C&H
Curtin & Heefner LLP
ATTORNEYS AT LAW
HERITAGE GATEWAY CENTER • 1980 SOUTH EASTON ROAD • SUITE 220 • DOYLESTOWN, PA 18901
(267) 898.0570 • (800) 773.0680 • FAX (215) 340.3929
WWW.CURTINHEEFNER.COM

JOHN W. DONAGHY
FRANK S. GUARRIERI
ALLAN D. GOULDING, JR.
MAUREEN BURKE CARLTON▲
KRISTA P. HARPER▲
FRANCIS X. STECKLAIR *
ROBERT SZWAJKOS
LISA M. PATTERSON▲
LISA KOEBBE SCHUBEL▲
JAMES J. ESPOSITO▲
MICHAEL P. MAGUIRE▲
VINCENT J. MAGYAR, JR.▲
THERESA M. GOLDING**
GILBERT J. GOLDING *
BONNIE S. STEIN▲+
ROBERT A. BADMAN, JR.▲
DAVID J. TRUELOVE▲
ERNEST R. CLOSSER III
JORDAN B. YEAGER
JOHN J. HART
MATTHEW J. BASS▲
CAROLYN M. ANGELACCIO▲
KYONG H. GROWNEY▲
SEAN R. SULLIVAN
JOSEPH F. KAMPHERSTEIN III▲
BLAKE S. GRIFFIN

* LL.M. TAXATION
+ LL.M. TRIAL
▲ALSO ADMITTED IN NJ
** ADMITTED IN NJ ONLY

OF COUNSEL
EDWARD I. DOBIN
DOUGLAS H. RIBLET

WILLARD S. CURTIN
1932-1996

WILLIAM F. HEEFNER
1951-2008

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)

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

MORRISVILLE OFFICE: 250 N. PENNSYLVANIA AVENUE • BOX 217 • MORRISVILLE, PA 19067 • (215) 736.2521 • (800) 773.0680 • FAX (215) 736.3647
LAWRENCEVILLE OFFICE: 123 FRANKLIN CORNER ROAD • SUITE 203 • LAWRENCEVILLE, NJ 08648 • TEL (609) 394.6500 • FAX (609) 896.1533

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).

<u>Brian Babb</u>

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).

<u>Joseph Lichtinger</u>

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.

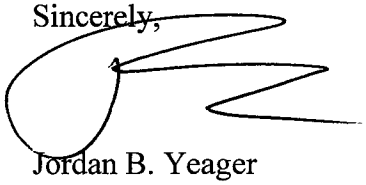
58. Mr. Lichtinger acknowledged that the mapping data he utilized in conducting his review of well permit applications do not reflect site specific conditions. (Lichtinger Dep. at p. 14-15).
59. Mr. Lichtinger did not go on site to conduct his permit application reviews, nor did anyone else. (Lichtinger 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

1 **COMMONWEALTH OF PENNSYLVANIA**
ENVIRONMENTAL HEARING BOARD
2
3
4 **DAMASCUS CITIZENS FOR**
SUSTAINABILITY, THE DELAWARE
5 **RIVERKEEPER, DELAWARE**
RIVERKEEPER NETWORK, MR. JAMES R.
6 **WILSON, MR. JONATHAN B. GORDON AND**
MESSRS. THOMAS AND MICHAEL COONEY
7
8 **v.** **EHB Docket No. 2010-102M**
9 **COMMONWEALTH OF PENNSYLVANIA,**
DEPARTMENT OF ENVIRONMENTAL
10 **PROTECTION AND NEWFIELD**
APPALACHIA PA, LLC, Permittee
11
12
13
14 Deposition of **BRIAN THOMAS BABB**, taken before and
15 by Lisa Willow Weiss, Notary Public in and for the
16 Commonwealth of Pennsylvania, on Thursday, March 24,
17 2011, commencing at 9:00 a.m. at the Pennsylvania
18 Department of Environmental Protection, 230 Chestnut
19 Street, Meadville, Pennsylvania.
20
19 Street, Meadville, Pennsylvania.
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19 Street, Meadville, Pennsylvania.
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23

1 **APPEARANCES**

2

3

4 **For the Appellants, the Delaware Riverkeeper and Delaware Riverkeeper Network:**

5

Jordan B. Yeager, Esquire
6 Curtin & Heefner LLP
Heritage Gateway Center
7 1980 South Easton Road, Suite 220
Doylestown, Pennsylvania 18901

8

9 **For the Appellants:**

10 John J. Zimmerman, Esquire
Zimmerman & Associates
11 13508 Maidstone Lane
Potomac, Maryland 20854

12

13 **For the Commonwealth of Pennsylvania, Department of Environmental Protection:**

14

Stephanie K. Gallogly, Esquire
15 Pennsylvania Department of Environmental Protection
230 Chestnut Street
16 Meadville, Pennsylvania 16335-3481

17

For Newfield Appalachia PA, LLC:

18

Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101

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22

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I N D E X

BRIAN THOMAS BABB

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1 B R I A N T H O M A S B A B B, first having
2 been duly sworn, testified as follows:
3
4 DIRECT EXAMINATION
5 BY MR. YEAGER:
6
7 Q. Good morning, sir. Can you please state your
8 name and spell your last name?
9 A. Brian Thomas Babb, B-A-B-B.
10 Q. Okay. Sir, have you ever sat for a
11 deposition before?
12 A. Once in an insurance claim.
13 Q. Okay. Well, same kind of thing -- well, I
14 don't know what your deposition was like there, but it's
15 basically just a question and answer session. The court
16 reporter is here to take down everything. As skilled as
17 she is, she can only take us down when one of us is
18 speaking at a time and can only take down words, so
19 um-hums and huh-huhs end up coming out a lot alike in a
20 deposition transcript, and shakes and nods don't come
19 um-hums and huh-huhs end up coming out a lot alike in a
20 deposition transcript, and shakes and nods don't come
19 um-hums and huh-huhs end up coming out a lot alike in a
20 deposition transcript, and shakes and nods don't come
21 out at all, so I'll remind you to use words as much as
22 you can, okay?
23 A. Okay.
24 Q. And I'll ask you to let me finish asking
25 before you start answering, and I'll try not to

1 interrupt you as well, okay?

2 A. All right.

3 Q. If at any time you need to take break, let me

4 know. It's my hope that we'll be through this fast

5 enough that you won't need to, but if you do, don't be

6 shy.

7 A. Okay.

8 Q. What position do you currently hold?

9 A. I'm a professional geologist manager.

10 Q. And what position did you hold before that?

11 A. I was a sanitarian supervisor.

12 Q. Sanitarian supervisor?

13 A. Yes, and water supply.

14 Q. When you say and water supply, is that a

15 program within DEP?

16 A. Yes.

17 Q. What program are you associated with now or

18 do you work with now?

19 A. Oil and gas.

20 Q. How long were you in water supply as a

19 A. Oil and gas.

20 Q. How long were you in water supply as a

19 A. Oil and gas.

20 Q. How long were you in water supply as a

21 sanitarian supervisor roughly?

22 A. 22 months.

23 Q. And prior to that?

24 A. Oil and gas.

25 Q. Doing what?

1 A. Permitting, drilling wells.

2 Q. What was your position?

3 A. Licensed professional geologist.

4 Q. And how long had you been doing that?

5 A. 11 years.

6 Q. And prior to that?

7 A. Water quality specialist and water

8 management.

9 Q. Doing what?

10 A. Inspecting sewage treatment plants and

11 industrial waste.

12 Q. How long have you been with DEP overall?

13 A. 17 years.

14 Q. So did you start in water quality?

15 A. Yes, that's where I started.

16 Q. And any advanced degrees?

17 A. Bachelor's degree in geography actually.

18 Q. In geography?

19 A. Yes. I have three minors in geology.

20 Q. Any licenses?

19 A. Yes. I have three minors in geology.

20 Q. Any licenses?

21 A. Yes, I'm a licensed professional geologist.

5 A. 11 years.

6 Q. And prior to that?

7 A. Water quality specialist and water

8 management.

9 Q. Doing what?

10 A. Inspecting sewage treatment plants and

11 industrial waste.

A. Yes.

Q. What are your job responsibilities?

A. I'm in charge of the applications pretty much for the drilling applications, E&S plans associated with drilling, water management plans for withdrawal associated with oil and gas drilling, and general permits through what we call the 105 program for encroachments into streams and wetlands and things like that.

Q. Anything else?

A. That is all.

Q. I didn't mean to suggest that it wasn't enough.

A. Yeah.

Q. Okay.

A. I can't think of anything right now. Permitting is what I -- almost any permitting or approval function I'm in charge of.

Q. Involving oil and gas drilling?

A. Yes, involving oil and gas drilling.

Q. Involving oil and gas drilling?

A. Yes, involving oil and gas drilling.

Q. Involving oil and gas drilling?

A. Yes, involving oil and gas drilling.

Q. Okay. When you say you're in charge of it, is there somebody over you who is also in charge of it?

A. Yes.

Q. And who's that?

A. Craig Lobins.

1 Q. Okay. So how much of your time -- can you
2 differentiate between your time to say how much of it is
3 associated with the well permits versus E&S permits
4 versus any other permits that you deal with?
5 A. I can come close, I think.
6 Q. Okay.
7 A. I think I probably spend 20 to 25 percent on
8 drilling permit applications.
9 Q. And what about on E&S?
10 A. E&S, 30 percent.
11 Q. Okay. Why does E&S take more?
12 A. This first year that I've been there, it's
13 more of a learning curve for me.
14 Q. Okay. Is that because you had been doing the
15 drilling permits yourself when you had been in that role
16 earlier?
17 A. Probably that's why, yes.
18 Q. Okay.
19 A. I understood them better. I understand them
20 better --
19 A. I understood them better. I understand them
20 better --
19 A. I understood them better. I understand them
20 better --
21 Q. Okay.
22 A. -- than the EMS plans or the water management
23 plans.
24 Q. Okay. Overall how many permits a year -- in
25 2010, do you know how many permits went by -- how many

1 permits you dealt with?
2 A. Drilling applications -- this will be a real
3 close estimate, 4,500.
4 Q. Okay. And that's just drilling applications?
5 A. Yes.
6 Q. And what about all together?
7 A. With the E&S, erosion and sedimentation plans
8 and water management plan approvals, they're a lot less,
9 but they're -- not a lot more complicated. There's less
10 of them.
11 Q. Okay.
12 A. In 2010, I wasn't there the whole year, but
13 I'm going to say there was 40 E&S plans. We have
14 different types of E&S plans, too.
15 Q. Okay.
16 A. There's ESGP1s and there's joint permits, but
17 about 40, I'd say.
18 Q. Okay. That's just the E&S?
19 A. Yes, and the water management plans, 15.
20 Q. Oh, okay. And what is your -- so when we
19 A. Yes, and the water management plans, 15.
20 Q. Oh, okay. And what is your -- so when we
19 A. Yes, and the water management plans, 15.
20 Q. Oh, okay. And what is your -- so when we
21 talk about the 4,500 -- and I understand you weren't
22 doing it for the whole of the year, but when we talk
23 about the well drilling permits, what are you doing in
24 connection with the Department's review and approval of
25 those permits?

A. I get them in. They're date stamped in and then clerical staff puts them in my box. I divvy them out, and I keep track of that.

Q. Okay.

A. And then they go through some review. Sometimes I'm needed, sometimes I'm not, for questions and things. And then when the staff is done with them, they come back to my office, and I give them a review of the items I think are pertinent that I can look at on my review of them.

Q. You give them a piece of paper -- when you say you give them a review --

A. No. They come back to me. The permit goes out and then it comes back to me and I look at them.

Q. When you say you give them a review, you're not talking about the geologist. You're talking about you review the application package that comes back to you.

A. Correct.

O. I understand. Okav. So vou review the

A. Correct.

O. I understand. Okav. So vou review the

A. Correct.

Q. I understand. Okay. So you review the paperwork that's come back to you?

A. Yes.

Q. And what else?

A. Then I put my initials -- actually, I sign it now. I date it and sign it that I've looked at it.

1 Q. Okay. And then what?
2 A. Then I -- if everything is fine with it, I
3 take it up front for processing to permit -- at this
4 point it's still an application, for processing it to
5 become a permit.
6 Q. It initially comes in, and the first people
7 it's touched by is clerical support?
8 A. Um-hum.
9 Q. Yes?
10 A. Yes.
11 Q. That's okay. And from clerical support, it
12 goes to you. From you it goes to a geologist who is
13 doing some level of technical review.
14 A. Yes.
15 Q. From that geologist it comes back to you?
16 A. Yes.
17 Q. And then you get it back to clerical support?
18 A. Yes.
19 Q. And then am I correct, the clerical support
20 then gets it to your supervisor?
19 Q. And then am I correct, the clerical support
20 then gets it to your supervisor?
19 Q. And then am I correct, the clerical support
20 then gets it to your supervisor?
21 A. Yes.
22 Q. Does it come back to you?
23 A. No.
24 Q. Okay. So let's then focus in on that part
25 with your role of the permits that involves the review

of the paperwork that you get back from the geologist, okay?

A. Um-hum.

Q. Describe for me, if you can -- if you can, in more detail what you're doing at that stage.

A. What I'm doing, I'm looking at the checked boxes that are on there, and any of them that say yes, I try and make sure that I see they've been -- either some kind of paper that they've been looked at some point, like if they say there's a wetland within 100 feet, well, I'm going to make sure I see it on that plat and that we've addressed that issue. If they need a waiver for that, make sure there's a waiver in there, if there's any special conditions that come with that waiver, I'm going to make sure that those get on the permit application as a special condition.

