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April 12, 2011

Commission Secretary  
Delaware River Basin Commission  
25 State Police Drive  
West Trenton, NJ 08628  
*Via Hand Delivery*

Re: Draft Natural Gas Development Regulations  
Partial Comment Submission on Behalf of the Delaware Riverkeeper and the  
Delaware Riverkeeper Network (DRN)

RECEIVED/DELAWARE RIVER  
BASIN COMMISSION  
2011 APR 12 P 2:31

Dear Commission Secretary:

Please accept this letter and the enclosed disc as part of the comment submission of the Delaware Riverkeeper and the Delaware Riverkeeper Network regarding the DRBC's Draft Natural Gas Development Regulations.

The enclosed disc contains transcripts of the depositions from the case, Damascus Citizens for Sustainability, Inc., et al v. PA DEP, et al., EHB Docket No. 2010-102-M, which is pending before the Pennsylvania Environmental Hearing Board. This case concerns the Woodlands Management project in Damascus Township, Wayne County, PA. The deponents were Mary Slye, Craig Lobins, Brian Thomas Babb and Joseph F. Lichtinger; these were the four DEP personnel who were involved in the permit approval for the Woodlands Management project. As these transcripts help demonstrate, the DRBC's reliance on state regulators fails to meet the DRBC's responsibilities.

The Woodlands project is located within the "Hollister Creek" watershed, a designated "Special Protection High Quality" (HQ) watershed and is approximately 300 feet from Hollister Creek. The project is also within the Upper Delaware River Basin and is approximately 0.43 miles from the Delaware River, an area within the Upper Delaware Scenic and Recreational River, a National Wild and Scenic River. The personnel from PA DEP who were responsible for approval of the permit admitted that the Department did not consider the potential impacts on the high quality watershed in which the project is located. (Lobins Dep. at 33-34, 45-46, 49-51; Babb Dep. at 31, 38, 52-53; Lichtinger Dep. at 9, 17, 29, 39-41). They also admitted that the

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Department did not consider the potential impacts on the Delaware River or the Delaware River Basin. (Lobins Dep. at 46-48, 51-52; Babb Dep. at 53-55; Lichtinger Dep. at 9, 10, 29, 37-40).

The following summarizes key admissions from these depositions:

Craig Lobins

1. Mr. Lobins is a DEP Regional Manager, for the Department's Oil & Gas Program. (Lobins Dep. at p. 4-5)
2. Mr. Lobins manages oil and gas permitting activity for the Northern half of Pennsylvania. (Lobins Dep. at p. 6).
3. Each oil and gas permit goes to Lobins for final authorization. (Lobins Dep. at p. 8).
4. Lobins and his program issued over 4,600 permits in 2010. (Lobins Dep. at p. 9).
5. Lobins spent, on average, two minutes per permit prior to granting final authorization. (Lobins Dep. at p. 10).
6. There were six (6) geologists working under Lobins performing the technical reviews for the 4,600 permits issued in 2010. (Lobins Dep. at p. 16).
7. Mr. Lobins was not aware of the Department reviewing a well permit application any differently when the project in a special protection high quality or exceptional value watershed. (Lobins Dep. at p. 33-34).
8. Prior to the issuance of a gas well permit, and prior to any earth disturbance on projects under five (5) acres, no one in the Department made a determination as to the sufficiency of any erosion and sedimentation control plan. (Lobins Dep. at p. 37-38).
9. Prior to the issuance of the subject permit, the Department did not consider the adequacy of any erosion and sedimentation control plan. (Lobins Dep. at p. 46).
10. The Department did not consider whether the location of the project is consistent with the uses that are allowed in that location under local zoning. (Lobins Dep. at p. 41-42).
11. The Department did not consider any comprehensive plans adopted by any municipal governments. (Lobins Dep. at p. 50).
12. The impact of a proposed well on national or state scenic rivers is only considered if the proposed well is located on public land. (Lobins Dep. at p. 43).
13. Likewise, the impact of a proposed well on publicly owned parks, forest, game lands and wildlife areas is only considered if the proposed well is located on public land. (Lobins Dep. at p. 44).
14. In issuing individual well permits, the Department does not consider the cumulative impact of the broader development of wells on the surrounding resources. (Lobins Dep. at p. 45).
15. Other than noting whether the proposed project was 100 feet from a stream or water body, as required under the Oil & Gas Act, the Department did not give any consideration to the impact of the project as proposed on a special protection high quality watershed. (Lobins Dep. at p. 45-46).
16. The Department did not consider the proximity of the project to the Delaware River. (Lobins Dep. at p. 46).

