



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

(717) 787-3483
Telecopier: (717) 783-4738
<http://ehb.courtapps.com>

2nd Floor – Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

Maryanne Wesdock
Acting Secretary to the Board

NOTICE OF APPEAL

1. Name, address and telephone number of Appellant:

See attached Exhibit A

2. Subject of your appeal:

(a) Action of the Department for which review is sought (*a copy must be attached*):

Issuance of Oil & Gas permit no. 37-127-20017 (Woodland 1-1)

(b) The Department's official who took the action:

S. Craig Lobins

(c) The location of the operation or activity which is the subject of the Department's action (municipality, county):

Damascus Township, Wayne County

(d) On what date and how you received notice of the Department's action:

*We received notice of the Department's action
by B NOTICE on June 1, 2010*

3. Objections to the Department's action in separate, numbered paragraphs. The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.

See attached Exhibit B

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

See attached Exhibit C

The information submitted is true and correct to the best of my information and belief.

John J. Zimmerman
(240) 912-6685

Elizabeth Koniers Brown /s/
Signature of Appellant or Appellant's Counsel

Telephone No.: _____

If you have authorized counsel to represent you, please supply the following information (CORPORATIONS MUST BE REPRESENTED BY COUNSEL):

John J. Zimmerman
Zimmerman & Associates
13508 Maidstone Lane
Potomac, MD 20854
(240) 912-6685

Elizabeth Koniers Brown, Esq.
Name (Type or Print)
Delaware Riverkeeper Network
Address
300 Pond St. 2nd Floor
Bristol, PA 19007
(215) 369-1188 ext 108
(Area Code) Telephone Number

THIS FORM AND THE PROOF OF SERVICE MUST BE RECEIVED BY THE ENVIRONMENTAL HEARING BOARD WITHIN 30 DAYS AFTER YOUR RECEIPT OF NOTICE OF THE ACTION OF THE DEPARTMENT THAT YOU ARE APPEALING. MAIL OR HAND-DELIVER YOUR APPEAL AND PROOF OF SERVICE TO:

ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received by it within the required time.

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

PROOF OF SERVICE

John J. Zimmerman (Appellant or Appellant's Counsel, if appellant is
represented by an attorney) hereby certifies that a copy of the notice of appeal, was on
July 4, 2010, served upon
(date)

☒ The Office of Chief Counsel of
the Department or agency taking
the action appealed.

via

☒ first class mail, postage
pre-paid
☐ overnight delivery
☐ personal delivery

AND

☒ The officer of the Department
who took the action being
appealed.

via

☒ first class mail, postage
pre-paid
☐ overnight delivery
☐ personal delivery

AND

If your appeal is from the Department's issuance of a permit, license, approval, or
certification to another person,

☒ The recipient of the permit,
license, approval, or
certification.

via

☒ first class mail, postage
pre-paid
☐ overnight delivery
☐ personal delivery

AND

Where applicable, the following:

- ☐ Any affected municipality, its municipal authority, and the proponent of the
decision, where applicable, in appeals involving a decision under Sections 5 or 7 of
the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
- ☐ The mining company in appeals involving a claim of subsidence damage or water
loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §
1406.1 et seq.;
- ☐ The well operator in appeals involving a claim of pollution or diminution of a water
supply under Section 208 of the Oil and Gas Act, 58 P.S. § 601.208;
- ☐ The owner or operator of a storage tank in appeals involving a claim of an affected
water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35
P.S. § 6021.1303.

John J. Zimmerman

Signature (Appellant or Appellant's
Counsel, if appellant is represented
by an attorney)

EXHIBIT A
SUPPLEMENT TO NOTICE OF APPEAL ON BEHALF OF MR. JAMES R. WILSON, MR.
JONATHAN B. GORDON, MSSRS. THOMAS AND MICHAEL COONEY, DAMASCUS
CITIZENS FOR SUSTAINABILITY, INC., THE DELAWARE RIVERKEEPER AND
DELAWARE RIVER KEEPER NETWORK REGARDING THE "WOODLAND
MANAGEMENT PARTNERS" WELL (Permit 37-127-20017), DAMASCUS TOWNSHIP,
WAYNE COUNTY, PA

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF APPELLANTS

DAMASCUS CITIZENS FOR SUSTAINABILITY
P.O. Box 147
Milanville, PA 18443
(570) 729-8687