I generally check to see if it's a Marcellus well. If it is, it's going to need a directional survey, and I do a pretty good review on the directional survev because thev're more comolicated than the rest of

survey, and I do a pretty good review on the directional survev because thev're more comolicated than the rest of survey, and I do a pretty good review on the directional

survey because they're more complicated than the rest of the application.

Q. Anything else?

A. Pretty much everything that's on that, the yes side, I try and look at and make sure we've addressed whatever issue they've said yes to, either

1 it's a conservation well, which means they have to look
2 at depths and make sure we have distance restrictions.
3 That's what the yes boxes are for. If there's anything
4 that we have to look at a little closer, we do.
5 Q. And when you -- so when you see a yes and
6 you're looking to see whether it's been addressed, what
7 are you looking at to determine whether it's been
8 addressed?
9 A. Well, like I said, in the waivers, if they're
10 within 100 feet of a wetland, they say yes. I look on
11 the plat to make sure it's on the plat, the map, and if
12 so, do you have a waiver involved. I look at the waiver
13 to make sure it addresses the issue, and those are going
14 to be special conditions on the permit.
15 If it's a conservation well, I look to make
16 sure the depth is there, to make sure it's a
17 conservation well, which means it's 3,800 feet and
18 penetrates the Onondaga. If they say it's a Marcellus
19 well, make sure we have a directional survey that makes
20 sense, that matches the information that's also on the
19 well, make sure we have a directional survey that makes
20 sense, that matches the information that's also on the
19 well, make sure we have a directional survey that makes
20 sense, that matches the information that's also on the
21 plat, total vertical depth, total measured depth.
22 Q. So you're looking at the other paperwork that
23 has come back to you from the geologist as part of the
24 application package? Is that what you're looking at?
25 A. I'm looking at everything that the -- that

1 came in.
2 Q. Okay.
3 A. Occasionally we'll have waivers come in, like
4 for the distance restrictions, and those come in with
5 the application, but then it gets sent out to the field
6 so they can do a field review, and they might put
7 special conditions on that waiver. When it comes back,
8 we match them up and then I make sure that those were
9 addressed and that we're going to make those special
10 conditions.
11 Q. Are you just looking at paperwork or are you
12 also going on and looking at a computer system?
13 A. I'm just looking at the paperwork.
14 Q. Okay. Can you say how many of these you
15 would be able to do, conduct this review of in a month,
16 a week, a day?
17 A. I generally review 20 to 25 of them each
18 morning.
19 Q. And how long does it take you to review 20 to
20 25?
19 Q. And how long does it take you to review 20 to
20 25?
19 Q. And how long does it take you to review 20 to
20 25?
21 A. 45 minutes.
22 Q. So roughly two minutes, a little bit more, an
23 application package; is that fair?
24 A. That sounds about right.
25 Q. Okay.

1 A. If there's no issues with it.
2 Q. Sure, sure. And if there are issues with it,
3 would you then be documenting that?
4 A. If there's issues with one, I'll generally
5 get back to the geologist and see what was the issue.
6 If I can't understand it, I'll try to understand it and
7 we'll figure it out.
8 Generally, we've worked out -- that's how I
9 do it in the morning. Now, I've worked on these with
10 them. If there's an issue while we were working on it,
11 they would come and talked to me, and hopefully I can
12 remember and say, okay, that's the one we were talking
13 about.
14 Q. Would there be documentation in the file if
15 there was an issue that required that kind of
16 discussion?
17 A. Between myself and the geologist?
18 Q. I don't know.
19 A. Well, generally, there's an issue. I don't
20 know what it would be. and then we have to have -- the
19 A. Well, generally, there's an issue. I don't
20 know what it would be. and then we have to have -- the
19 A. Well, generally, there's an issue. I don't
20 know what it would be, and then we have to have -- the
21 operator would have to submit something else to us.
22 Q. Okay.
23 A. That's in there.
24 Q. Okay.
25 A. That type of thing. Anything we get,

1 anything associated with the permit. I do not write up
2 special things. Sometimes I'll ask the staff, hey,
3 write in here that you talked to this operator about
4 this or -- I can't think of a good issue right now.
5 Q. Is that part of what the geologists are doing
6 is keeping a paper record of those types of
7 communications?
8 A. Yes.
9 Q. Okay. So that you can then, as part of your
10 review, look at what communications have been had?
11 A. Right. We have phone logs that are sometimes
12 in there.
13 Q. Okay.
14 A. We have standard letters we put out with
15 objections, if someone has an objection and we call and
16 talk to them, and that information goes in there, if
17 there's an objection.
18 Q. Are the geologists expected to use those
19 phone logs to document to use those discussions?
20 A. Yes.
19 phone logs to document to use those discussions?
20 A. Yes.
19 phone logs to document to use those discussions?
20 A. Yes.
21 Q. And do you ever have e-mail exchanges with
22 the geologists about an application or a review of an
23 application?
24 A. I can't think of one. There's so many that
25 it wouldn't make sense. I can't think of one, so no, we

1 generally don't.
2 Q. When you say there's so many, it wouldn't
3 make sense, what do you mean?
4 A. If there's issues on permits, I get enough
5 e-mails as it is now, and they know they can come right
6 in my office and talk about it.
7 Q. There are six geologists that report to you;
8 is that correct?
9 A. Yes.
10 Q. And do each of them work out of this office?
11 A. Yes.
12 Q. Do they conduct site visits as part of their
13 technical review of a permit application?
14 A. Rarely, very rarely.
15 Q. Under what circumstances would that happen?
16 A. Most cases would be an objection where we
17 have either an issue we can't solve on the phone. That
18 might be the only one we would have people go out on.
19 Q. Would there be documentation if a site visit
20 were done?
19 Q. Would there be documentation if a site visit
20 were done?
19 Q. Would there be documentation if a site visit
20 were done?
21 A. Yes.
22 Q. What's the difference -- do you know what
23 Craig Lobins does in connection with these applications?
24 A. Not everything probably.
25 Q. Do you know to what extent there's any

1 difference between what you are doing and what he is
2 doing?
3 A. The big difference is he sees the permit. I
4 don't see the permit.
5 Q. Okay.
6 A. It gets issued. They type up the permit.
7 And he sees the permit. Now, he can look at the permit
8 and see how it makes sense with either typos on the
9 permit or, oh, this lat and long doesn't match up or
10 something, so he gets to see that. Any special
11 conditions I said should go in, he can look and make
12 sure that they're in there. I'm hoping they go in.
13 They generally do, and he's ensuring. I would think he
14 would ensure that they would go in.
15 Q. And I think I asked this before. I just want
16 to make sure. After it leaves your desk when you've
17 done your review of the application, do you see that
18 permit file again?
19 A. Generally not.
20 Q. Okay. Under what circumstances would you?
19 A. Generally not.
20 Q. Okay. Under what circumstances would you?
19 A. Generally not.
20 Q. Okay. Under what circumstances would you?
21 A. Only if Craig brings it back to me and says
22 there's something wrong.
23 Q. And would there be some sort of paper trail
24 that would reflect that?
25 A. Probably on, let's say -- the lat long was

1 wrong.

2 Q. Okay.

3 A. Somehow it's wrong, he figured that out. We

4 would note that we changed it.

5 Q. Okay.

6 A. Generally, it's -- we just note that we

7 change it right on the plat or on the permit, but

8 there's not a separate piece of paper for something like

9 that.

10 Q. When you say a Marcellus well, what do you

11 mean by a Marcellus well?

12 A. A well that's in a shale formation. We call

13 them Marcellus wells, but it's not --

14 Q. Okay.

15 A. The ones that are Marcellus, they're in a

16 Marcellus formation, but any that are in a shale

17 formation where they're going to use a substantial

18 horizontal lateral and fracture it.

19 Q. Okay. So a Marcellus well doesn't

20 necessarily mean -- doesn't exclusively mean a well

19 Q. Okay. So a Marcellus well doesn't

20 necessarily mean -- doesn't exclusively mean a well

19 Q. Okay. So a Marcellus well doesn't

20 necessarily mean -- doesn't exclusively mean a well

21 drilled into the Marcellus shale. It would include

22 wells drilled into other shale formations; is that

23 correct?

24 A. Um -- sorry, I didn't mean to say that.

25 Q. No, no, that's okay. That was a reasonable

1 "um."

2 A. A Marcellus well is a Marcellus well. I

3 mean, if it's Marcellus shale, it's Marcellus shale. We

4 found that they're starting to drill into other shales

5 with similar characteristics and we put special

6 conditions on the permits.

7 Q. Right.

8 A. And we label them with an M so we call them

9 Marcellus wells, and we want to make sure those special

10 conditions get onto those other shale wells where

11 they're going to fracture, so we have been calling them

12 Marcellus wells. I wish we would have -- I shouldn't

13 say that.

14 Q. Well, that's all right, you're allowed to

15 wish.

16 MS. GALLOGLY: Don't speculate.

17 Q. Oh, I'm not asking you to speculate. One of

18 the elements of the definition you gave to the label of

19 a Marcellus well was that it's a horizontal well that's

20 being fractured. Is that accurate?

19 a Marcellus well was that it's a horizontal well that's

20 being fractured. Is that accurate?

19 a Marcellus well was that it's a horizontal well that's

20 being fractured. Is that accurate?

21 A. Usually.

22 Q. Okay.

23 A. You can have a Marcellus well that is just a

24 vertical well.

25 Q. Okay. And can you have a Marcellus well

1 that's not being fractured?

2 A. Yes.

3 Q. Do you know when the Pennsylvania Natural

4 Diversity Index, how often that gets updated?

5 A. No, I don't.

6 Q. When an applicant -- is the review of an

7 application different based on the acreage of the

8 disturbed area?

9 A. For a drilling application? No.

10 Q. What about for an E&S?

11 A. Yes.

12 Q. Is the review of a drilling application any

13 different when there will be an E&S permit versus when

14 there won't be an E&S permit?

15 A. No, and if there is an E&S permit, they'll

16 put it on the -- I forget what number it is. They'll

17 put that there's an E&S, and they'll put the number if

18 there's one associated. If there's not one, it's not on

19 there.

20 Q. Okay.

19 there.

20 Q. Okay.

19 there.

20 Q. Okay.

21 A. That's the only difference.

22 Q. Okay. The review that the permit application

23 is given for a well permit is the same level of review,

24 the same components to it, whether there will also be an

25 E&S permit or not?

1 A. Yes.

2 Q. Okay. Is there anything done that you're

3 aware of by the Department to confirm the accuracy of

4 the information supplied by the applicant on the

5 application?

6 A. All of the information?

7 Q. Any of them.

8 A. Well, the PNDI, in my memory, we look at the

9 date to see when it was ran. It looks like a PNDI

10 sheet. We look -- the information that's submitted, I

11 guess -- I don't mean to guess but --

12 Q. Do you know whether there's anything done by

13 the Department to verify the accuracy of the information

14 that the applicant supplies?

15 A. Only on the plat portion we're actually

16 measuring things -- we're actually measuring items on

17 either distances and the latitude longitude where it is

18 derived. We make sure it makes sense from a topomap

19 that we have and what's on the plat.

20 Q. If the plat shows a water resource in a

19 that we have and what's on the plat.

20 Q. If the plat shows a water resource in a

19 that we have and what's on the plat.

20 Q. If the plat shows a water resource in a

21 certain location in relation to the proposed bore hole,

22 is the Department doing anything to determine whether

23 those relative locations are accurate?

24 A. If we see them on a topomap, on our own map

25 that we use, we make sure it jives, it makes sense. If

1 it doesn't make sense, we'll call and say, there's an
2 issue here, so solve this issue or why do I see this,
3 and it doesn't make sense and why does this seem closer
4 and they're farther away.
5 Q. And this is something that's done by the
6 geologist or done by you?
7 A. The geologists.
8 Q. And when you're talking about a topomap,
9 you're talking about a map that's prepared by the USGS?
10 A. Based on a map prepared by the USGS.
11 Q. Okay.
12 A. We have a map system that uses a topomap
13 generated by maptech, and our lat long information feeds
14 a computer system called eFACTS, and we have software
15 that melds those together and the lat long they put on
16 is now able to be shown during their review on this
17 computer system and we look at that and we look at the
18 plat and everything should make sense. If there's any
19 discrepancies, we'll have the operator address those.
20 Q. The data that is utilized for those maps,
19 discrepancies, we'll have the operator address those.
20 Q. The data that is utilized for those maps,
19 discrepancies, we'll have the operator address those.
20 Q. The data that is utilized for those maps,
21 does that include data on the size and location of
22 wetlands and water sources?
23 A. Yes.
24 Q. Do you know how old that data is?
25 A. No.

1 Q. Do you know what the source of that data is?
2 A. Not exactly.
3 Q. Do you know the accuracy of that data?
4 A. No.
5 Q. And as part of the well permit application
6 process, are applicants required to submit wetland
7 delineation reports?
8 A. Only if they are within a certain distance.
9 Q. Based on their representation of the
10 distance?
11 A. Yes, and if it's less than an acre, they can
12 delineate out that it's less than an acre so you won't
13 have to submit a waiver. You still can't -- you still
14 can't disturb that wetland, but you don't have to submit
15 a waiver if it's less than 100 feet, but they'll submit
16 a delineation sometimes to show that it's less than an
17 acre.
18 Q. I want to make sure I understood the pieces
19 of that. The circumstances under which they have to
20 submit a delineation are onlv if thev are within 100
19 of that. The circumstances under which they have to
20 submit a delineation are onlv if thev are within 100
19 of that. The circumstances under which they have to
20 submit a delineation are only if they are within 100
21 feet, if they represent -- oh, I'm sorry, you're shaking
22 your head so I'm already getting it wrong so go ahead.
23 A. Well, you asked if they submitted
24 delineations and sometimes they do, but they don't have
25 to submit a delineation

1 Q. Okay. Ever?
2 A. Not with the application.
3 Q. Okay.
4 A. No.
5 Q. Are there circumstances where if they don't,
6 you are always going to require them to?
7 A. Yes.
8 Q. What are those circumstances?
9 A. If we see one on our maps and we think that's
10 close to an acre, we'll have our field guy go out, and
11 if he can't make a determination, we'll have them submit
12 a delineation proving to us that it is less than an
13 acre.
14 Q. When you say the field guy, you're talking
15 about a geologist?
16 A. No, I'm talking about a water quality
17 specialist generally.
18 Q. Okay.
19 A. It's an oil and gas -- we call them field
20 people. He's a water quality specialist, who's out in
19 A. It's an oil and gas -- we call them field
20 people. He's a water quality specialist, who's out in
19 A. It's an oil and gas -- we call them field
20 people. He's a water quality specialist, who's out in
21 the field and one of our field offices or even out of
22 this office.
23 Q. And who makes a determination as to whether
24 that should happen?
25 A. Which should happen?