17. There was no consideration given to the impact that the proposed project would have on the Wild & Scenic River corridor. (Lobins Dep. at p. 47).
18. There was no heightened scrutiny given to permits issued within the Delaware River watershed. (Lobins Dep. at p. 48).
19. Gas well permits have not been reviewed under the department's anti-degradation program. (Lobins Dep. at p. 49).
20. The Department did not consider the adequacy of storm water management measures prior to the issuance of the permit. (Lobins Dep. at p. 50-51).
21. The Department did not analyze the impact of the proposed project on groundwater recharge. (Lobins Dep. at p. 51).
22. The Department did not consider the impact of the project on stream flow. (Lobins Dep. at p. 51).
23. Other than noting whether the proposed project met the 100 foot distance restrictions of the Oil & Gas Act, the Department did not consider what impact, if any, the project would have on Hollister Creek. (Lobins Dep. at p. 51).
24. Other than noting whether the proposed project met the 100 foot distance restrictions of the Oil & Gas Act, the Department, in approving the project, did not consider the impact on the water resources of the Delaware River Basin. (Lobins Dep. at p. 51-52).
25. Mr. Lobins testified that he was not familiar with hydrogen sulfide being an issue in the Northeast Region, and that it was not an issue that was considered when the permit was approved. (Lobins Dep. at p. 56).

Brian Babb

26. Mr. Babb is a Professional Geologist Manager, Oil & Gas Program, DEP. (Babb Dep. at p. 5).
27. Mr. Babb was in charge of permitting for oil and gas wells. (Babb Dep. at p. 7).
28. Mr. Babb spent approximately two (2) minutes per gas well permit application. (Babb Dep. at p. 14).
29. There was no difference in the review of drilling applications based to the acreage of the disturbed area. (Babb Dep. at p. 21).
30. Applicants are not required to disclose the amount of acreage of their proposed disturbed area. (Babb Dep. at p. 26).
31. Permit applications are given the same level of review whether or not there will be an E & S permit. (Babb Dep. at p. 21-22).
32. Mr. Babb does not know whether the data the Department relies on from the USGS is accurate. (Babb Dep. at p. 23-24).
33. There is no consideration given in the permit review process for potential cumulative impacts of multiple well projects. (Babb Dep. at p. 26).
34. Other than noting on the permit application forms that a proposed project is in a special protection watershed, there is nothing else different about how the Department handles the permit review for a well permit when the proposed project is within a special protection watershed. (Babb Dep. at p. 31, 38).

35. Mr. Babb was under the impression that the Department had not approved any proposed well project that was close by a National or State Scenic River. (Babb Dep. at p. 31-32).
36. In making a determination on a well permit application, the Department does not give any consideration to municipal zoning or municipal comprehensive plans. (Babb Dep. at p. 34).
37. Mr. Babb was not familiar with how the Department's regulations define, "well site." (Babb Dep. at p. 50).
38. Mr. Babb testified that there is nothing in the application packet for the subject project that identifies the distance of the proposed well site from Hollister Creek. (Babb Dep. at p. 51-52).
39. Mr. Babb testified that there is nothing in the application packet for the subject project that identifies where the proposed well site is in relation to the Delaware River corridor. (Babb Dep. at p. 52).
40. Mr. Babb also acknowledged that he does not know what is considered to be within and not within the river corridor. (Babb Dep. at p. 52).
41. Mr. Babb did not know of any Departmental analysis to consider what the impacts, if any, might be from this project on Hollister Creek. (Babb Dep. at p. 52).
42. Likewise, Mr. Babb did not know of any Departmental analysis to consider what impact, if any, the project might have on the Delaware River or the Delaware River Basin. (Babb Dep. at p. 53-55).
43. Similarly, Mr. Babb was not aware of any consideration of the impacts on any national Wild & Scenic River. (Babb Dep. at p. 53-54).
44. The permit application file for the subject permit does not reveal whether an erosion and sediment control plan had been prepared prior to the issuance of the permit. (Babb Dep. at p. 53).
45. The Department did not conduct any analysis -- as part of its permit application review -- of the potential impacts that the project would have on groundwater resources. (Babb Dep. at p. 53).
46. The Department did not conduct any analysis to assess the adequacy of any storm water management measures in connection with the subject project. (Babb Dep. at p. 53).
47. The Department, as part of the permitting process, does not communicate or coordinate with local municipalities. (Babb Dep. at p. 53).
48. Mr. Babb testified that the Department has delineated on its maps areas where there is a greater potential for hazards associated with the presence of hydrogen sulfide; in those areas there are special conditions for how to drill and how to case a bore hole. (Babb Dep. at p. 55-60).
49. Mr. Babb testified that it is the responsibility of the geologist to note the special conditions that need to be on a permit in such an area. (Babb Dep. at p. 57).