THE DELEWARE RIVERKEEPER
300 Pond Street, 2d Floor
Bristol, PA 19007
(215) 369-1188

DELAWARE RIVERKEEPER NETWORK
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MR. JAMES R. WILSON
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Damascus, PA
(570) 224-0204

MR. JONATHAN B. GORDON
2786 River Road
Damascus, PA
(570) 224-8484

MSSRS. THOMAS AND MICHAEL COONEY
2849 River Road
Damascus, PA
(570) 224-4338

EXHIBIT B

SUPPLEMENT TO NOTICE OF APPEAL ON BEHALF OF MR. JAMES R. WILSON, MR. JONATHAN B. GORDON, MSSRS. THOMAS AND MICHAEL COONEY, DAMASCUS CITIZENS FOR SUSTAINABILITY, INC., THE DELAWARE RIVERKEEPER AND DELAWARE RIVER KEEPER NETWORK REGARDING THE "WOODLAND MANAGEMENT PARTNERS" WELL (Permit 37-127-20017), DAMASCUS TOWNSHIP, WAYNE COUNTY, PA

1. Mr. James R. Wilson is a homeowner and part-time resident at 2894 River Road, Damascus, PA 18415. Mr. Wilson's companion, Ms. Patricia Zins, is a full time resident at 2894 River Road. Mr Wilson also owns a home at 2869 River Road, Damascus PA 18415, where he frequently has guests. Both homes use water for cooking, bathing and drinking from private water wells on the properties; additionally, both homes receive a supplemental water supply from a spring that flows down the mountain from near the top of the ridgeline, very near the site of the proposed gas well activity. Upon information and belief, both of Mr. Wilson's properties are approximately 0.3 mile from the planned well site, and the property at 2869 River Road is contiguous with property owned by Woodland Management Partners.
2. Mr. Jonathan B. Gordon is a homeowner and part-time resident at 2786 River Road, Damascus, PA 18415. Upon information and belief, Mr. Gordon's property is located approximately 0.6 mile from the well site. Mr. Gordon has a private well on his property that supplies him with water for cooking, bathing and drinking. Mr. Gordon's property is also traversed by a creek that flows from the ridge above his property.
3. Mr. Thomas Cooney is a homeowner and part-time resident at 2849 River Road, Damascus, PA 18415. Mr. Michael Cooney is a full time resident at 2849 River Road. Mssrs. Cooney use water from a spring on their property for cooking, bathing and drinking. This spring has been supplying water to residents of the Cooney property and several other homes in the area for over 100 years. The Cooney property is contiguous to the Woodland Management Partners property and is approximately 0.3 miles from the proposed gas well pad site.
4. Damascus Citizens for Sustainability, Inc. (DCS) is a 501(c)(3) corporation dedicated to the protection of the Delaware River Basin watershed region and its resources from the environmental pollution threats posed by gas extraction using such unconventional techniques as hydraulic fracturing and horizontal drilling. The concerns of DCS extend as well to the threats posed by gas production related activities including water withdrawals, natural gas and liquids processing, wastewater and solid waste treatment and disposal and all related facets of such gas exploration, development, production and transport in this watershed. DCS members include individuals and organizations that own land in the watershed and share in the enjoyment of the natural resources, environment, and culture of

the region. Both DCS and its members will be adversely affected by and suffer irreparable injury from actions by Newfield Exploration Co. ("Newfield") at the well identified above.

5. On or about May 27, 2010, PA DEP issued a "Drill and Operate" permit to Newfield, granting permission to Newfield to drill a gas well on property owned by Woodland Management Partners in Damascus Township, Wayne County, PA.
6. DCS learned about the issuance of the permit on or about June 1, 2010 via eNOTICE.
7. The proposed 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. Upon information and belief, runoff to the east from the well site would flow to the Delaware River. Upon information and belief, runoff to the west from the well site would flow to Hollister Creek.
8. Upon information and belief, the area in which the proposed well site is located has limited groundwater resources and lacks a public water supply.
9. Upon information and belief, the Department has not given adequate consideration to the impacts of the project upon water quantity or quality.
10. The well pad site is located at 1193 feet elevation above sea level.
11. Upon information and belief, the Department has not evaluated this permit under its antidegradation program.
12. Upon information and belief, PA DEP's failure to examine the project under its antidegradation program means that it also has not considered the threat that such drilling and associated activities presents to Hollister Creek watershed, the Delaware River, and the aquatic and other wildlife supported by those streams.
13. Completion of the project as authorized by PA DEP creates significant risk of degradation to the Special Protection High Quality watershed within which the project is located.
14. Upon information and belief, the Department has not given adequate consideration to the adverse effects of the project upon this HQ watershed.
15. DEP has erred to the extent that it has automatically equated any compliance with regulatory requirements with a factual determination that a permitted practice will not have an adverse impact on Hollister Creek's HQ use.