1 Q. That one of these field people should go out.
2 A. The geologist generally would.
3 Q. Would that be documented?
4 A. Yes.
5 Q. Other than -- I just want to make sure I'm
6 clear. Other than looking at the mapping data that you
7 identified a few moments ago and doing a comparison
8 between that and what the applicant has provided you, is
9 there anything else done by the Department to verify the
10 accuracy of the size or location of wetlands or water
11 sources that are depicted on the plat?
12 A. No.
13 Q. Is there any consideration given in the
14 permit review process for potential cumulative impacts
15 of multiple applications, multiple well projects?
16 A. No.
17 Q. Are the applicants -- and I apologize if I
18 asked a question about this. Are the applicants
19 required to disclose within their application packet the
20 amount of acreage of the disturbed area?
19 required to disclose within their application packet the
20 amount of acreage of the disturbed area?
19 required to disclose within their application packet the
20 amount of acreage of the disturbed area?
21 A. No.
22 Q. How does the Department decide whether an E&S
23 permit is needed?
24 A. If the Department decides, it's generally
25 because the water quality specialist field people have

1 gone out and have determined that this is at least five
2 acres and that they're going to need a permit, and then
3 that's how we determine, the Department determines it.
4 It's a field person generally. And it's also in
5 regulation that if you're going to be over five acres,
6 that you need to submit it.
7 Q. Okay. But as the permitting agency, do you
8 have an interest in making sure that the applicants are
9 meeting the requirements of the regulations?
10 MR. HOLTZMAN: Objection.
11 MS. GALLOGLY: He's not a
12 designee. He's just testifying as
13 to what he does.
14 MR. YEAGER: Right. Okay.
15 Q. As the -- what's your title again?
16 A. Geologist manager.
17 Q. As the geologist manager --
18 A. Professional geologist manager.
19 Q. Professional geologist manager, do you have
20 an interest in making sure that the Department's
19 Q. Professional geologist manager, do you have
20 an interest in making sure that the Department's
19 Q. Professional geologist manager, do you have
20 an interest in making sure that the Department's
21 regulations are followed?
22 A. Yes.
23 Q. And part of the area in your responsibility
24 is E&S permitting, correct?
25 A. Yes.

1 Q. And one of the triggers for E&S permitting is
2 the amount of disturbed area on a proposed site,
3 correct?
4 A. Yes.
5 Q. Greater than five acres?
6 A. Yes.
7 Q. Is it five acres or greater or is it greater
8 than five acres?
9 A. I think it's five acres and greater.
10 Q. Okay. Whatever it is I won't hold you to it.
11 So if it's five acres or greater, they need to submit,
12 as you understand the regs, the applicant is required to
13 submit and obtain an E&S -- submit an application and
14 obtain an E&S permit.
15 A. Yes.
16 Q. Okay. As part of the Department's review of
17 a well drilling permit, the Department doesn't have --
18 am I correct that the Department doesn't have a part in
19 that process that includes a determination as to whether
20 an E&S permit will be required?
19 that process that includes a determination as to whether
20 an E&S permit will be required?
19 that process that includes a determination as to whether
20 an E&S permit will be required?
21 MR. HOLTZMAN: Objection again to
22 the extent he's answering as
23 though he's a designee of the
24 Department, that's inappropriate.
25 Actually, continuing objection,

1 but he's answering as an
2 individual. Go ahead.
3 THE WITNESS: Can you ask it
4 again?
5 MR. YEAGER: Can you read that
6 again.
7 (Question read.)
8 A. Not on the drilling permit.
9 Q. On a different permit?
10 A. Well, if it's an E&S plan, they've submitted
11 it. They've submitted the plan there.
12 Q. Okay. You mentioned the field -- I forget
13 what -- how you described the field people who go out?
14 A. Water quality specialists.
15 Q. Water quality. Thank you. Can you estimate
16 among the permits, the well drilling permits that are
17 reviewed by the Department, what percentage of those
18 review processes involve a site visit by the water
19 quality specialist, by a water quality specialist?
20 A. During the permitting process?
19 quality specialist, by a water quality specialist?
20 A. During the permitting process?
19 quality specialist, by a water quality specialist?
20 A. During the permitting process?
21 Q. Yes. Does that happen at all?
22 A. At times. I don't know the percentage.
23 Q. Is it frequent? Infrequent?
24 A. Probably infrequent.
25 Q. And in looking at the permit file, we would

1 be able to see whether that happened?
2 A. Beforehand?
3 Q. No.
4 A. During the permitting process?
5 Q. After the permitting process is complete, if
6 you're looking back at the permit file, would there be
7 documentation in the permit file that a water quality
8 specialist conducted a site visit?
9 A. Yes, there's inspections forms that are in
10 there.
11 Q. Does the permit review process that you
12 oversee and that you participate in vary at all between
13 applications that are in special protection watershed
14 and those that are not?
15 A. Yes.
16 Q. How so?
17 A. Some are in special protection watersheds and
18 some aren't.
19 Q. My question is, does the review process for
20 well permits vary?
19 Q. My question is, does the review process for
20 well permits vary?
19 Q. My question is, does the review process for
20 well permits vary?
21 A. Only that if it's not on there, we make sure
22 that it gets put on there, that it's in a special
23 protection -- yeah, special protection watershed. We
24 put it on there if it's not.
25 Q. It's noted on the forms?

A. Yes. There's a check box or where you circle it or list the name of it. If that's not done, we will put that on there.

Q. Okay. Is there anything else different about how the Department handles the permit review for a well permit when the proposed project is within a special protection watershed?

A. No.

Q. Do you know whether the Department tracks the number of well permits in each watershed or subwatershed that is a special protection watershed?

A. I don't know.

Q. Okay. Do you know whether, from your oversight of the permitting process and from your participation in the permitting process, whether as part of the determination as to whether to grant a permit, there's any consideration to the impact that the proposed well would have on national or state scenic rivers?

A. Yes.

rivers?

A. Yes.

rivers?

A. Yes.

Q. What consideration is given to that?

A. If it's close by or -- if it's close by, and we know it's a scenic river, I haven't run across one of these, but I would imagine if it's a scenic river, we'll consider it. We haven't had one so I'm not sure how we

1 would handle it exactly.

2 Q. What's close by mean?

3 A. I don't have a definition for that. If we

4 see it and it looks like it's a scenic river, it might

5 be an issue. Let's -- let's look at it further.

6 Q. What scenic rivers are there in the region

7 that you are involved in in permitting for gas wells?

8 A. I know -- the Allegheny has parts of it is

9 scenic. The Clarion. The Delaware. I'm guessing now.

10 Q. I don't want you to guess.

11 A. Okay. I know parts of the Clarion and the

12 Allegheny.

13 Q. Okay. Parts of each.

14 A. Yes.

15 Q. Okay. And you think the Delaware might be or

16 parts of the Delaware might be?

17 A. Yes.

18 Q. Any others that you think might be?

19 A. I think the Susquehanna has parts.

20 Q. Okay. Do you know whether there's a process

19 A. I think the Susquehanna has parts.

20 Q. Okay. Do you know whether there's a process

19 A. I think the Susquehanna has parts.

20 Q. Okay. Do you know whether there's a process

21 in place within the Department, in the permitting

22 process that you oversee and participate in by which you

23 determine whether the proposed project is close by one

24 of those parts of river that would be designated as

25 scenic?

1 A. There is. We have an arc map layer for
2 scenic rivers.
3 Q. And do you know whether the Department has a
4 standard for determining whether a project is close
5 enough to a scenic river that it requires consideration
6 within the Department?
7 A. No.
8 Q. I'm sorry, it was based on the way I asked
9 the question. No, you don't know whether it does or no,
10 the Department doesn't have such a standard?
11 A. I don't know of the standard.
12 Q. Okay. Do you know whether there is a
13 standard?
14 A. No.
15 Q. You were doing these permits as a geologist
16 for 11 years?
17 A. Um-hum.
18 Q. Yes?
19 A. Yes.
20 Q. Were you aware of a standard at that time?
19 A. Yes.
20 Q. Were you aware of a standard at that time?
19 A. Yes.
20 Q. Were you aware of a standard at that time?
21 A. No.
22 Q. Is there anyone else who serves as the direct
23 supervisor for the geologists who are involved in the
24 permitting process under you?
25 A. No.

1 Q. Are there regular performance reviews
2 conducted of those geologists?
3 A. Yes.
4 Q. And are those conducted by you?
5 A. Yes.
6 Q. Does the Department in making a determination
7 on a well permit consider the impact of a proposed well
8 on publicly owned parks, forests, game lands, wildlife
9 areas?
10 A. Yes.
11 Q. Explain how so.
12 A. Well, we are to consider it. There is a form
13 that's filled out, a coordination form, that the
14 operator needs to fill out to show that they understand
15 that there is some sort of coordination with the public
16 agency that this location is proposed on.
17 Q. So is it your understanding that that form
18 only needs to be filled out if the proposed well is
19 situated on publicly owned property?
20 A. Or within 200 feet.
19 situated on publicly owned property?
20 A. Or within 200 feet.
19 situated on publicly owned property?
20 A. Or within 200 feet.
21 Q. Okay. In making a determination on a well
22 permit application, is there any consideration given to
23 the municipal zoning or municipal comprehensive plans?
24 A. No.
25 Q. All right.

1 (Discussion held off the record.)
2 Q. We had a set of depositions yesterday, and
3 what we have worked out yesterday is going to carry over
4 today. We're using one set of documents as an exhibit
5 in each of the exhibits, and it's been marked as
6 Appellant's 1, and I'll represent to you that it
7 reflects in full the documents that the Department
8 produced in response to a discovery request in this
9 case.
10 And you'll see at the bottom of the page, of
11 each page, for example, the bottom of this page, there's
12 a number on it. I may refer to it as a Bates number,
13 okay? It's a pagination system that gets put on
14 documents to help keep track?
15 A. Bates?
16 Q. Bates, B-A-T-E-S.
17 A. Okay.
18 Q. And this document set is numbered 1 through
19 38. And what I'd like you to do is, I'm going to ask
20 you some questions about it. I'd like you, if you
19 38. And what I'd like you to do is, I'm going to ask
20 you some questions about it. I'd like you, if you
19 38. And what I'd like you to do is, I'm going to ask
20 you some questions about it. I'd like you, if you
21 could, just take a moment to go through that and take a
22 look at it.
23 A. Okay.
24 Q. If I ask you specific questions about a page
25 or document, I'll give you time to go through it in more

1 detail. I just want you to get more familiar with it to
2 start.
3 (Brief recess at this time.)
4 Q. Did you have a chance to go through
5 Appellant's 1?
6 A. Yes.
7 Q. Okay. Can you remember this particular
8 permit application?
9 A. No.
10 Q. Okay. Do you remember ever processing any
11 permitting applications in the Delaware River watershed?
12 A. I can't specifically remember it.
13 Q. Okay. Looking at the first page of this
14 permit application, can you identify what on here is
15 your handwriting?
16 A. Yes, where it says date approved, top and the
17 middle.
18 Q. 5-11-10?
19 A. Yes.
20 Q. Anything else?
19 A. Yes.
20 Q. Anything else?
19 A. Yes.
20 Q. Anything else?
21 A. Nothing else.
22 Q. The handwriting to the right of that date
23 approved where it says watershed name and designation?
24 A. Yes.
25 Q. Whose is that?

1 A. That is probably Joe Lichtinger's.
2 Q. Okay. And to the left of where the date
3 approved box is, there are, in the same kind of pen, it
4 looks like, 5-3-10, and is that J.L. next to it?
5 A. Yes, I think it is.
6 Q. And below that, it says 5-27-10, next to the
7 INV?
8 A. Um-hum.
9 Q. Do you know who that is?
10 A. I don't know who that is.
11 Q. That's not yours?
12 A. No, that's no mine.
13 Q. Do you know what reflects that INV, what goes
14 in there?
15 A. No, I don't.
16 Q. At the beginning -- I just want to make sure
17 I understand how a set of answers that you've given
18 already fits in there. At the beginning, I had asked
19 you about what you do as part of your review of these
20 applications, and part of what I understood you to be
19 you about what you do as part of your review of these
20 applications, and part of what I understood you to be
19 you about what you do as part of your review of these
20 applications, and part of what I understood you to be
21 saying was that you look at the yeses and do some
22 follow-up within the file to look at other documents to
23 relate to the yeses?
24 A. Yes.
25 Q. And then I had asked you about the review

1 given to well sites that are proposed to be in a special
2 protection high quality or exceptional value watershed.
3 A. Yes.
4 Q. And that's a question on this form at No. 12,
5 correct?
6 A. Yes.
7 Q. And this is an example of an application
8 where there is a yes in that box, correct?
9 A. Yes.
10 Q. I understand your answer, when I asked you
11 about whether there's any difference in the review
12 that's given of these applications when it's in a
13 special protection watershed that your answer was other
14 than making sure that the watershed is noted in the
15 forms, there was nothing -- there's nothing else
16 different about how these are reviewed, correct?
17 A. Yes.
18 Q. So when you see a yes in Box 12, as you're
19 doing your review, does that lead to anything else from
20 you?
19 doing your review, does that lead to anything else from
20 you?
19 doing your review, does that lead to anything else from
20 you?
21 A. Yes.
22 Q. What does it lead to?
23 A. I make sure it's checked up here.
24 Q. Make sure that it's checked at the top right
25 of this form where it says watershed name?

