the shielded records posed a threat to public safety and public security of infrastructure and a threat to personal safety. We appealed PADEP's withholding of documents to the Office of Open Records (OOR), arguing that the records are purely factual not deliberative, and not part of an inquiry or official probe, simply part of an agency study. In July, the Office of Open Records agreed with us and ordered PADEP to turn the records over within 30 days. PADEP successfully appealed the OOR's Order to Commonwealth Court, but we continue to seek records and data on potential radioactivity from the agency.

June also saw our legal team before the U.S. District Court, District of New Jersey fighting a motion to dismiss a legal action we had brought against Soil Safe in March challenging what we believe to be improper handling of contaminated materials. Soil Safe's motion was rejected which allowed the case to proceed. This action is continuing as we seek to demonstrate that Soil Safe has violated their recycling permit — unlawfully **handling, storing, and disposing of contaminated soil** — and has endangered human health and the environment.

July

This month, the Pennsylvania Auditor General released a report on PADEP's failure to follow through with **investigations of adverse impacts to water supplies** despite a legal obligation to do so. Delaware Riverkeeper Maya van Rossum was invited to Harrisburg to attend the press conference held for the release of the report. The Delaware Riverkeeper Network and partner organizations had been in touch with PADEP for 18 months prior to the release of this report regarding our grave concerns about procedures and policies for water quality monitoring, testing, and response in the face of the shale gas boom and provided data and information to the Auditor General's staff. The audit confirmed that basic reforms are needed to address the harms communities are experiencing from shale gas development in the Commonwealth.

Also in July, Stone Energy relinquished the Delaware River Basin Commission (DRBC) docket (permit) that would have permitted **a 0.7 million gallon per day water withdrawal from the West Branch Lackawaxen River for fracking**. The Delaware Riverkeeper Network had brought a legal challenge alleging that DRBC failed to follow its own requirements and procedures, such as requiring Stone Energy to include certain mandatory data and information in a water withdrawal application intended to support shale gas drilling. In addition, we alleged that the DRBC did not satisfy its duty to ensure that strict antidegradation water quality standards applicable to the West Branch would be met. The relinquishment of the docket ensures that future water withdrawals pursuant to this docket will not occur.



August

In August, the Lenape Nation passed a wampum string to the Delaware Riverkeeper Network. Members of the Lenape Nation paddled down the Delaware River this month to sign a treaty with community groups, environmental organizations, historical societies, churches, and others who support the Lenape, and partner to care for the Lenape homeland. The tradition of signing the **Treaty of Renewed Friendship**, which takes place every four years, was begun in 2002. As part of the treaty signing, the Lenape pass a wampum string, a symbol of the agreement, to a partner that has made a significant contribution as caretakers. In August, Chief Shelley DePaul passed the wampum string to Delaware Riverkeeper Maya van Rossum. The wampum will be held by the Delaware Riverkeeper Network for the next four years. The wampum was previously held by the Penn Museum.

Also in August, Hilcorp Energy Company withdrew its application for well spacing units (and eventual **forced pooling**) for **natural gas drilling**. In July, the Delaware Riverkeeper Network had filed a friend of the court brief in support of landowners in Western Pennsylvania who opposed Hilcorp's application; the landowners were also seeking a declaration that Pennsylvania's Oil and Gas Conservation Law, under which Hilcorp sought forced pooling, is unconstitutional. This law has not yet been used to allow forced pooling in horizontal hydrofracked wells. Hilcorp withdrew its application prior to a Commonwealth Court hearing which had been scheduled for September.

September

In September, the Delaware Riverkeeper Network submitted **a formal petition to the DRBC** requesting the agency take jurisdiction over the proposed PennEast Pipeline. We also crafted an action alert calling for letters from the public which has resulted in the submission of well over 500 citizen letters. Initially DRBC resisted jurisdiction, but follow-up letters from the Delaware Riverkeeper Network along with a deliberate press strategy and growing public pressure finally convinced the agency otherwise. In November, the DRBC Executive Director wrote Delaware Riverkeeper Maya Rossum to say it would be requiring a DRBC docket (or permit) before the pipeline could proceed.

The PennEast Pipeline right-of-way is proposed to run for over 110 miles in Pennsylvania and New Jersey, cutting across approximately 83 wetlands and 87 waterways, including the Lehigh and Delaware Rivers.

Also this month, we concluded **a year-long study of Tohickon Creek** water temperatures. We also recruited and trained 12 volunteers who collected dissolved oxygen and water temperature data to supplement in-stream temperature probe data.

October

This month, the Delaware Riverkeeper Network completed the first phase of ecological restoration and green stormwater improvements at the Haddon Township Environmental and Historical Center with 50 volunteers, culminating **two years of planning, design and installation**. The Ecological Master Plan, which we completed in 2013, was approved by the Township Commissioners in early 2014. Installation of the vegetated swales and two rain gardens began in September with grading and site infrastructure directed by Delaware Riverkeeper Network staff and installed by the Township's Department of Public Works. We then brought in plantings, and volunteers installed them during a great work day. Phase 2, which included installation of a native meadow and more riparian corridor restoration, was completed in April 2015.