16. Upon information and belief, PA DEP has not complied with the requirements of Act 167 as applied to Special Protection Waters.
17. Completion of the project as authorized by PA DEP will result in the consumptive use of a significant amount of water, with typical amounts for similar projects estimated by experts at one to several million gallons.
18. Upon information and belief, PA DEP has not considered the impact such consumptive use would have upon the water resources of the project area, the surrounding community, or the Delaware River Basin.
19. Upon information and belief, the well site is located in a "Rural Residential" zoning district within Damascus Township."
20. Upon information and belief, mineral extraction is not permitted in Rural Residential zoning districts without a special exemption having been granted.
21. Newfield has failed to apply for or obtain a special exemption to permit this gas well to lawfully be located and operated within the township.
22. The DEP has failed to consider these applicable zoning ordinance provisions when reviewing Newfield's application for an oil & gas well permit for the site.
23. Permitting a gas well use in the proposed location violates Damascus Township zoning ordinances and regulations.
24. The DEP's action violates the Oil & Gas Act, which requires DEP to deny issuance of a permit if such permit would violate a statute, rule or regulation. 58 P.S. § 601.201(e)(1).
25. The DEP's actions violate Acts 67 & 68, which provide in relevant part that, "When a county adopts a comprehensive plan in accordance with sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances in accordance with sections 301, 303(d) and 603(j), Commonwealth agencies shall consider and may rely upon comprehensive plans and ordinances when reviewing applications for the permitting of infrastructure or facilities." 53 P.S. §10619.2(a).
26. East Central Wayne County, including Damascus Township, has adopted a Comprehensive Plan.
27. Upon information and belief, the DEP has failed to adequately analyze the impact of Erosion and Sediment Control measures and Stormwater Management measures and/or other nonpoint pollution control requirements of the Clean Streams Law, Pa Code Chapter 102, and Pa Oil & Gas Act.

28. Newfield has not demonstrated compliance with the East Central Wayne County Comprehensive Plan.
29. The Department's action violates the Water Resources Planning Act, 27 Pa. C.S.A. §3103, which requires DEP to "cooperate and coordinate with ...municipalities ... for efficient planning for the maintenance and enhancement of the water resources of this Commonwealth."
30. The Department's action fails to conform to the dictates of the State Water Plan. Among other facets of the Plan is a requirement for an integrated approach, which links land use decisions and water resource management, and improved coordination across agencies.
31. Within the area of the subject well site, the State Water Plan calls for siting and development of uses requiring withdrawals in ways that assure adequate and sustainable water supplies without causing unacceptable impacts on stream uses and environmental resources. The Plan also directs that local land use planning should consider cumulative impacts on the watershed.
32. The Department has not pursued an integrated approach and has not coordinated with the Township in considering cumulative impacts on the watershed.
33. Upon information and belief, PA DEP has not adequately considered the impacts of the project in combination with other similar projects that may be proposed and permitted in the future.
34. The Oil & Gas Act requires the Department to consider the proposed use's impact on public resources, including but not limited to scenic rivers. 58 P.S. § 601.205(c)(2). The proposed drilling site is located within the Upper Delaware Scenic and Recreational River, a National Wild and Scenic River.
35. Upon information and belief, the Department failed to consider the proposed use's impact on the National Wild and Scenic River, including but not limited to the visual impacts of construction, drilling and/or operations at the well site.
36. Upon information and belief, the Department failed to consider the significant risk of a material diminution in stream flow and an alteration of the natural flow regime of Hollister Creek due to the proposed use and failed to evaluate the ability of Hollister Creek to support HQ use in the event of such diminution and alteration.
37. Upon information and belief, the Department failed to analyze the impact of the proposed use on groundwater recharge and its impact on stream flow.
38. Upon information and belief, the Department failed to analyze the impact of groundwater withdrawals on stream flow.