1 A. Yes. That should be Joe's handwriting there.
2 Q. Okay.
3 A. And I look at the plat to see if it was
4 designated on there.
5 Q. Okay. And so if we turn to, I think it's
6 15 -- yeah, Bates Page 15, that's the well location
7 plat, correct?
8 A. Yes.
9 Q. There's a stamp there where it says HQ
10 watershed and a stamp and a line and someone has written
11 in Hollister Creek.
12 A. Yes.
13 Q. So that's the only thing you're looking for.
14 A. Yes.
15 Q. Why is that done?
16 A. It is done to notify the field people, water
17 quality specialists that they're in an HQ or EV
18 watershed.
19 Q. Why?
20 A. I don't know for sure.
19 Q. Why?
20 A. I don't know for sure.
19 Q. Why?
20 A. I don't know for sure.
21 Q. Okay. When you are reviewing the permits,
22 are you going back and looking at the Department's
23 mapping information?
24 A. No.
25 Q. If you turn to Bates Page 2, you see there's

1 a map type image?

2 A. Yes.

3 Q. In the middle of the page?

4 A. Yes.

5 Q. And you see there's kind of a dark swath top?

6 A. Yes.

7 Q. Top right quadrant?

8 A. Yes.

9 Q. Do you have any understanding what that

10 represents?

11 A. I do know what that represents.

12 Q. Okay. What is it?

13 A. It is -- I don't know -- I do know that the

14 Delaware River is there.

15 Q. Okay. So it's piecing together your

16 knowledge of the -- how do you know the Delaware River

17 is there?

18 A. I've looked at this since the time, so that's

19 how I know. Actually, recently, I was wondering where

20 exactly this thing was, where this is coming from so I

19 how I know. Actually, recently, I was wondering where

20 exactly this thing was, where this is coming from so I

19 how I know. Actually, recently, I was wondering where

20 exactly this thing was, where this is coming from so I

21 looked and I was like, oh, that's where that is.

22 Q. Okay.

23 A. So I just happen -- I know that now. I would

24 imagine at the time I did not know that.

25 Q. At the time that you did your review.

A. Yes.

Q. Okay. So in looking at this set of documents that I've given you, does it refresh your recollection at all about this permit application?

A. Refresh my recollection so that I can remember specifically looking at this one?

Q. Yes.

A. No.

Q. Okay. And you would agree with me some of this, that there are documents in here that would have been generated after your review of the file?

A. Yes.

Q. If we look at Page 17, Bates Page 17, that's where the well permit is, and then on 18 there's a corrected well permit. Do you see that?

A. Yes.

Q. Is it fair to say that the documents from 17 on would not have been among the documents that you would have reviewed when you conducted your file review recognizing that you don't recall the specific permit

would have reviewed when you conducted your file review recognizing that you don't recall the specific permit

would have reviewed when you conducted your file review recognizing that you don't recall the specific permit

but based on your understanding of how this process goes?

A. The answer is yes, although 35 occasionally comes in with application, but I can't recall if it came in with this one or not, and it's just a checklist.

Q. Okay.

A. But the rest were afterwards.

Q. And so then looking at the documents that are here 1 through 16, are you aware of whether there are any additional documents that exist that would relate to this permit application up until the time of the permit being granted other than what's here as 1 through 16?

A. I'm not aware of any other documents that would be associated with this.

Q. Okay. Now, if you could take a look at Page 15, again, the well location plat -- I'm sorry, let's go back to the first page. There's a section at the top right under DEP use only where it says special condition, A, B, C, D, E, F?

A. Yes.

Q. Can you explain what that is?

A. Those are special conditions that, for example, if it was -- have a horizontal -- it's a Marcellus well. We would circle E and they would have some obligations to submit directional surveys to this

Marcellus well. We would circle E and they would have some obligations to submit directional surveys to this

Marcellus well. We would circle E and they would have some obligations to submit directional surveys to this

office or -- those are special conditions for the type of permit that it is.

Q. Okay.

A. This one doesn't have any, but that's the type of thing they would have. I don't have all those

1 memorized. E is the most common because we have a lot
2 of Marcellus wells.
3 Q. If it's going into a -- just because of the
4 confusion about the use of the phrase Marcellus, if it's
5 going through a different shale formation, would it also
6 be E circled?
7 A. Possibly. If they were going to have a
8 horizontal bend, a substantial horizontal bend to the
9 well in a shale formation, we would also circle E.
10 Q. Okay. Does the Department have, based on
11 your oversight and participation of the permitting
12 process, does the Department have any difference in the
13 way that it processes applications involving gas wells
14 versus test wells?
15 A. I don't know of any difference.
16 Q. Who makes the determination about whether one
17 of those special conditions should be circled?
18 A. The geologist reviewer.
19 Q. Okay. The geologist reviewer, that's the
20 person under you?
19 Q. Okay. The geologist reviewer, that's the
20 person under you?
19 Q. Okay. The geologist reviewer, that's the
20 person under you?
21 A. Yes.
22 Q. Do you make a determination as to whether the
23 special conditions have been appropriately selected or
24 not?
25 A. Yes. I look and see what the special

condition is, and I have a list of what A, B, C, D and E, what they are.

Q. Okay.

A. And I can't remember what they are now, but if it's close to a stream or they have to do something, special condition, I'll make sure, A or B or C, whatever they checked, I'll make sure that it fits with the application.

Q. But other than E, which is the one you use for Marcellus wells, you're not sure what the others --

A. Correct.

Q. -- what the other special conditions are.

A. Yes.

Q. Okay. All right. Going back to Page 15, in looking at -- and this is one of the documents that you spend some of your roughly two minutes looking at.

A. Yes.

Q. Why don't you tell me if you are doing that review now, what you'd be looking at as it relates to these documents.

review now, what you'd be looking at as it relates to these documents.

review now, what you'd be looking at as it relates to these documents.

A. And this one, with this page, I would have noticed that it's a conservation well.

Q. Based on what you checked on the first page?

A. Yes.

Q. Okay.

1 A. And they mentioned they met the distance
2 restriction because it is a conservational, so I look to
3 see, one, the depth.
4 Q. Now you're looking back at Page 15?
5 A. Yes, 15, there's a total vertical depth, and
6 I just look to see if it makes sense. It sounds
7 reasonable to me, and I make sure they're in a formation
8 that is a conservation depth.
9 Q. Okay.
10 A. In this case, they are.
11 Q. All right. What else are you doing in your
12 review? Before you go onto the next one, why is that
13 important?
14 A. Because if they're at conservation depth,
15 they need to meet distance restrictions according to the
16 conservation law, and we have to make sure that they do
17 that.
18 Q. And they've told you that they are at that
19 depth?
20 A. Yes.
19 depth?
20 A. Yes.
19 depth?
20 A. Yes.
21 Q. So are you doing anything in your review to
22 see whether they meet the distance restrictions?
23 A. The geologists are, yes.
24 Q. I'm asking you personally.
25 A. I look and make sure that looks like they're

1 far enough away from a property line.
2 Q. Okay.
3 A. That's what I look at to see if -- if I don't
4 see a property line running right through it, make sure
5 it makes sense.
6 Q. Is the scale of these the same in every one
7 you get?
8 A. No.
9 Q. So where is the scale noted?
10 A. Down, bottom right, near the bottom right,
11 right below the surveyor's seal.
12 Q. Oh, I'm sorry. So do you get out a ruler,
13 instrument of some kind to measure?
14 A. Infrequently.
15 Q. You shook your head yes, you were agreeing
16 with me infrequently? I just wanted to make sure I
17 heard you right.
18 A. Infrequently, yes, I'm sorry.
19 Q. That's all right. Is there a range in the
20 scales you get?
19 Q. That's all right. Is there a range in the
20 scales you get?
19 Q. That's all right. Is there a range in the
20 scales you get?
21 A. Yes.
22 Q. Like what is --
23 A. Is there a qualified scale? We don't have
24 any parameters that you have to meet.
25 Q. Okay. So what's the -- I mean, this is 1 to

400, right?

A. Yes.

Q. What other scales do you see?

A. 1 to 2,000.

Q. Okay.

A. Is fairly frequent. 1 to 500. 1 to 200 is generally the smallest.

Q. Okay.

A. And 1 to 2,000 is generally the biggest, but occasionally we might have one bigger.

Q. So when you see those different scales, can you look at it and say that looks like the right distance without measuring it?

A. Yes, I'm pretty good at it.

Q. Okay.

A. I don't know if it's exact -- it makes sense to me when I look at it, but I'm not going to measure them all.

Q. Okay. So what else are you doing when you're doing your -- and I know you don't have a specific

Q. Okay. So what else are you doing when you're doing your -- and I know you don't have a specific

Q. Okay. So what else are you doing when you're doing your -- and I know you don't have a specific memory of what you did here but what else would you generally be looking at?

A. I peruse the plat and I see it looks like there's some ponds here. They look far enough away to me.

1 Q. You're pointing to the left, kind of the --
2 roughly the 10:00 on the circle?
3 A. Yes. And it says ponds there, wetlands, and
4 it's delineated -- it's not delineated. It's marked out
5 on here.
6 Q. All right.
7 A. And I can tell by looking at it that it's 400
8 feet away.
9 Q. Okay. But that the edge of what's identified
10 here as the pond is 400 feet away from what?
11 A. The proposed location.
12 Q. Of --
13 A. The well.
14 Q. The bore hole?
15 A. Yes.
16 Q. Okay. What else are you looking at?
17 A. On this one? Probably not much else.
18 Q. Okay. Do you know, from looking at this what
19 the distance of the well site -- when I use the term
20 well site, what do you understand that term to mean?
19 the distance of the well site -- when I use the term
20 well site, what do you understand that term to mean?
19 the distance of the well site -- when I use the term
20 well site, what do you understand that term to mean?
21 A. The well site is the disturbed -- that's not
22 the case. The well site is the pad that they're going
23 to be working on.
24 Q. Okay.
25 A. That's what I look at as the well site.

1 Q. Okay. Not the disturbed area?
2 A. If it's an E&S plan, it's considered the
3 disturbed area for the application for that permit.
4 Q. What about for a well permit?
5 A. I don't take -- I guess not necessarily.
6 Q. Okay. Explain that --
7 A. I don't look at it that way because they're
8 different permits. One is for disturbing the earth and
9 one is for drilling the well.
10 Q. Do you have any understanding why the
11 distance is -- if we look at Questions 8 and 9 on the
12 front sheet, it asks about whether, will the well site
13 be within 100 feet measured 8, within 100 feet (measured
14 horizontally) of a stream, spring or body of water
15 identified on the most current seven and a half degree
16 topographic map, correct?
17 A. Yes.
18 Q. And 9 says will the well site be within 100
19 feet of a wetland or in a wetland. Do you have any
20 understanding as to why those distances are identified
19 feet of a wetland or in a wetland. Do you have any
20 understanding as to why those distances are identified
19 feet of a wetland or in a wetland. Do you have any
20 understanding as to why those distances are identified
21 on this form?
22 A. They are in -- this is in the Oil and Gas
23 Act. I believe they're both in the act and both in our
24 regulations.
25 Q. And is the definition of well site in the

1 regulations?

2 A. No.

3 MR. HOLTZMAN: Objection, he's not

4 a legal expert.

5 MR. YEAGER: No, he's not.

6 A. I don't know.

7 Q. So do you know whether under the regulations

8 that you're issuing permits under, do you know how a

9 well site is defined?

10 A. No.

11 MR. HOLTZMAN: Objection. He

12 doesn't know whether it's defined.

13 Q. Does the plat on Page 15 identify the extent

14 of the disturbed -- proposed disturbed area?

15 A. I don't think so. I don't know.

16 Q. So as you look at the plat on Page 15, you

17 don't know whether the proposed disturbed area is within

18 100 feet measured horizontally of a body of water,

19 correct?

20 A. As I'm looking at this plat?

19 correct?

20 A. As I'm looking at this plat?

19 correct?

20 A. As I'm looking at this plat?

21 Q. Yeah.

22 A. Correct.

23 Q. Is Hollister Creek on this plat?

24 A. I do not see it.

25 Q. Do you know where it is in relation to the

well site?

A. No.

Q. Is there anything in this application packet -- I didn't mean to limit you in any way to that sheet. Is there anything in this application packet that tells you where the proposed site is in relation to Hollister Creek?

A. I see it here.

Q. You see it on Page 2?

A. Yes, on Page 2.

Q. What is it you're pointing to?

A. It says Hollister on the stream designation.

Q. Okay. Running from top to bottom on the left-hand side roughly, correct?

A. Correct.

Q. And then there's a line across the middle from left to right, right to left, where the word Wayne is. Do you see that? Do you see Wayne in the middle?

