



May 3, 2010

By Fax and electronic mail

Carol Collier, Executive Director
Commission Members
Delaware River Basin Commission
P.O. Box 7360
West Trenton, New Jersey

Re: “Exploratory” or “test” gas wells in the Delaware River Watershed

Dear Director Collier and Commission Members,

Delaware Riverkeeper Network is deeply concerned about the Delaware River Basin Commission’s (the Commission) role in regulating “exploratory” or “test” gas wells in the Basin, the ambiguity raised by this classification, and respectfully requests consideration of the issues outlined below.

What is an “Exploratory” Well?

The Delaware River Basin Commission’s Executive Director Determination of May 19, 2009 (EDD) stated, in part:

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. ***Wells intended solely for exploratory purposes are*** not covered by this Determination. Commencing a project encompasses performing any of the activities associated with the project, including the activities identified in the first paragraph above.¹

In the press release issued by the Commission regarding the EDD, it is stated, “Wells intended solely for exploratory purposes are not covered by this determination. *An exploratory well is*

¹ DETERMINATION OF THE EXECUTIVE DIRECTOR CONCERNING NATURAL GAS EXTRACTION ACTIVITIES IN SHALE FORMATIONS WITHIN THE DRAINAGE AREA OF SPECIAL PROTECTION WATERS, Delaware River Basin Commission, May 19, 2009.

one that the project sponsor intends to plug and cap at the conclusion of exploratory activities without use for production or fracking. Exploratory wells are subject to state regulation.”² (emphasis added). However, DRN could find no separate terms for “exploratory” or “test” wells under Pennsylvania Oil and Gas Act or regulations.³ Upon information and belief, there is no additional approval required from PADEP to transform a test well into a production well. Indeed, it appears that, under Pennsylvania law, a Marcellus well is one that either produces gas initially or is anticipated to produce gas.⁴

As stated in the EDD, the Commission has recognized the potential for substantial impact from shale gas development on the water resources of the Delaware River Basin. Under Section 3.8 of the Delaware River Basin Compact, Section 2.3.5 of the Commission's *Rules of Practice and Procedure* ("RPP"), and Water Code Section 3.40, the Commission has the jurisdiction and means to prevent adverse impacts.

However, there is currently no public process for the Commission to address “exploratory” or “test” wells; there is no way for the public to know how the Commission decides which wells are production wells and which are “exploratory” or “test” wells. There is no file for the public to review at Commission’s offices.

The ambiguity in determining and identifying “exploration” wells, as DRBC envisions that term, presents a serious problem to DRN. DRN strongly advocates for certain policy changes, outlined below.

The Rutledge Well Exemplifies the Problem

The problem of test wells is exemplified by recent developments in the Basin. Upon information and belief, DRBC has determined that it will not be regulating at least one well that appears to be a production well. We point out that at least 8 wells have been applied for by Newfield for Hess Corporation in Wayne County, Pennsylvania, including the so-called Rutledge Well. Several have already been approved – or are expected to be approved in the coming days – by PADEP.

However, we have reviewed the Pennsylvania Department of Environmental Protection (PADEP) permit application file for one of the wells that the Commission is considering an exploratory or test well.⁵ The H.L. Rutledge gas well (“the Rutledge well”) is to be located in Damascus Township, Wayne County on the North Branch of Calkins Creek, which is classified as a High Quality water by PADEP (41o 43’ 43.2” lat.; 75o11’32.1” long.). The PADEP permit type is “new well”, the type of well is “gas”. Although the well was classified as a “non-Marcellus” well on the original application, a corrected first page, included in the file, indicates the target formation is “Marcellus”. The Pennsylvania Code defines a “Marcellus Shale well” as, “A well that when drilled or altered produces gas or is anticipated to produce gas from the

²“DRBC ELIMINATES REVIEW THRESHOLDS FOR GAS EXTRACTION PROJECTS IN SHALE FORMATIONS IN DELAWARE BASIN'S SPECIAL PROTECTION WATERS”, DRBC News Release, May 19, 2009.

³ 58 P.S. § 601.103 (2010); 25 Pa. Code § 78.1 (2010).

⁴ 25 Pa. Code § 78.1 (2010).

⁵ PADEP well permit # 127-200012 dated 2.22.10.

Marcellus Shale geologic formation”.⁶ There is no indication in the file that the Rutledge well will **not** be a production well.

It is our understanding that all of these wells are considered gas production wells under their PADEP permits. The Rutledge well operator does not need to return to PADEP for any further permitting for this well to allow it to be used to produce gas. It has already been permitted to do so. The Commission is putting itself in a precarious position by not requiring the Rutledge well or similar wells to follow uniform DRBC requirements that apply to shale gas wells in the Basin.

Has the Commission received documentation from the applicant/operator that they will “plug and cap [the well] at the conclusion of exploratory activities without use for production or fracking”? Unless the Commission has secured specific documentation that guarantees the closure of this well with no further development as a production well, the Rutledge well cannot be considered an exploratory well or a test well -- it is a production well, and, as such, is subject to the EDD and the Commission’s rules.