Joseph Lichtinger

50. Mr. Lichtinger is a licensed professional geologist. (Lichtinger Dep. at p. 4).
51. Mr. Lichtinger performed the first line of technical review for well permit applications. (Lichtinger Dep. at p. 6, 8).

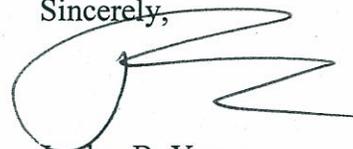
52. The review Mr. Lichtinger conducted was no different if the proposed project was less than five (5) acres or greater than five (5) acres. (Lichtinger Dep. at p. 9).
53. He did not make any effort to determine the amount of acreage that would be taken up by the well site. (Lichtinger Dep. at p. 17).
54. The review Mr. Lichtinger conducted was no different if the proposed project was within an a special protection watershed. (Lichtinger Dep. at p. 9).
55. As part of his review Mr. Lichtinger did not consider what, if any, impact the proposed project might have on a high quality or exceptional value watershed. (Lichtinger Dep. at p. 9, 29).
56. Mr. Lichtinger did not consider what impact, if any, the proposed project would have on a national scenic river. (Lichtinger Dep. at p. 10).
57. He testified as follows:
  - Q. During the course of your review of well permits, did you consider what, if any, impact the proposed project might have on any national or state scenic rivers?
  - A. Yes.
  - Q. What was the -- how did you go about those considerations?
  - A. Well, the Clarion and the Allegheny River were national scenic rivers --
  - Q. Okay.
  - A. -- that I was aware of. And we had to make sure they were not in the corridor.
  - Q. Okay.
  - A. But the corridor is not defined.
  - Q. Other than projects that were within the Clarion and Allegheny, any consideration given to national or state scenic rivers?
  - A. I did not.
  - Q. Okay.
  - A. Because I was not aware of any other.
58. Mr. Lichtinger acknowledged that the mapping data he utilized in conducting his review of well permit applications do not reflect site specific conditions. (Lichtinger Dep. at p. 14-15).
59. Mr. Lichtinger did not go on site to conduct his permit application reviews, nor did anyone else. (Lichtinger Dep. at p. 15-16, 41-42).
60. Mr. Lichtinger acknowledged that if an applicant represented to the Department that a proposed well was not within 200 feet of a publicly owned property, no consideration was given to the impact of the proposed project on publicly owned parks, forests, game lands or wildlife areas. (Lichtinger Dep. at p. 16-17).
61. Mr. Lichtinger did not assess the adequacy of any erosion and sediment control plans or of any storm water management plans. (Lichtinger Dep. at p. 17).
62. As part of his review, Mr. Lichtinger never considered the cumulative impact of a project in connection with other projects in the area. (Lichtinger Dep. at p. 20).
63. In looking at the application package, Mr. Lichtinger could not determine the distance of the project from Hollister Creek or from the Delaware River. (Lichtinger Dep. at p. 37).