A. Yes.

O. Do vou know what that line is?

A. Yes.

O. Do vou know what that line is?

A. Yes.

Q. Do you know what that line is?

A. No, I don't know what it is.

Q. Okay.

A. I think it's Hollister Creek.

Q. Okay. And so is there anything in this application packet that tells you what the distance of

1 the proposed well site is from Hollister Creek?
2 A. No.
3 Q. Is there anything that tells you where it is
4 in terms of being upgradient or downgradient of
5 Hollister Creek?
6 A. Page 0002 can. It has topo lines on it, so I
7 can read the topo lines. It's upstream. I can look at
8 it and see that it's upstream. It's uphill.
9 Q. Okay. Is there anything in -- is the star --
10 on 2 is the star where you understand the well site to
11 be?
12 A. Yes.
13 Q. Is there anything in this packet that tells
14 you where the proposed well site is in relation to the
15 Delaware River corridor?
16 A. I don't know.
17 Q. Okay. Do you know what the -- what's
18 considered to be within the corridor and not within the
19 corridor?
20 A. I don't know for sure.
19 corridor?
20 A. I don't know for sure.
19 corridor?
20 A. I don't know for sure.
21 Q. Okay. Do you know whether there was within
22 the Department any analysis performed to consider
23 whether there -- to consider what the impacts, if any,
24 might be from this project on Hollister Creek?
25 A. I don't know of any.

1 Q. Do you know whether there was any analysis
2 performed to consider what the impact if any of this
3 project might be on the Delaware River?
4 A. No.
5 Q. Is there any, from what you see
6 chronologically up to the time of the permit from this
7 file, is there anything that tells you that an erosion
8 and sediment control plan had been prepared prior to the
9 issuance of the permit?
10 A. No.
11 Q. Are you aware of in analysis conducted by the
12 Department as part of its permit review application of
13 the potential impacts that the project would have on
14 groundwater resources?
15 A. No.
16 Q. Are you aware of any analysis conducted by
17 the Department to assess the impact or the adequacy of
18 any storm water management measures in connection with
19 this project?
20 A. No. no.
19 this project?
20 A. No. no.
19 this project?
20 A. No, no.
21 Q. Are you aware whether the Department, as part
22 of the permitting process, communicates or coordinates
23 with local municipalities?
24 A. We do not.
25 Q. And I had asked you some questions before,

1 but now that you've had an opportunity to look at these
2 documents, is there any information that you're aware of
3 that the Department considered the proposed project's
4 impact on any national wild and scenic river?
5 MS. GALLOGLY: I object because
6 he's already testified that he
7 doesn't even remember reviewing
8 this permit so how would he know
9 that?
10 MR. YEAGER: Well, I'm asking him,
11 now that he's looked at these
12 documents, whether there's
13 anything in the documents that
14 reflects such a consideration.
15 A. The Department's consideration for?
16 Q. Potential impacts on a national wild and
17 scenic river?
18 A. I don't know any specific to the scenic
19 rivers.
20 Q. Okay. Are you aware of whether the
19 rivers.
20 Q. Okay. Are you aware of whether the
19 rivers.
20 Q. Okay. Are you aware of whether the
21 Department, as part of its permit review, has considered
22 the impact of proposed project on the water resources of
23 the Delaware River basin?
24 MR. HOLTZMAN: Objection. Are you
25 asking him based on his review of

1 the documents presently?
2 MR. YEAGER: And his oversight and
3 participation in the permit review
4 process.
5 MR. HOLTZMAN: Of course, he's
6 already mentioned many times that
7 he doesn't remember this --
8 MS. GALLOGLY: And I would object
9 too, because I think you asked
10 that.
11 MR. YEAGER: No, I didn't use the
12 word basin. I asked about the
13 river.
14 A. Ask it one more time.
15 MR. YEAGER: Could you read it
16 back?
17 (Question read.)
18 A. No, I'm not aware of that.
19 MR. YEAGER: If you bear with me,
20 I'll be done in a moment.
19 MR. YEAGER: If you bear with me,
20 I'll be done in a moment.
19 MR. YEAGER: If you bear with me,
20 I'll be done in a moment.
21 Q. Do you know what H2S is?
22 A. Hydrogen sulfide.
23 Q. Are you aware of any differences within the
24 areas of the state that you cover concerning the
25 presence or concerns about H2S?

A. There are areas that we've delineated as having -- it can be hazardous.

Q. Okay.

A. In H2S areas.

Q. Have you delineated areas where there is a greater potential for those hazards? Is that what you're saying?

A. On our maps.

Q. Okay.

A. There's at least one. I don't know if there's anymore.

Q. Where is that?

A. Erie County.

Q. But if you look at the map, you'd be able to see weather there are others?

A. I wouldn't know where to look.

Q. Okay.

A. I know it's in Erie County, and if there's others on the map, they would be on those maps. If we're doing something -- oh, look, there's an H2S area.

others on the map, they would be on those maps. If we're doing something -- oh, look, there's an H2S area.

others on the map, they would be on those maps. If we're doing something -- oh, look, there's an H2S area.

Q. Okay. What does it look like on a map?

A. The one I remember, it's kind of a red oval, that these wells in this area, there's a potential of H2S problems.

Q. So it's a -- I'm just trying to get a general

picture in my mind. It sounds like it's a solid area on a map, not kind of polka dots, here, here, and here, but --

A. Yes.

Q. But this general region you have to look at?

A. It's one solid area.

Q. Okay. And what flows from that? When you're in an area where that has been identified.

A. When you're in one of those areas, there's special conditions for, I believe, how to drill it and how to case it.

Q. Okay. And would those special conditions be something that you would note in the permit?

A. Yes.

Q. Okay. Whose role is that within the permit process?

A. The geologist.

Q. Okay. When you're doing your review, do you look to see whether the geologist appropriately performed that part of his or her job?

look to see whether the geologist appropriately performed that part of his or her job?

look to see whether the geologist appropriately performed that part of his or her job?

A. Specific to H2S?

Q. Yes.

A. I hesitated because I don't think we've had one since I've been in this position.

Q. Okay.

1 A. So --
2 Q. How would you -- I'm sorry.
3 A. I think one of these is a special condition
4 of that, but I don't know for sure.
5 Q. Okay. How would you know when you get one of
6 these applications across your desk or application
7 packages across your desk, how would you know whether
8 it's in one of those regions, unless the geologist noted
9 it?
10 A. I wouldn't.
11 Q. Okay. So you're not in a position to oversee
12 the geologist on that piece of the geologist's
13 application analysis?
14 A. Correct.
15 Q. Okay. Are you getting information back from
16 what's happened with wells that have been drilled to --
17 and issues that have been identified through the course
18 of those projects to fine tune what you're doing in the
19 permit approval process?
20 A. I hear about things. You have to maybe
19 permit approval process?
20 A. I hear about things. You have to maybe
19 permit approval process?
20 A. I hear about things. You have to maybe
21 explain it a little better.
22 Q. Well, I'm asking you, I don't know what's
23 going on, so I'm trying to understand whether you're
24 getting -- whether you're modifying your permit approval
25 process based on the information you're getting back

1 about what has happened over the course of permits that
2 have been granted.
3 A. I think we do, but I cannot specify anything
4 right now.
5 Q. Okay. Well, the process that you've utilized
6 to conduct your review, since you started in this
7 position in May of last year -- right, you started in
8 May of 2010, right?
9 A. Yes.
10 Q. Has what you do --
11 A. Me specifically?
12 Q. -- changed?
13 A. No.
14 Q. Okay. And has what the geologists under you
15 do changed?
16 A. No.
17 Q. And do you know whether what Mr. Lobins does
18 above you in the chain, whether that has changed?
19 A. I don't know.
20 O. Okav. Do vou know what the risks are
19 A. I don't know.
20 O. Okav. Do vou know what the risks are
19 A. I don't know.
20 Q. Okay. Do you know what the risks are
21 associated with H2S?
22 A. Not for sure.
23 Q. What's your understanding?
24 A. It can be hazardous. It's a safety measure
25 more than anything else, it can blow up.

1 Q. Okay.
2 A. And so you have to drill either on --
3 probably on mud so you're not introducing air. I think
4 it's a safety issue.
5 Q. Okay.
6 A. That's my understanding.
7 Q. And so if you're drilling -- is it your
8 understanding that if you're going to be approving a
9 permit in an area where that's a concern, that it would
10 be done by mud drilling instead of air drilling?
11 A. I don't know.
12 Q. Okay.
13 A. I don't know how they would drill it.
14 Q. But isn't that one of the conditions that
15 your department sets as part of the permit?
16 A. If it's in an H2S area, we have special
17 conditions for that, and I don't recall what that is.
18 Q. Okay.
19 MR. YEAGER: All right. I don't
20 have any other questions for you.
19 MR. YEAGER: All right. I don't
20 have any other questions for you.
19 MR. YEAGER: All right. I don't
20 have any other questions for you,
21 sir. Mr. Zimmerman may and some
22 of the other counsel may.
23 MR. ZIMMERMAN: Thank you.
24
25

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Babb, if you could look at Bates No. 15 again.

A. Um-hum.

Q. I'm a little confused about some of these numbers. You'll see in the middle of the big circle where it says Woodland Management Partners, the dot just above Woodland Management Partners, is that the actual well bore location --

A. Yes.

Q. -- is your understanding?

A. Yes.

Q. Now, off to the right and down a little bit toward the bottom of the page, there is a small box with four smaller boxes inside it. Do you see that?

A. Um-hum.

Q. And it's circled with somebody's handwriting?

A. Where's that? Oh, okav. I see what vou're

Q. And it's circled with somebody's handwriting?

A. Where's that? Oh, okav. I see what vou're

Q. And it's circled with somebody's handwriting?

A. Where's that? Oh, okay. I see what you're saying.

Q. In the upper left-hand corner of this same page, there is a rectangular box with some numbers in it?

A. Um-hum.

1 Q. At the top, that same symbol with the four
2 little boxes, it says denotes location of well on
3 topomap. And then there are numbers for true latitude
4 north and true latitude west, and the numbers that
5 appear in those two boxes are also on the well permit,
6 Page 17; is that correct?
7 A. Yes.
8 Q. Going back to 15, at the very top of the page
9 underneath the heading, it says well is located on
10 topomap, 9,363, I think it is, feet south of latitude,
11 41 degrees, 37 minutes 30 seconds; is that correct?
12 A. Yeah, 9393 is what I see.
13 Q. 9393, pardon me. My eye speed is not up to
14 snuff. Located on the topomap, so the little box that
15 we were looking at or the four boxes that are circled,
16 that's the location on the topomap.
17 A. Yes.
18 Q. Can you explain to me how the location on the
19 topomap relates to the numbers in the box to the upper
20 left where it says 41 degrees, 45, 57, et cetera?
19 topomap relates to the numbers in the box to the upper
20 left where it says 41 degrees, 45, 57, et cetera?
19 topomap relates to the numbers in the box to the upper
20 left where it says 41 degrees, 45, 57, et cetera?
21 A. Yes. Well, they're the same thing. This
22 location on a topographic map, if you put this corner on
23 a topographic map, there's nine corners on a topographic
24 map.
25 Q. Right.

1 A. If you put this corner on here, set it there,
2 it will locate it, according to this symbol, on the
3 topographic map.
4 Q. But that's not where the well is actually
5 bored, correct?
6 A. Yes, it is.
7 Q. It is where the well is bored?
8 A. Yes. And it's the identical location to
9 where you see the symbol above Woodland Management
10 Partners.
11 Q. But the four little boxes and the bore hole
12 are not in the same place.
13 A. Correct. This -- it's actually one box with
14 a plus sign in it.
15 Q. Okay, all right. Fine.
16 A. The center of that is the location.
17 Actually, you could take that off of here. That refers
18 to nothing on this diagram. This diagram shows you
19 where the location is. This along with these lines --
20 and what this is, this 9,393 is the distance from this
19 where the location is. This along with these lines --
20 and what this is, this 9,393 is the distance from this
19 where the location is. This along with these lines --
20 and what this is, this 9,393 is the distance from this
21 line on the topographic map, and this one here is a line
22 on the topographic map. You can take this off of here
23 and it has nothing to do with this.
24 Q. When you're talking about this one, you're
25 talking about the top of this page and the second time

1 you're referring to the right-hand side of the page?
2 A. Yes.
3 Q. Thank you.
4 A. And there's nine of those boxes on the
5 topographic map and that is that one to 2,000 scale. So
6 you can take that information. That information is
7 solely to put it on a topographic map, which will put it
8 at this same location if the buffer -- if the streams
9 are on there --
10 (Discussion held off the record.)
11 Q. Can you tell me, Mr. Babb, why, if you have
12 any idea, why somebody circled the box with the plus
13 sign in it?
14 A. Yes. They would have checked that the
15 distances matched from the top of this line to that
16 center point and from the side line here, to the center
17 point with the numbers that are indicated and checked on
18 the side for the topographic map.
19 Q. Okay. Just a couple of other questions.
20 When Mr. Yeager was asking you about H2S, you indicated
19 Q. Okay. Just a couple of other questions.
20 When Mr. Yeager was asking you about H2S, you indicated
19 Q. Okay. Just a couple of other questions.
20 When Mr. Yeager was asking you about H2S, you indicated
21 that you have a mapping of areas where that might be an
22 issue. Is that one of the arc map layers?
23 A. No.
24 Q. No. But you believe that there are special
25 conditions if you're going to be drilling in that area?

1 A. There's a special condition, yes.
2 Q. You've already testified you don't remember
3 all of the special conditions, A, B, C, D, E, F other
4 than E is Marcellus.
5 A. Correct.
6 Q. Okay.
7 MR. ZIMMERMAN: That's all I have.
8
9 CROSS-EXAMINATION
10 BY MS. GALLOGLY:
11
12 Q. I just have one follow-up for you. I believe
13 you were asked about what the Department uses when it's
14 looking to see if there's a wild and scenic river?
15 A. Yes.
16 Q. In your permitting process. And you
17 mentioned that there was an arc map layer of federal and
18 state wild and scenic rivers, correct?
19 A. Yes.
20 Q. Okay. How long have you had that layer?
19 A. Yes.
20 Q. Okay. How long have you had that layer?
19 A. Yes.
20 Q. Okay. How long have you had that layer?
21 A. It has been less than a year.
22 Q. Okay. When did you or your permitting guys
23 start using it?
24 A. I'm going to say November. That's a guess.
25 I don't remember.