39. The proposed use is up gradient from Hollister Creek and the Delaware River and alterations in stormwater flow will alter stream flow.
40. Upon information and belief, the proposed use would require the use of a significant volume of water resources and if such water is withdrawn from within the Hollister Creek watershed, there is a significant and credible risk of material diminution and alteration of stream flow.
41. Upon information and belief, PA DEP has not adequately considered the significant impacts the project will have upon air quality both in the project area and in the region, nor the health effects of such emissions upon local residents.
42. Contrary to the assertion of Newfield, in its application approved by PA DEP, the well will be located in an area where it may impact a public resource (see Permit Application, page 1, question 11).
43. Upon information and belief, the applicant failed to submit Form 5500-PM-OG0076 ("Coordination of a Well Location With Public Resources") and the Department failed to consider issues relating to such possible harm.
44. The process employed by PA DEP is inadequate to ensure protection of public resources as required under Pennsylvania law. Form 5500-PM-OG0076 ("Coordination of a Well Location With Public Resources") asks certain very limited questions concerning impacts to public resources (e.g., whether the project will be within 200 feet of a publicly owned park, forest, gameland, designated wildlife area or Natural National Landmark, whether the well will be located within the corridor of a state or national scenic river, whether the site is within 200 feet of any historical or archaeological sites listed as federal or state historic places, whether the Pennsylvania Natural Diversity Index (PNDI) or other evaluation has identified a conflict with a species of special concern).
45. Because the impacts of the proposed project – considered individually as well as cumulatively as part of a larger series of projects planned by Newfield – extend far beyond the 200-foot buffer noted above in Paragraph 42, their potential to harm public resources, including the federally designated Wild and Scenic Upper Delaware River as well as the Special Protection HQ watershed known as "North Branch Calkins Creek" has not been adequately considered.
46. The permit issued by PA DEP violates PA Code Title 25, Chapter 901 because it fails to comply with Delaware River Basin Commission (DRBC) rules incorporated by reference therein.
47. Upon information and belief, PA DEP has not adequately considered the impact of the proposed project upon the water resources of the Delaware River Basin, its compliance with the Comprehensive Plan developed by DRBC to ensure

protection of those resources, or the DRBC Water Code and DRBC Water Quality Standards, all of which are incorporated by reference into Pennsylvania law under Chapter 901.

48. Because of its failure to conduct such review in adherence to the water quality standards promulgated by DRBC, such inaction also violates PA Code Title 25 §93.2(b), requiring that, where water standards stricter than those issued under that Title have been issued pursuant to an interstate compact, the more stringent standards apply.
49. Upon information and belief, PA DEP under its permit-by-rule process has conducted inadequate technical review of the project application, including required review of Best Management Practices (BMPs), erosion and sedimentation plans, and verification of well pad size and total disturbance area, among others.
50. In its permit-by-rule process, PA DEP has accepted unverified assertions of the project sponsor that its project complies with PA DEP rules and Pennsylvania law, substituting compliance with required paperwork for the factual determinations required to be made by PA DEP.
51. Similarly, it would appear that neither PA DEP nor other state agencies have made any factual determination regarding impacts of the project upon species of special concern. Upon information and belief, a number of species of special concern may inhabit or pass through the project area. PNDI review based on a 1991 survey of Wayne County is an inadequate substitute for a factual assessment of possible harms to species of special concern within the project area and beyond.
52. PA DEP's arbitrary and capricious elimination of review by County Conservation Districts (CCDs) of erosion and sediment control permit applications as well as stream and wetlands encroachment permit applications exceeded the agency's authority. Elimination of CCD review also prevented meaningful public participation and local control as required by Pennsylvania law.
53. Upon information and belief, there has been no technical review of erosion and sedimentation plans or stormwater control plans performed by PA DEP or any other agency, in contravention of Chapters 93 and 102 of PA Code Title 25.
54. The permit as issued violates Article I, Section 27 of the Pennsylvania Constitution, which guarantees to its citizens "the right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment," and places a duty upon the Commonwealth to "conserve and maintain" the natural resources of the state "for the benefit of all the people." The record of such drilling in Pennsylvania and elsewhere around the nation shows a clear pattern of destruction of the clean air, pure water and other values that

Pennsylvanians enjoy by right. Such drilling cannot be reconciled with the Commonwealth's duties under this provision.