64. No consideration was given to the distance of the project from any Wild and Scenic River Corridor. (Lichtinger Dep. at p. 38).
65. As part of his permit application review, Mr. Lichtinger did not consider municipal comprehensive plans or municipal zoning. (Lichtinger Dep. at p. 37). Likewise, Mr. Lichtinger did not communicate with any local municipalities. (Lichtinger Dep. at p. 40).
66. As part of his permit application review, Mr. Lichtinger did not consider whether the proposed project's location would have any impact on water resources or the watershed in which it was located. (Lichtinger Dep. at p. 39).
67. As part of his permit application review, Mr. Lichtinger did not consider which way runoff would flow. (Lichtinger Dep. at p. 39).
68. As part of his permit application review, Mr. Lichtinger did not consider whether there were alternative siting or design options or whether the project could be developed with a smaller disturbed area. (Lichtinger Dep. at p. 41).
69. Mr. Lichtinger was not familiar with the level of protection afforded high quality watersheds. (Lichtinger Dep. at p. 39-40).
70. As part of his permit application review, Mr. Lichtinger did not analyze or consider what impact, if any, the proposed project might have on stream flow or on groundwater recharge. (Lichtinger Dep. at p. 40).
71. In reviewing permit applications, Mr. Lichtinger did not consider the presence of hydrogen sulfide, and no effort was made to avoid hitting hydrogen sulfide during drilling. (Lichtinger Dep. at p. 42, 43).
72. Mr. Lichtinger was not aware of any mapping being available that showed regions where hydrogen sulfide might be encountered during drilling. (Lichtinger Dep. at p. 43-44).

As these excerpts from the sworn testimony of DEP personnel demonstrate, the DRBC will not meet its legal obligations if, consistent with the Draft Regulations, the Commission defers to and relies upon the DEP permitting process.

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

Sincerely,



Jordan B. Yeager  
Curtin & Heefner LLP

Counsel to the Delaware Riverkeeper and  
the Delaware Riverkeeper Network

Damascus Citizens for Sustainability (DCS)  
P.O. Box 147  
Milanville, PA 18443  
Website DamascusCitizens.org

Damascus Citizens for Sustainability (DCS) submits this disc of references to go with comments being submitted electronically via the PEPC website. This disc and the comments we are submitting are regarding the Commission's Draft Natural Gas Development Regulations (the "Draft Rules" ), proposing a new Article 7 of Part III - Basin Regulations, issued for public comment December 9, 2010.

These comments include and reflect the findings of technical experts engaged by DCS to analyze and report on the Draft Rules. All reports are submitted with these comments and are appended to this document. Also appended are all materials on this disc as referenced by the submitted (via PEPC website) comments from B. Arrindell, Director of Damascus Citizens for Sustainability for its members. Additional comments for DCS are being submitted by DCS attorney, Jeff Zimmerman.

DCS is a 501©3 organization dedicated to preserving and protecting the Delaware River Basin. Its over 6,000 members live, work, and play in the Delaware River Basin. They all drink the water and care about the environment in the DRB, the wildlife here and the future.

These comments conclude that the Draft Rules do not provide the necessary means for the Commission to fulfill its legal mandate to protect the water resources of the Delaware River Basin during the construction, operation, and decommissioning of natural gas development projects. The Draft Rules rely in too many instances on the state oil and gas regulatory programs in Pennsylvania and New York (the "host states"), which are inadequate to accomplish the Commission's goals, legal obligations, and regulatory responsibilities. In instances where the Draft Rules exceed host state program requirements, the proposed standards do not provide sufficient controls to achieve "no measurable change except toward natural conditions" or to protect the water resources of the Delaware River Basin as required by the Compact, the Water Code, and the Administrative Manual: Rules of Practice and Procedure.

We respectfully request that the Commission withdraw the Draft Rules, complete comprehensive environmental and cumulative impact analyses, learn from other scientific studies that are in process such as the U.S. Environmental Protection Agency's (EPA's) hydraulic fracturing study that is about to commence as well as New York State Department of Environmental Conservation's Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas & Solution Mining Regulatory Program Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs and accomplish necessary planning initiatives and key research efforts before redrafting proposed natural gas development regulations.