1 Q. Okay. So when this permit that's at issue
2 was being reviewed, it was not a map layer that was
3 being used?
4 A. Correct. I don't think it was.
5 MS. GALLOGLY: Okay, that's all I
6 have.
7
8 CROSS-EXAMINATION
9 BY MR. HOLTZMAN:
10
11 Q. I have a few questions as well, Mr. Babb. My
12 name is Tony Holtzman, counsel for the permittee in this
13 matter. Hopefully this won't take so long. I'm just
14 going to ask a few questions to clarify a few comments
15 you made during your earlier testimony.
16 First of all, if I could, do you know whether,
17 in submitting an application to the Department the
18 applicant has a duty to provide accurate information on
19 their application?
20 A. Yes.
19 their application?
20 A. Yes.
19 their application?
20 A. Yes.
21 Q. You do know?
22 A. Do they have a duty?
23 Q. Right.
24 A. They're signing it so I think they're
25 attesting to the fact that it's true, as far as they

1 know.

2 Q. And when the Department issues a permit, is

3 it your understanding that the permit authorizes the

4 permittee to conduct their activities in accordance with

5 what's in their application?

6 A. Yes.

7 Q. And can there be consequences if a permittee

8 fails to do so?

9 A. Yes.

10 Q. What types of consequences can there be?

11 A. They start out with notices of violation,

12 according to the permit, up to penalties and can cease

13 suspension of drilling, revocation of permits.

14 Q. And how does the Department ensure that a

15 permittee is conducting their operations in accordance

16 with what's in the permit and, therefore, what's in

17 their application?

18 A. Our field personnel.

19 Q. Okay. Could you explain that a little bit

20 further?

19 Q. Okay. Could you explain that a little bit

20 further?

19 Q. Okay. Could you explain that a little bit

20 further?

21 A. Our water quality specialists and oil and gas

22 inspectors for those areas go out and -- they're a field

23 representative to make sure that things are being

24 prepared appropriately as planned if they have an E&S

25 plan. They have to have an E&S plan onsite. They look

1 at the plan. They look at the permit application that
2 has to be onsite, and they make sure that they are not
3 going -- not -- they make sure they're following as
4 permitted and all the legal ramifications regulations
5 and laws that they know of in the oil and gas program.
6 Q. And do you know how frequently those types of
7 inspections occur, generally speaking?
8 A. In our -- I don't know exactly. Well, I
9 don't know.
10 Q. And you said that an E&S plan has to be kept
11 onsite, correct?
12 A. Yes.
13 Q. Are there consequences for a permittee's
14 failure to comply with their E&S plan, to your
15 understanding?
16 A. Yes.
17 Q. Are those similar to the consequences that
18 you enumerated just a few minutes ago?
19 A. Yes.
20 Q. I'm sorry, bear with me. I just need to look
19 A. Yes.
20 Q. I'm sorry, bear with me. I just need to look
19 A. Yes.
20 Q. I'm sorry, bear with me. I just need to look
21 through my notes here. Could you look at the exhibit
22 that you were given earlier, Page 1, please. And you
23 see that there's a box towards the upper right-hand
24 corner, and it's labeled type of well.
25 A. Um-hum.

1 Q. And you see that, what's been checked is
2 other, correct?
3 A. Yes.
4 Q. And do you see what it says below that?
5 A. Yes.
6 Q. Vertical test well, correct?
7 A. Yes.
8 Q. Okay. And what is your understanding of a
9 designation of a vertical test well? What's your
10 understanding of what a vertical test well is?
11 A. My understanding is it is a well that's being
12 drilled that perhaps they will not produce.
13 Q. And if you look at Page 18, this is what's
14 called a corrected well permit, correct?
15 A. Yes, that's what it says.
16 Q. And you see there's a box that says well
17 type?
18 A. Yes.
19 Q. And in there it says TE, correct?
20 A. Yes.
19 Q. And in there it says TE, correct?
20 A. Yes.
19 Q. And in there it says TE, correct?
20 A. Yes.
21 Q. What does that mean?
22 A. I would imagine -- I believe it means test.
23 Q. Okay. And then that's consistent with what's
24 been marked on the application at the front on Page 1,
25 correct?

A. Yes.

Q. Is there anything that you saw in this packet from Pages 1 to 16 when you reviewed it earlier or on Pages 17 and 18 to suggest that the well at issue is a disposal well or an injection well?

A. No.

Q. Are you familiar with something called a point source?

A. Yes.

Q. What's your understanding of a point source?

A. It is a discharge that's focused to one point. That's my understanding of it.

Q. Okay. Could you turn to Page 15, please. And I think you said earlier that from reviewing this plat that's depicted on Page 15, I believe you stated that the well site was 400 feet away from any wetland or pond that's depicted on the plat.

A. No, I said the well location.

Q. The well location.

A. Right.

Q. The well location.

A. Right.

Q. The well location.

A. Right.

Q. Okay.

A. It looked to me like it was -- looking at it, it was about 400 feet.

Q. Were you saying it was about 400 feet or at least 400 feet?

1 A. I said it looked about 400 feet.
2 Q. Okay. Thank you. And to clarify, this
3 particular application for a well permit labeled 1
4 through 16 is not one that you recall specifically,
5 correct?
6 A. Correct.
7 Q. And, therefore, you don't have any specific
8 knowledge of whether, for example, in the course of
9 reviewing this application someone in the Department
10 considered impacts on Hollister Creek?
11 A. Correct.
12 Q. Nor, for that matter, do you have any
13 specific recollection or knowledge of whether someone in
14 the Department considered potential impacts on any
15 natural resources?
16 A. Yes. The PNDI form.
17 Q. Okay. Could you explain that, please?
18 A. This is a form that is submitted by the
19 applicant. They designate a location and has to match
20 the plat, that these four agencies had jurisdiction
19 applicant. They designate a location and has to match
20 the plat, that these four agencies had jurisdiction
19 applicant. They designate a location and has to match
20 the plat, that these four agencies had jurisdiction
21 over, if there's any endangered species or species of
22 concern, things like that to plan around.
23 Q. Just so I understand, are you deriving that
24 assessment from what you see now in front of you, or are
25 you saying that you recall that the PNDI analysis was

1 done at the time of the application review?
2 A. I couldn't remember if -- I don't remember
3 looking at this, if that's what you're asking me.
4 Q. Right. So you don't recall at the time that
5 this application was first presented to you, whether any
6 particular analysis relating to natural resources had
7 been performed? You don't recall that as you sit here
8 today?
9 A. I don't remember particularly looking at
10 this, if that's what you're saying.
11 Q. Thank you.
12 A. Yes -- or no.
13 Q. Let me just try to come at it -- I apologize.
14 It's my fault. Let me come at it a little bit
15 differently.
16 MR. YEAGER: I think he's answered
17 the question. He said he doesn't
18 remember looking at it.
19 MS. GALLOGLY: He answered it both
20 ways.
19 MS. GALLOGLY: He answered it both
20 ways.
19 MS. GALLOGLY: He answered it both
20 ways.
21 MR. YEAGER: His words, forget
22 about the yes or no; his words
23 explained what his answer is.
24 MR. HOLTZMAN: I think I'll let
25 the witness make that statement on

1 the record.
2 Q. You don't recall as you sit here today
3 whether any particular analysis was performed in
4 connection with this application as it relates to
5 natural resources?
6 A. With this application, it came across my
7 desk, I would have seen this and noted that there is no
8 further review required for these agencies.
9 Q. Right. But you don't recall this particular
10 application?
11 A. No, I do not.
12 Q. Okay, thank you.
13 MR. HOLTZMAN: I have no further
14 questions.
15 MR. YEAGER: I don't have any
16 follow-up.
17 MR. ZIMMERMAN: I have a couple of
18 follow-up, if you wouldn't mind.
19
20 RECROSS-EXAMINATION
19
20 RECROSS-EXAMINATION
19
20 RECROSS-EXAMINATION
21 BY MR. ZIMMERMAN:
22
23 Q. If a permit application package comes to you
24 and doesn't contain a PNDI analysis sheet, does that
25 make it an incomplete application?

A. Yes.

Q. And would that mean you would return it to the geologist who was reviewing it?

A. If it came to me, yes, I would take it back to the geologist and have them get that.

Q. Okay. You were mentioning something about test well, vertical test well. Are there certain restrictions that your department applies to vertical test wells?

A. No.

Q. Can a vertical test well be used for something besides testing?

A. I don't know.

Q. Let me rephrase it a little bit. Can a test well be used to produce gas?

A. Yes.

Q. Yes, that would be authorized or yes, it is possible?

A. With this vertical -- with a vertical test well, someone drilled the well, they could produce it.

A. With this vertical -- with a vertical test well, someone drilled the well, they could produce it.

A. With this vertical -- with a vertical test well, someone drilled the well, they could produce it.

Q. So in answer to one of Mr. Holtzman's questions, you said that a vertical test well, if I have this correct, is a well being drilled that perhaps they will not produce?

A. Yes.

1 Q. Does your answer to his question perhaps they
2 will not produce mean that it would be the operator's
3 decision as to whether to produce and the Department
4 would not be involved in that decision?
5 A. Yes.
6 MR. ZIMMERMAN: Okay. Thank you.
7
8 REDIRECT EXAMINATION
9 BY MR. YEAGER:
10
11 Q. If I could just ask one question. When
12 Mr. Holtzman was asking you about what the permit, the
13 granted permit authorizes, my recollection that he asked
14 about whether it authorized the applicant to drill the
15 well in accordance with the application. Is it correct
16 that it authorizes the applicant to drill the well in
17 accordance with the permit, not in accordance with the
18 application?
19 A. Yes.
20 MR. YEAGER: That's all.
19 A. Yes.
20 MR. YEAGER: That's all.
19 A. Yes.
20 MR. YEAGER: That's all.
21 MS. GALLOGLY: Okay. Now I have
22 to follow up.
23
24
25

RECROSS-EXAMINATION

BY MS. GALLOGLY:

Q. First of all, the permit is issued based on the application, correct?

A. Yes.

Q. And the permit when issued says that it is issued to drill in accordance with the information contained in the application, correct?

A. Correct.

Q. All right. Can you look at Page 00015.

A. Yes.

Q. See this box on the left-hand side lower, above the people's names that says target formation?

A. Yes.

Q. It says Onondaga?

A. Yes.

Q. What is the target formation?

A. The Onondaga.

Q. I know, but what does that mean, the target

A. The Onondaga.

Q. I know, but what does that mean, the target

A. The Onondaga.

Q. I know, but what does that mean, the target

formation?

A. The formation that they plan on producing.

Q. Okay. So this permit, as issued, only allows Newfield to produce the Onondaga, right?

A. No.

1 Q. Okay. Then tell me what it allows them to
2 produce.
3 A. They can produce -- this is their target
4 formation.
5 Q. Right.
6 A. This is one they're planning on drilling to.
7 Q. And --
8 A. But they produce --
9 MR. YEAGER: If you could let him
10 answer, please.
11 A. And producing.
12 Q. Right.
13 A. And they can produce from there up that hole.
14 Q. Okay.
15 MS. GALLOGLY: No further
16 questions.
17 MR. HOLTZMAN: I just have one
18 more.
19
20 RECROSS-EXAMINATION
19
20 RECROSS-EXAMINATION
19
20 RECROSS-EXAMINATION
21 BY MR. HOLTZMAN:
22
23 Q. You were discussing the vertical test well
24 just a moment ago, and you said that, correct me if I'm
25 wrong, it's possible to produce gas from a vertical test

1 well. Was that your testimony?
2 A. Yes. I didn't say possible. I said they can
3 produce.
4 Q. And when you say they can produce it, do you
5 mean it's physically possible to do?
6 A. Yes.
7 Q. And you said, I believe, that in this case --
8 strike that. So by "can," you mean physically possible?
9 A. Yes.
10 MR. HOLTZMAN: Okay, that's it.
11 Thank you.
12 MR. ZIMMERMAN: Let me ask one,
13 then.
14 MR. YEAGER: Actually, I don't
15 think he finished his answer.
16 MR. ZIMMERMAN: I'm sorry. Did
17 you finish your answer?
18 THE WITNESS: Yes.
19
20 FURTHER RECROSS-EXAMINATION
19
20 FURTHER RECROSS-EXAMINATION
19
20 FURTHER RECROSS-EXAMINATION
21 BY MR. ZIMMERMAN:
22
23 Q. I think what we're struggling with here is
24 from English class when we were in grade school, can
25 versus May. Mr. Holtzman had indicated and your

1 response was yes, they can produce, but as far as you
2 understand, your regulations, may they produce without
3 getting a further approval from the Department --
4 A. Yes.
5 Q. -- for a test well? The answer is yes?
6 A. Yes.
7 MR. HOLTZMAN: I have nothing
8 further.
9 MR. ZIMMERMAN: I don't have
10 anything further.
11 MR. YEAGER: Nor do I.
12 MS. GALLOGLY: Nope.
13 MR. YEAGER: Thank you, sir.
14
15 (Babb deposition concluded at 11:20 a.m.)
16
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1 **REPORTER'S CERTIFICATE**

2

3

4

5

6 I, Lisa Willow Weiss, a Court Reporter and Notary
7 Public in and for the Commonwealth of Pennsylvania, do
8 hereby certify that the foregoing is a true and accurate
9 transcription of my stenographic notes in the
10 above-captioned matter.