55. The Department's action in issuing this permit is otherwise not in accordance with law and in violation of the rights of Appellants.
56. Appellants respectfully reserve the right to supplement this filing.

EXHIBIT C
SUPPLEMENT TO NOTICE OF APPEAL ON BEHALF OF MR. JAMES R. WILSON, MR.
JONATHAN B. GORDON, MSSRS. THOMAS AND MICHAEL COONEY, DAMASCUS
CITIZENS FOR SUSTAINABILITY, INC., THE DELAWARE RIVERKEEPER AND
DELAWARE RIVER KEEPER NETWORK REGARDING THE "WOODLAND
MANAGEMENT PARTNERS" WELL (Permit 37-127-20017), DAMASCUS TOWNSHIP,
WAYNE COUNTY, PA

RELATED APPEALS PENDING BEFORE THE ENVIRONMENTAL HEARING BOARD

The following are related appeals of permits issued to Newfield Appalachia PA LLC in Wayne County, Pennsylvania:

Permit No. 37-127-20012	Rutledge 1-1
Permit No. 37-127-20013	Teeple 1-1
Permit No. 37-127-20015	Schweighofer 1-1
Permit No. 37-127-20016	Crum 1-1
Permit No. 37-127-20018	Teeple 1-2H



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OIL AND GAS MANAGEMENT PROGRAM

WELL PERMIT

DEP USE ONLY	
Permittee's eFACTS ID 277879	Auth ID 830957
Watershed Name Hollister Creek	Quality HQ

Permittee NEWFIELD APPALACHIA PA LLC	OGO.# OGO-67425	Permit Number 37-127-20017-00	Date Issued 05/27/2010
Address 363 N SAN HOUSTON PKWY E		Farm Name & Well Number WOODLAND MGMT PARTNERS 1 1	Well Serial #
SUITE 2020		Municipality Damascus	County Wayne
HOUSTON, TX 77060-2424		7 1/2' Quadrangle Name Callicoon	Map Section # 7
Phone (281) 847-6031	Project #	Latitude 41-45-57.2000	Longitude -75-6-33.8000
Surf Elev at Site 1193 feet	Anticipated Total Depth 8350 feet	Well Type GS	Offset distances referenced to NE corner of map section. South 9393 feet West 7108 feet

This permit covering the well operator and well location shown above is evidence of permission granted to conduct activities in accordance with the Oil and Gas Act and the Oil and Gas Conservation Law, if the well is subject to that act and any rules and regulations promulgated thereunder, subject to the conditions contained herein and in accordance with the application submitted for this permit. This permit does not convey any property rights.

This permit and the permittee's authority to conduct the activities authorized by this permit are conditioned upon operator's compliance with applicable law and regulations.

Notification must be given to the district oil and gas inspector, the surface landowner and political subdivision of the date well drilling will begin at least 24 hours prior to commencement of drilling activities.

The permittee hereby authorizes and consents to allow, without delay, employees or agents of the Department to have access to and to inspect all areas upon presentation of appropriate credentials, without advance notice or a search warrant. This includes any property, facility, operation or activity governed by the Oil and Gas Act, the Oil and Gas Conservation Law, the Coal and Gas Resource Coordination Act and other statutes applicable to oil and gas activities administered by the Department. The authorization and consent shall include consent to the Department to collect samples of wastewaters or gases, to take photographs, to perform measurements, surveys, and other tests, to inspect any monitoring equipment, to inspect the methods of operation and disposal, and to inspect and copy documents required by the Department to be maintained. The authorization and consent includes consent to the Department to examine books, papers, and records pertinent to any matter under investigation pursuant to the Oil and Gas Act or pertinent to a determination of whether the operator is in compliance with the above referenced statutes. This condition in no way limits any other powers granted to the Department under the Oil and Gas Act and other statutes, rules and regulations applicable to these activities as administered by the Department.

This permit does not relieve the operator from the obligation to comply with the Clean Streams Law and all statutes, rules and regulations administered by the Department.

Special Permit Conditions:

This permit expires 05/27/2011 unless drilling is commenced on or before that date and prosecuted with due diligence.

S. Craig Loh
Regional Oil and Gas Program Manager

Stephen Watson
Oil & Gas Inspector

2 Public Square
Wilkes-Barre, PA 18711-0790

570-826-2320
Telephone

RECEIVED

JUN 10 2010

OIL & GAS