Also this month, the Delaware Riverkeeper Network joined with the Clean Air Council and a group of Middlesex Township residents to challenge approvals by township supervisors that opened up 90% of their township to gas drilling. The Delaware Riverkeeper Network joined this challenge with members in western Pennsylvania because the Middlesex Township **ordinance violates the rights of people to pure water, clean air, and a healthy environment** under Pennsylvania's Environmental Rights Amendment, and will set precedent, including for our River. This legal action is ongoing. In addition, a real estate developer and a group of landowners, who have all leased their land for gas drilling, are now suing the Delaware Riverkeeper Network, the Clean Air Council, and the Middlesex Township residents in an effort to silence our opposition.

November

In November, the Delaware Riverkeeper Network compelled, via settlement, NJDEP to issue a draft permit to Salem Nuclear Generating Station (Salem NGS) by June 2015. Salem NGS in Lower Alloways Creek Township kills over three billion Delaware River fish and organisms every year. The **adoption of closed cycle cooling** could all but put an end to these fish kills. The application for renewal of Salem NGS's Clean Water Act permit, submitted in 2006 by PSE&G which operates the Salem plant, gave NJDEP the opportunity to do the right thing and require closed cycle cooling. When over seven years later, NJDEP had yet to act, we took legal action. In October 2013, the Delaware Riverkeeper Network, New Jersey Sierra Club and New Jersey Environmental Federation, represented by Delaware Riverkeeper Network attorneys, filed a Complaint in the Superior Court of New Jersey for Mercer County requesting NJDEP be ordered to take action. NJDEP issued the draft permit on June 30, 2015 with a 60-day comment period.

Also this month, Delaware Riverkeeper Maya van Rossum presented a session on the **segmentation of pipeline construction projects** at the Coalition to Protect Communities from Fracking's Collateral Damage conference in Ithaca, New York.



December

On December 17, 2014, fracking was banned in New York by the Cuomo administration after investigative research, careful examination of the science and consideration of the public. We were pleased and honored to have worked with such an amazing set of colleagues and individuals throughout New York and the region to secure this amazing victory.

December also saw the Delaware Department of Natural Resources and Environmental Control (DNREC) issue a draft permit for the Delaware City Refinery (DCR). For over 12 years, DNREC has not issued an up-to-date permit for DCR, instead allowing the facility to operate under an **expired permit that still relies on outdated technology**. In October 2013, the Delaware Riverkeeper Network, National Sierra Club, the local Delaware Sierra Club and the Delaware Audubon Society, represented by Delaware Riverkeeper Network attorneys, filed for a Writ of Mandamus in Superior Court in Delaware requesting an order for DNREC to act. Our legal action brought to bear political pressure that resulted in the issuance of the draft permit.

Also this month, the USFWS **designated the red knot rufa as threatened** under the Endangered Species Act. The Delaware Riverkeeper Network led the creation and submission (in 2005) of a petition that helped secure this designation.



For The Generations

In March 2012, the Delaware Riverkeeper Network, seven municipalities, and Dr. Mehernosh Khan filed legal action challenging Act 13, signed into law by Governor Corbett in February 2012, which amended Pennsylvania's oil and gas law. Among other things, Act 13 preempted municipal zoning of oil and gas development. The plaintiffs challenged the new law on the grounds it violated the Pennsylvania Constitution and endangered public health, natural resources, communities and the environment. In December 2013, the Pennsylvania Supreme Court rendered a decision in the case, referred to as *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth*, that created a legal framework and opportunity for Pennsylvanians to defend their constitutional rights to pure water, clean air, and a healthy environment.

In 2014, after *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth*, the Delaware Riverkeeper Network launched the **For The Generations** project to inspire our nation, and others around the globe, to demand constitutional level protection of their inherent and inalienable rights to a healthy environment. Our Declaration of Independence talks about rights to life, liberty, and the pursuit of happiness, but we do not find protections in our U.S. Constitution for three basic needs to ensure life, liberty, and happiness: our rights to pure water, clean air, and healthy environments.

Under this initiative, the Delaware Riverkeeper Network is working to:

- Pursue and secure constitutional protection of environmental rights in other states and at the federal level.
- Ensure that governments across the nation at the local and state level honor the rights of all people to pure water, clean air and healthy environments in the laws they enact, the decisions they make, and the actions they pursue.
- Ensure that the Pennsylvania Environmental Rights Amendment is further strengthened in the wake of the Pennsylvania Supreme Court Decision.

Our rights to pure water, clean air and a healthy environment are inherent, inalienable and fundamental rights retained by the people of all Generations. There can be no life, liberty or happiness without a healthy environment. Learn more about **For The Generations** at bit.ly/ForTheGenerations. You can also follow this new initiative at www.facebook.com/forthegenerations.



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