11

12

13

14

15 Lisa Willow Weiss

16 Lisa Willow Weiss
17 Court Reporter and Notary Public

18 COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Lisa Willow Weiss, Notary Public
19 City of Meadville, Crawford County
My Commission Expires July 31, 2012
Member, Pennsylvania Association of Notaries

20 City of Meadville, Crawford County
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19 My Commission Expires July 31, 2012
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20 Dated: March 29, 2011

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1 **COMMONWEALTH OF PENNSYLVANIA**
ENVIRONMENTAL HEARING BOARD

2

3

4 **DAMASCUS CITIZENS FOR**
SUSTAINABILITY, THE DELAWARE
5 **RIVERKEEPER, DELAWARE**
RIVERKEEPER NETWORK, MR. JAMES R.
6 **WILSON, MR. JONATHAN B. GORDON AND**
MESSRS. THOMAS AND MICHAEL COONEY

7

8 **v.** **EHB Docket No. 2010-102M**

9 **COMMONWEALTH OF PENNSYLVANIA,**
DEPARTMENT OF ENVIRONMENTAL
10 **PROTECTION AND NEWFIELD**
APPALACHIA PA, LLC, Permittee

11

12

13

14 Deposition of **CRAIG LOBINS**, taken before and
15 by Lisa Willow Weiss, Notary Public in and for the
16 Commonwealth of Pennsylvania, on Wednesday, March 23,
17 2011, commencing at 1:45 p.m. at the Pennsylvania
18 Department of Environmental Protection, 230 Chestnut
19 Street, Meadville, Pennsylvania.

20

19 Street, Meadville, Pennsylvania.

20

19 Street, Meadville, Pennsylvania.

20

21

22

23

1 **APPEARANCES**

2

3

4 **For the Appellants, the Delaware Riverkeeper and Delaware Riverkeeper Network:**

5

Jordan B. Yeager, Esquire
6 Curtin & Heefner LLP
Heritage Gateway Center
7 1980 South Easton Road, Suite 220
Doylestown, Pennsylvania 18901

8

9 **For the Appellants:**

10 John J. Zimmerman, Esquire
Zimmerman & Associates
11 13508 Maidstone Lane
Potomac, Maryland 20854

12

13 **For the Commonwealth of Pennsylvania, Department of Environmental Protection:**

14

Wendy Carson-Bright, Esquire
15 Pennsylvania Department of Environmental Protection
230 Chestnut Street
16 Meadville, Pennsylvania 16335-3481

17

For Newfield Appalachia PA, LLC:

18

Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101

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I N D E X

CRAIG LOBINS

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1 MS. CARSON-BRIGHT: Once again,
2 before we get started, I would
3 just renew my objection with
4 regard to Mr. Zimmerman and not
5 being licensed to practice law in
6 Pennsylvania.
7 MR. HOLTZMAN: I join that
8 objection again. Continuing
9 objection.
10 MS. CARSON-BRIGHT: Yes,
11 continuing objection.
12
13 C R A I G L O B I N S, first having
14 been duly sworn, testified as follows:
15
16 DIRECT EXAMINATION
17 BY MR. YEAGER:
18
19
20 Q. Mr. Lobins, could you spell your last name,
19
20 Q. Mr. Lobins, could you spell your last name,
19
20 Q. Mr. Lobins, could you spell your last name,
21 please?
22 A. L-O-B-I-N-S.
23 Q. How are you currently employed?
24 A. With the Department of Environmental --
25 Commonwealth of Pennsylvania Department of Environmental

1 Protection.

2 Q. What's your position?

3 A. Regional manager with the oil and gas

4 program.

5 Q. How long have you had that position?

6 A. Seven and a half years.

7 Q. And what did you do before that?

8 A. I was the environmental cleanup program

9 manager for the Commonwealth of Pennsylvania Department

10 of Environmental Protection.

11 Q. How long were you in that position roughly?

12 A. Five years, since January of '98, I think it

13 was.

14 Q. When did you join the Department?

15 A. 1987.

16 Q. Can you just quickly list what other

17 positions you had?

18 A. Yes. Okay, yes. I started out in the waste

19 management program as a geologist, and then I moved to

20 the environmental cleanup program as a section chief for

19 management program as a geologist, and then I moved to

20 the environmental cleanup program as a section chief for

19 management program as a geologist, and then I moved to

20 the environmental cleanup program as a section chief for

21 the remediation section, and then -- which would have

22 been in 1992, and then in 1998 became a program manager

23 for environmental cleanup.

24 Q. And advanced degrees?

25 A. Degree in geology. I'm a licensed

1 professional geologist.
2 Q. And when did you become a licensed
3 professional geologist?
4 A. I think it was 1993.
5 Q. And do you have to maintain certification for
6 that?
7 A. Yes. You -- and just recently, actually, you
8 have to take 24 professional hours of development and
9 every couple years renew your license.
10 Q. Is it 24 hours over what period of time?
11 A. Oh, I'm sorry, two years, in a two-year
12 period.
13 Q. And what -- can you identify what your major
14 job functions are as regional manager of the oil and gas
15 program?
16 A. Yes, I manage the permitting activity for the
17 northern half of Pennsylvania, which includes 27
18 counties, and then for the 12 counties in the
19 northwestern part of Pennsylvania, also include the
20 permitting -- oil and gas permitting -- oil and gas
19 northwestern part of Pennsylvania, also include the
20 permitting -- oil and gas permitting -- oil and gas
19 northwestern part of Pennsylvania, also include the
20 permitting -- oil and gas permitting -- oil and gas
21 permitting, and then also oversee or manage the
22 operations and compliance part of the oil and gas
23 program.
24 Q. Now, you've been in that position for seven
25 and a half years?

1 A. Yes.

2 Q. Has the responsibilities in the position

3 changed over that period of time or have they been

4 constant?

5 A. No, they changed because we opened a new

6 office out in Williamsport, so we have an east region.

7 And with the east region, they now provide the oversight

8 of the operations and monitoring compliance.

9 Q. I'm sorry.

10 A. Yeah, for the eastern part of the state.

11 Q. Okay. Let me go -- take a step back from the

12 questions --

13 A. Okay.

14 Q. -- and give you some instructions. Have you

15 ever sat for a deposition before?

16 A. Yes.

17 Q. All right. As you understand, it's a

18 question and answer session?

19 A. Um-hum.

20 Q. I'll try not to speak when you're speaking.

19 A. Um-hum.

20 Q. I'll try not to speak when you're speaking.

19 A. Um-hum.

20 Q. I'll try not to speak when you're speaking.

21 A. Okay.

22 Q. And I'll ask that you wait until I finish my

23 question before you start to answer.

24 A. Okay.

25 Q. The court reporter can only take words, not

1 um-hums, huh-huhs, nods and shakes, so we'll both just
2 try to stick with that as much as we can. If at any
3 time you want to take a break, just let me know. And if
4 you don't understand my question or part of my question,
5 just let me know, all right?
6 A. Okay, um-hum.
7 Q. So you were telling me about the change on
8 the operations and compliance side that that's become,
9 it sounds like, more regionalized and the Williamsport
10 office is handling that for the northeastern region?
11 A. Yes, eastern region.
12 Q. Okay. But for the permitting activity, you
13 maintain that for the northern part of the state across
14 east, west?
15 A. That's correct.
16 Q. How many permits a month -- what's the best
17 way to describe what your role is in managing the
18 permitting activity?
19 A. After my staff does a review of the permits,
20 it comes in and there's an administrative review and
19 A. After my staff does a review of the permits,
20 it comes in and there's an administrative review and
19 A. After my staff does a review of the permits,
20 it comes in and there's an administrative review and
21 then there's a technical review. And the permit comes
22 to me for final authorization, and essentially if it's
23 an acceptable permit, then I sign the permit, and then
24 the permit is -- then it's a valid permit. It's a
25 permit at that point.

1 Q. And everything you told me so far about the
2 permitting process, was that true back in the April to
3 June time period of 2010?
4 A. Yes.
5 Q. At that time -- roughly the number of permits
6 that you were handling a month the same then as it is
7 now?
8 A. Yes.
9 Q. How many are we talking about a month?
10 A. Well, we issued -- well, issued 4,600 last
11 year, a little over 4,600, so I guess that would be
12 almost 400 a month.
13 Q. 4,600 permits in 2010?
14 A. In 2010.
15 Q. Is there a time a year where you tend to be
16 busier or less busy with the oil and gas permitting?
17 A. It's fairly constant, and I think towards the
18 end of the year, it picks up a little bit, and I think
19 usually probably in the spring, summer months, it's a
20 little bit higher too.
19 usually probably in the spring, summer months, it's a
20 little bit higher too.
19 usually probably in the spring, summer months, it's a
20 little bit higher too.
21 Q. So in those higher months, how many permits
22 do you think you're doing a month?
23 A. 500. 500 would be a high month.
24 Q. What percentage of your time is devoted to
25 the final authorization of the permitting process?

A. Two hours a day. Two hours a day would probably be a pretty good average.

Q. Five days a week?

A. Yes.

Q. Is there a typical length of time it takes you to review for final authorization?

A. A couple minutes per permit. Two minutes per permit, and that would be an average.

Q. What do you do in that time period?

A. A lot of it is a quality control. I'm checking the fields on the permit page, making sure all the fields are filled out, and I'm comparing it to the actual plat, making -- see what the target formation is, making the lat and longitudes are correct. And then if there's any special conditions, that it should be on the permit to make sure the special conditions were noted on the permit.

That process probably actually takes more like five minutes, but two to five minutes, I think would probably be -- if we crunched the numbers, two

like five minutes, but two to five minutes, I think would probably be -- if we crunched the numbers, two

like five minutes, but two to five minutes, I think would probably be -- if we crunched the numbers, two

hours a day and roughly 40 -- 40 permits, I guess, a day, is that right, 40 times -- no, it would be more than that. No, 40. 80 in a week. So that would be almost 400. 80 minutes, 80 minutes for -- review 40 permits, 80 minutes, so I think --

1 Q. It's about two minutes?
2 A. It's about -- that's close, yeah, two to
3 three minutes.
4 Q. Does that vary at all with the type of well
5 that's being drilled?
6 A. Yes. If there's more detail on it, for
7 example, if it's a lateral well and they're drilling --
8 one of these horizontal wells, then I'm taking a look at
9 the side view too and the possibility there could be a
10 pilot hole on it. They might have another, a pilot
11 boring, you know, so there's more detail so it takes a
12 little longer to look at them.
13 Q. Other than if it's a horizontal well, other
14 well types that might take you longer?
15 A. Excuse me, yeah, if there's -- let's say,
16 more special conditions, the technical person has a few
17 more technical or special conditions on it, then I have
18 a tendency to look at them a little closer.
19 Q. Okay.
20 A. Question them why are they putting them on.
19 Q. Okay.
20 A. Question them why are they putting them on.
19 Q. Okay.
20 A. Question them why are they putting them on.
21 Q. But if there's an absence of special
22 condition, it doesn't take you longer to figure out why
23 they're not putting them on?
24 A. No, that's correct.
25 Q. And what document would you look at to see

1 whether there's special conditions put on it?

2 A. On the permit application.

3 Q. Okay.

4 A. That's one place, but then within the packet

5 these special conditions would be also contained in

6 there.

7 Q. On what document?

8 A. With the application, if it's with the permit

9 application. I receive a packet similar to this, and

10 then on this special conditions noted up on the top

11 right-hand corner and then also within the submittal,

12 the special conditions would be there and quite often

13 they're flagged.

14 Q. Okay. We'll come back to the document in a

15 little bit.

16 A. Um-hum.

17 Q. Other types of -- other well types or aspects

18 of the application package that gets to you that causes

19 you to conduct a more detailed review?

20 A. The Marcellus wells, they always raise an

19 you to conduct a more detailed review?

20 A. The Marcellus wells, they always raise an

19 you to conduct a more detailed review?

20 A. The Marcellus wells, they always raise an

21 eyebrow, and with that, there's special conditions

22 associated with the Marcellus well.

23 Q. And how did you determine whether it's a

24 Marcellus well?

25 A. On the plat, it identifies a target

1 formation, and then also on the application, there's a
2 section for notes and it's designated in the notes
3 section.
4 Q. Any other applications or packets that
5 require a more detailed review from you -- let me strike
6 that -- that lead to a more detailed review?
7 A. Applications that are submitted in areas that
8 there may be an investigation taking place, that there's
9 some type of a groundwater impact, possibly some
10 compliance issue an operator would have. You give those
11 applications a little more thought.
12 Q. I didn't follow you.
13 A. If you're dealing in an area that has a stray
14 gas occurrence, there's a discharge to the groundwater.
15 Q. From an existing project?
16 A. From an existing project or -- from an
17 existing project or it may be just naturally occurring,
18 and then you just -- I guess it probably gets a little
19 more attention because I know that there's a little more
20 of a concern in that area.
19 more attention because I know that there's a little more
20 of a concern in that area.
19 more attention because I know that there's a little more
20 of a concern in that area.
21 Q. How do you know, when you look at that set of
22 documents that lands on your desk, if that is in an area
23 where there has been a groundwater impact?
24 A. Institutional knowledge mainly.
25 Q. Okay. Meaning your institutional knowledge?

