



Determination of the Executive Director Concerning Gas Drilling

June 18, 2009

Pamela Bush, Esq.
VIA ELECTRONIC MAIL
Commission Secretary and Assistant General Counsel
Delaware River Basin Commission
25 State Police Dr.
West Trenton, NJ 08628

Re: Determination of the Executive Director Concerning Gas Drilling

Dear Ms. Bush:

I write today on behalf of the Delaware Riverkeeper (a/k/a Maya van Rossum, "the Riverkeeper") and Delaware Riverkeeper Network ("DRN") concerning the Executive Director's May 15, 2009 Determination regarding natural gas extraction activities in shale formations in the Delaware River watershed ("the Determination").

DRBC has determined that horizontal drilling and hydraulic fracturing for natural gas "if not properly performed may cause adverse environmental effects, including effects on water resources." Determination, ¶ 1. Specifically, "as a result of water withdrawals, wastewater disposal and other activities, natural gas extraction projects in these shale formations may individually or cumulatively affect the water quality of Special Protection Waters by altering their physical, biological, chemical or hydrological characteristics." Determination, ¶ 4.

DRN supports DRBC's action on this issue. The determination is a necessary measure to prevent horizontal drilling and hydraulic fracturing for natural gas from causing "adverse environmental effects, including effects on water resources." Determination, ¶ 1. DRBC undoubtedly recognizes the importance of protecting SPW resources through its antidegradation regulations, which, inter alia, discourage the direct discharge of wastewater to SPW, require a comprehensive analysis of non-discharge/load reduction alternatives for all new and expanded discharges, require the use of Best Demonstrable Technology for all discharges to SPW and require the use of nonpoint source pollution control plans. The goal of all of these requirements is to create no measurable change in the high water quality of SPW. Through these regulations, SPW designation balances the economic and growth needs of the Delaware Watershed with protection of the resources that make it exceptional and attractive. The Determination clearly 2 seeks to protect the outstanding water resources subject to these regulations by requiring Commission approval for natural gas extraction projects located in shale formations within the drainage area of SPW.

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DRN opposes any attempt to overturn this Determination. It is our understanding of DRBC's Rules of Practice and Procedure ("RPP") that this Determination falls within the scope of RPP Article 6. Although we do not independently request a hearing about the Determination, if such a hearing is requested by any person or party, we request that DRN be deemed an "interested party" and be permitted to participate fully in the hearing procedure under RPP 2.6.4(a).

DRN has a demonstrated interest in the Determination and will be adversely affected if it is not implemented. As you know, DRN petitioned DRBC to grant the Upper and Middle Delaware Wild and Scenic River segments 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 Riverkeeper, DRN, and DRN's members all enjoy the water quality values of the Delaware River, particularly within the drainage area of SPW.

The Riverkeeper is a full-time privately-funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Riverkeeper advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its tributaries and habitats. The 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 6,500 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.

For the reasons outlined above, the Delaware Riverkeeper and Delaware Riverkeeper Network should be deemed an interested party for purposes of an administrative hearing held under DRBC's RPP, should one be requested by any party. DRN has an interest in the implementation of the Determination, as it seeks to prevent adverse effects to SPW on behalf of its members.

Thank you for consideration of this request. To the extent that it should be directed to another party, I respectfully request that you forward this letter appropriately.

Sincerely,

Elizabeth Koniers Brown
Senior Attorney