Please Put ABOVE AND ~~WITH~~ The Disc  
materials with the comments sent via  
PEPC website for Damascus Citizens for  
Sustainability  
2 copies of The Disc enclosed

2011 JAN 21 A 11: 21

January 18, 2011

Via Mail and E-mail  
Carol Collier, Executive Director, and Commission Members  
Delaware River Basin Commission  
P.O. Box 7360  
West Trenton, NJ 08628

Re: Natural Gas Development Regulations

Dear Director Collier and Commission Members:

The undersigned organizations and community groups urge you to broaden the public input process in response to the Commission's proposed natural gas development regulations. The regulation of gas extraction and development in the Delaware River Basin will impact the eight million residents of the Delaware River Watershed. It also will affect millions of people living outside of the Basin who rely on the Delaware River for drinking water—the 2.8 million New Jersey residents who get their water from the River and the estimated 8 million people in New York City.

The public has been deeply involved in natural gas development issues in the Delaware River Basin since the prospect of drilling emerged, almost three years ago. Since April 2010, approximately 8,000 letters have been submitted to the Commission expressing concern about the potential impacts of natural gas development. An additional 1,700 comments were submitted to the Commission on the proposed docket for Stone Energy's water withdrawal for gas well development from the West Branch of the Lackawaxen River, the Commission's first approved natural gas-related project. The public response to this urgent issue has dwarfed the public's input on previous Commission projects and illustrates its deep concerns and interest in providing substantive input.

In order for large numbers of people to provide meaningful comment on the Commission's draft regulations for gas extraction activities in the Delaware River Basin, particularly given the technical and policy issues involved, the public participation process must offer adequate time and diverse opportunities for broad public participation.

We therefore call on the Commission to adopt the following for the Commission's public participation process with respect to the draft regulations:

- The public comment period should be a minimum of six months in order to facilitate robust public participation and to offer sufficient advance notice for each hearing. Ninety days, as currently proposed, is wholly inadequate, especially considering that the Christmas and New Year holidays occurred in the midst of that period.
- Verbal testimony is key to the input process, and three hearings will not be at all sufficient to allow input from the affected public. In addition, public hearings should be held at geographically accessible and diverse locations. There should be at least one public hearing in each Basin state: Delaware, New Jersey, New York, and Pennsylvania, and at least one public hearing in each of the two largest population centers that rely on the Delaware River for water supplies, New York City and Philadelphia. Since Pennsylvania is such a large state, one hearing should be held in the Upper Delaware region, one in the central Watershed area, and one in the southeastern area.
- While meetings, workshops, and public events which the Commission sponsors or participates are good ways to educate or stimulate discussion, they cannot substitute for official Public Hearings on such significant proposed regulations.
- All written comments addressed to the Commission, whether submitted by e-mail, fax or mail, must, in a timely fashion, be made accessible to the public in order to keep the rulemaking process transparent.
- Based on input from the initial public comments, and given the technical aspects and significant policy decisions involved, the DRBC should prepare a revised draft of the regulations and conduct a second period of public input before final regulations are adopted.

The undersigned signatory groups, representing over 200,000 people with interests in the Delaware River Basin, thank you for your consideration of our requests regarding the upcoming, and critically important, public participation process. We look forward to the Commission's timely response and respectfully request that it be directed to Barbara Arrindell (at the address indicated below) who will then communicate it to all of the organizations listed.

Sincerely,

B. Arrindell, Director

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NY and PA in the Delaware River Basin

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Delaware River Basin

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# **Zimmerman & Associates**

**Environmental Litigation, Mediation, Enforcement & Compliance, Counseling**

## **M E M O R A N D U M**

**To:** Pam Bush

**From:** Jeff Zimmerman

**Date:** April 14, 2011

**Subject:** DRBC Gas Development Proposed Regulations  
Supporting Documents for Comments by  
Damascus Citizens for Sustainability and  
Friends of the Upper Delaware River

Enclosed is a CD with documents that we will reference in comments that are being submitted through the electronic system provided by the National Park Service. We are sending this CD separately by overnight mail in order for it to be filed with the Commission by the comment deadline of April 15, 2011.