Delaware Riverkeeper Network advocates that the Commission take immediate action to require that “exploratory” or “test” wells, including the Rutledge well, enter the Commission permitting process now, prior to commencement of construction activities.

Policy Recommendations

As a first step, we strongly advocate that the Commission remedy the lack of public access and input on this issue immediately and that the Commission clarify how it identifies wells “intended for eventual production.” The determinative factor should not be based solely on something as opaque to the public as the intent of the project sponsor. The second step should be the adoption of regulations that establish a public process for the determination of “exploratory” or “test” wells.

We further request that the Executive Director notify natural gas extraction project sponsors immediately that they may not commence any natural gas extraction project located in shale formations within the drainage area of Special Protection Waters (SPW) without first applying for and obtaining Commission approval, based on the findings of the EDD.

DRN further advocates that the more protective approach would be to assert DRBC’s permitting authority over all natural gas wells, because of the difficulty in determining at the time of initial drilling whether they will eventually become production wells, and because of the potential impacts from exploratory wells. Delaware Riverkeeper Network advocates that the Commission include all natural gas related projects, including “exploratory” or “test” wells, as reviewable projects under the natural gas-specific regulations that are being developed by the Commission. All non-shale gas wells should also be included based on the reasons discussed below and in the March 6 letter DRN submitted to the Commission regarding the Robson well

⁶ 25 Pa. Code § 78.1 (2010).

in Wayne County, a gas well not regulated by the Commission because the target formation was not Marcellus shale.⁷

Further, the Commission should adopt regulations that define and formalize a public process for so-called “exploratory” or “test” wells, which would include a guarantee that these wells will never be used for production and they will be plugged and capped after testing. Public access to files, agency transparency in the decision-making process regarding all wells, and a robust public participation component should be established as part of the process.

We are very concerned that the gas wells not currently included in the Commission’s scope of review will, individually or cumulatively, present substantial adverse impacts on the high quality waters of the Delaware River and its Watershed. Our concerns arise from the impacts that these exploratory or test wells will have because they are not subject to the scrutiny of the Commission’s anti-degradation program that protects SPW. Specifically in regards to the Rutledge well and other test wells in Wayne County, the impacts to the tributaries and wetlands that drain to the Upper Delaware Scenic and Recreational River and potential impacts on the main stem Delaware River, its ecosystem and federally recognized resources due to proximity to the main stem, floodplain intrusion, and line of sight ridge to ridge from the Wild and Scenic River are of particular concern.

Once these wells are drilled, the physical impacts of required land conversion, drilling, pad construction, and road placement among other impacts and possible pollution events, are a *fait accompli* and cannot be undone. Further, these wells may not be positioned or follow the specifications of the Commission’s natural gas-specific rules that will be adopted in the near future. There is ample evidence of environmental harm from gas drilling throughout the Commonwealth due to accidents, spills, mistakes, and other events.

The example of the documented pollution caused by the Robson gas well⁸ is evidence enough of the potential for pollution and environmental degradation. As stated above, the Robson well, despite its location within the Basin, was drilled without Commission review or permitting. DRN objected to the Commission’s decision not to include the Robson well in its required permitting process, as did other members of the public, for many reasons, including the risk of pollution at a site not monitored or regulated by the Commission⁹. The risk of further pollution events in the Basin that may be prevented by Commission regulatory oversight is too great. This is especially true since several permit applications from Newfield for Hess Corporation for wells in Wayne County are pending before, or have been issued by, PADEP. The proliferation of these DRBC-exempt gas wells increases the opportunity for pollution and degradation to the Delaware River Watershed at individual sites and cumulatively.

⁷ Letter to DRBC from Delaware Riverkeeper Network, re PADEP Permit 37-127-20008-00, Robson 627528 1, March 6, 2009.

⁸ PADEP Permit 37-127-20008-00, Robson 627528 1.

⁹ Letter to DRBC from Delaware Riverkeeper Network, re PADEP Permit 37-127-20008-00, Robson 627528 1, March 6, 2009.

In conclusion, Delaware Riverkeeper Network's considers the Rutledge well to be subject to the EDD and the Commission's rules, requiring that the well enter the Commission's permitting process immediately, prior to construction. DRN also considers all exploratory or test wells to be subject to the EDD and advocates for a public review process that applies to test wells. Further, DRN advocates that the Commission's public rulemaking on natural gas-specific projects establishes all natural gas projects, including test wells and non-shale wells, reviewable projects under the Commission's regulations. We respectfully request that no construction of any natural gas project commence until these initiatives are accomplished. We are counting on the Commission to carry out its mission to protect the water resources of the Delaware River Basin.

Thank you for your attention to this matter.

Sincerely,

Maya K. van Rossum
the Delaware Riverkeeper

Tracy Carluccio
Deputy Director

cc: National Park Service