1 A. Yes, yes.
2 Q. Okay. Any other categories of applications
3 that lead to a more detailed review by you?
4 A. I don't think, no.
5 Q. You said there were two steps to the review
6 process, as I understood it, prior to getting to you,
7 the administrative review and the technical review,
8 correct?
9 A. Yes.
10 Q. Is the administrative review what some people
11 call the review for administrative completeness?
12 A. Yes.
13 Q. Making sure that the documents that are
14 required to be submitted with the application have been
15 submitted in the form that's required?
16 A. Yes, that's correct.
17 Q. Okay. Do you know what goes into the
18 technical review prior to it getting to you?
19 A. Just a general understanding.
20 Q. Okay. What is your general understanding
19 A. Just a general understanding.
20 Q. Okay. What is your general understanding
19 A. Just a general understanding.
20 Q. Okay. What is your general understanding
21 what goes into the technical review?
22 A. Is it okay for me to look at one of these
23 when you're asking me this or you just rather not me
24 look at the --
25 Q. Well, right now -- you'll have an opportunity

1 to do that, as much time as you need to do that.
2 A. Okay.
3 Q. But right now I just want to get your best
4 recollection.
5 A. Okay. Yeah, the geologist would take a look
6 at the application, and he's looking at all the check
7 boxes that go down along through it and looking, for
8 one, if it's a conservation well or not a conservation
9 well. And then there's some different criteria, to
10 satisfy some different criteria for those designations.
11 And then along with the plat, he's looking at
12 the plat where the well is located is correct. Looks at
13 the location of the well and makes sure that the
14 latitude and longitude, the coordinates are correct,
15 offsets are correct, water supplies within 1,000 feet,
16 making sure that any water supply within 1,000 feet has
17 been identified and that water supply owner has been
18 notified, looking at the target formation, distance
19 restrictions from buildings, streams, wetlands, how deep
20 the well is being drilled, if it's going to be a
19 restrictions from buildings, streams, wetlands, how deep
20 the well is being drilled, if it's going to be a
19 restrictions from buildings, streams, wetlands, how deep
20 the well is being drilled, if it's going to be a
21 deviated hole, essentially a horizontal or lateral type
22 of drilling, then makes -- sees where that -- takes a
23 look at the side view, sees where that boring is going
24 to -- where it's going, and making sure special
25 condition gets on there for like a deviation survey, if

1 it's a deviated hole, that a deviation survey, special
2 condition gets on the permit. I think generally those
3 types of things.
4 Q. And that's what you've just described is
5 done, that's the technical review that's done by the
6 geologist?
7 A. Yes.
8 Q. How many geologists work under you to perform
9 those technical reviews for the roughly 4,600 wells that
10 you were permitting in 2010?
11 A. Six. And they are not my direct report. And
12 you said how many -- I don't know if you said directly
13 for me. They don't work -- they're in my chain of
14 command.
15 Q. I didn't mean that they report directly to
16 you, but they're under you --
17 A. Yes.
18 Q. -- in completing this technical review that
19 you were describing.
20 A. Yeah, six.
19 you were describing.
20 A. Yeah, six.
19 you were describing.
20 A. Yeah, six.
21 Q. Okay. And do they all report to the same
22 person?
23 A. Yes.
24 Q. Is that Brian Babb?
25 A. Yes.

1 Q. What's your understanding of what role, if
2 any, he has in the technical review?
3 A. He's -- checks their work, and so it's just a
4 little more, a little bit -- it's more quality control,
5 and he's looking -- he's taking a look at the plat,
6 making sure there's things that are not missed by his
7 staff, special conditions, and making sure all the
8 fields are filled out properly, data entries. So he's
9 providing some quality control on it also.
10 Q. And do you know what portion of his time --
11 you had said roughly two hours a day of your time is
12 committed to the final authorization of these permits.
13 Do you know what portion of Mr. Babb's time is devoted
14 to that?
15 A. No.
16 Q. Is there anyone else supervising him besides
17 you?
18 A. No.
19 Q. What other responsibilities does he have on
20 his plate?
19 Q. What other responsibilities does he have on
20 his plate?
19 Q. What other responsibilities does he have on
20 his plate?
21 A. He has three engineers that he supervises and
22 one -- right now, one biologist. There's a vacancy. He
23 had two of them, but he has one biologist right now, so
24 he has a total of 11 people.
25 Q. Thinking about kind of task categories, so

1 one task category is to oversee technical review that
2 the geologists are performing; is that a fair
3 characterization?
4 A. Yes, yes.
5 Q. And looking at that as kind of the level of
6 specificity of a task that he has, can you identify what
7 his other tasks are?
8 A. Yes, it would be with the 102 program which
9 is our storm water. Chapter 102 is our storm water
10 program which would deal with storm water permits, and
11 then also Chapter 105, which is encroachment, and it
12 would be for permits for -- encroachments for crossing
13 streams, wetlands.
14 Q. All within oil and gas?
15 A. Yes. And then another area would be water
16 management plans and biologist review on water
17 management plans and oil and gas.
18 Q. Okay. All in oil and gas?
19 A. All in oil and gas.
20 Q. Okay. So we have four categories of his area
19 A. All in oil and gas.
20 Q. Okay. So we have four categories of his area
19 A. All in oil and gas.
20 Q. Okay. So we have four categories of his area
21 of responsibility?
22 A. Yes.
23 Q. Why don't we go to this document for a
24 second. We've had marked in a prior deposition this set
25 of documents as Appellant's Exhibit 1. They've been

1 provided to counsel. These are the documents we
2 received from the Department on Monday, and you'll see
3 they've got a pagination on them.
4 A. Okay.
5 Q. I may refer to that as a Bates number?
6 A. Okay.
7 Q. One of the things that you referred to was
8 making sure that you do, at least at times, as part of
9 your quality control, is that you make sure that the
10 longitude and the latitude are correct?
11 A. Correct.
12 Q. Show me on the document what you look at to
13 do that.
14 A. It would be on the plat.
15 Q. Okay.
16 A. I think I found it. The page 15, Bates No.
17 15.
18 Q. Right.
19 A. And then up on the top left-hand corner, it
20 has true latitude north, true longitude west.
19 A. And then up on the top left-hand corner, it
20 has true latitude north, true longitude west.
19 A. And then up on the top left-hand corner, it
20 has true latitude north, true longitude west.
21 Q. Right.
22 A. So I'm looking at these numbers, and I'm
23 missing, less the permit page.
24 Q. The permit is later. I think you'll find it
25 at 17 and 18.

1 A. Okay. And then I'm looking at, on the permit
2 page, on Page 17, looking at -- checking the latitude
3 and longitude are the same values that are on the plat,
4 same numbers. Then I also look at the --
5 Q. So you're just comparing that the numbers
6 that are on the plat are the same numbers that are on
7 the permit?
8 A. Yes, that's one of the checks, that's
9 correct.
10 Q. Okay. Why is that something you look at?
11 A. It's just important to know where these
12 wells -- it's important to have the correct location on
13 our maps and our database where this well is actually
14 going to be drilled.
15 Q. Okay. Was there anything else about the
16 longitude and latitude that you wanted to tell me?
17 A. Just -- just making sure that they're using
18 the right data, the datum on it, this NAD 83 that's down
19 here, too.
20 Q. Of the things that you identified -- well,
19 here, too.
20 Q. Of the things that you identified -- well,
19 here, too.
20 Q. Of the things that you identified -- well,
21 let me go back. What documents do you look at to do the
22 final authorization that you give of a permit?
23 A. It would be the application that was
24 submitted with -- the application that's submitted, and
25 then also the permit page and the well record completion

1 report, well site restoration that is submitted to the
2 applicant once the permit is issued. It comes in as a
3 complete set.
4 When we send -- when we return this copy,
5 after we have an approved permit, when we send it back
6 out to the applicant, it will contain a permit and then
7 some other supplements with it, which is well record,
8 completion report, well site restoration, things,
9 information that we expect to get back after the
10 operator drills the well.
11 Q. Okay. Anything else that you're looking at
12 when you're giving it your final authorization?
13 A. No.
14 Q. Any documents generated by the Department?
15 Well -- I'm sorry. Let me strike that, because it
16 wasn't a good question.
17 A. Okay.
18 Q. Other than the permit itself that's been
19 prepared by the Department and those forms that you're
20 expecting to get back, are there documents from the
19 prepared by the Department and those forms that you're
20 expecting to get back, are there documents from the
19 prepared by the Department and those forms that you're
20 expecting to get back, are there documents from the
21 Department's review of the application that you're
22 looking at?
23 A. Yes, yes, and that's part of the application,
24 the package, application page. And in that, the
25 application is more than just the cover page or the

1 application page. I guess, your number one. It
2 includes the PNDI search would be part of it, and then
3 any other -- well, has the water supply notifications,
4 and then we call them green cards, return certified mail
5 that they got the locations back, and then the reviewer
6 would sometimes have comments on here as far as if
7 there's correspondence with the applicant as far as
8 additional information needed. That would be part of
9 the application package.
10 Q. What kind of comments do you see from the
11 reviewer?
12 A. If there's some type of a deficiency, the
13 reviewer would notify the applicant of the deficiency
14 and then there would be correspondence back from the
15 applicant on how that deficiency was addressed.
16 Q. Are you talking about administrative
17 completeness or are you talking about on the technical
18 side?
19 A. It could be either.
20 Q. Okay.
19 A. It could be either.
20 Q. Okay.
19 A. It could be either.
20 Q. Okay.
21 A. But I was actually speaking about on the
22 technical side.
23 Q. Okay. You don't see any reviewer comments
24 for this file, correct? Why don't you take a minute to
25 go through --

1 A. Okay. I'll take a minute.
2 Q. Take a minute to go through the documents,
3 get familiar with what's there, because I'm going to ask
4 you some questions about what's there.
5 A. Okay.
6 Q. Have you had a chance to review that?
7 A. Yes.
8 (Discussion held off the record.)
9 MR. YEAGER: While we were off the
10 record, I had gotten on my
11 Blackberry a notice from the
12 Environmental Hearing Board that
13 the motion was granted allowing
14 Mr. Zimmerman to appear pro hac
15 vice. I'm assuming with that,
16 that resolves the objections that
17 counsel had raised.
18 Q. All right. Going back to this document, you
19 had a chance to review what's there?
20 A. Yes.
19 had a chance to review what's there?
20 A. Yes.
19 had a chance to review what's there?
20 A. Yes.
21 Q. Okay. Would you agree with me that part of
22 what's here are the documents that would predate the
23 issuance of the permit and part of what's here are
24 documents that would postdate the issuance of the
25 permit?

1 A. Yes.
2 Q. Limiting yourself to the documents that
3 predate the issuance of the permit, do you see any
4 reviewer comments in this file?
5 A. No.
6 Q. Based on the number of permits that you have
7 reviewed just over the last year, is it fair to assume
8 that you don't remember this particular permit?
9 A. Yes, I do not remember this particular
10 permit.
11 Q. Have you reviewed any documents in
12 preparation for today's deposition?
13 A. Just your appeal, the appeal notice.
14 Q. Okay.
15 A. And then also I took a look at the permit and
16 application and plat.
17 Q. Are you aware, based on anything that you've
18 reviewed of any documents related to this document other
19 than any attorney/client communication that exists other
20 than what's in this packet that's been marked as
19 than any attorney/client communication that exists other
20 than what's in this packet that's been marked as
19 than any attorney/client communication that exists other
20 than what's in this packet that's been marked as
21 Appellant's 1?
22 A. No, I'm not aware of anything else.
23 Q. When you're reviewing a permit application to
24 give it its final authorization, do you ever see e-mails
25 in the file, communication, either within the Department

1 or from the Department externally?
2 A. I'm sure I have.
3 Q. What types of substance do you find in those
4 e-mails?
5 MS. CARSON-BRIGHT: That's a
6 pretty speculative question there.
7 Q. Do you understand the question?
8 A. Well, I can't think of any -- why don't you
9 ask the question again. That would probably be --
10 Q. Well, you said that you have seen e-mails --
11 as I understood your question before and if I
12 mischaracterized it --
13 A. I say I probably have.
14 Q. Can you picture what would have been in any
15 of those e-mails that you think you've seen?
16 A. No, I actually cannot.
17 Q. Okay. Looking at the first page of
18 Appellant's 1, the permit application, is there any of
19 the writing on this first page that's yours?
20 A. No.
19 the writing on this first page that's yours?
20 A. No.
19 the writing on this first page that's yours?
20 A. No.
21 Q. Having looked through these documents, and I
22 know you didn't spend a long length of time going
23 through it, but did you notice your handwriting
24 anywhere?
25 A. On the permit page.

1 Q. Okay.
2 A. There's a well permit and then also a
3 corrected well permit.
4 Q. Bates Pages 17 and 18?
5 A. Yes.
6 Q. Now, that signature there, did you put pen to
7 paper?
8 A. Yes.
9 Q. Do you utilize an electronic signature at
10 all?
11 A. No, not on permits.
12 Q. Okay.
13 A. On cover letters, on a cover letter, it would
14 go out for this permit, electronic signature.
15 Q. Okay. You see that 17 is a well permit and
16 18 is a corrected permit?
17 A. Yes.
18 Q. Is there any way to figure out the date that
19 the corrected permit would have been issued?
20 A. No.
19 the corrected permit would have been issued?
20 A. No.
19 the corrected permit would have been issued?
20 A. No.
21 Q. Is there any way to figure out who prepared
22 the corrected permit?
23 A. No. For a particular individual?
24 Q. Yes.
25 A. No.

1 Q. Any way to figure out why or how that came
2 about?
3 A. Well, I figured out how or -- I guess yes,
4 yes.
5 Q. Okay.
6 A. Why and how.
7 Q. Okay.
8 A. Why was on the application this well was
9 designated as a test well. When we issued the original
10 permit, we had the well type as a gas well, and then it
11 was brought to our attention that this was not a gas
12 well, it was a test well and that was the purpose, the
13 reason why we sent out a corrected well permit.
14 Q. How did you know it was brought to your
15 attention?
16 A. Because there's a corrected well permit, and
17 then for me to sign it, they would have brought in the
18 original permit and corrected that we've made a mistake
19 on this and we need to send out a corrected permit.
20 Q. Okay. Does the Department have any
19 on this and we need to send out a corrected permit.
20 Q. Okay. Does the Department have any
19 on this and we need to send out a corrected permit.
20 Q. Okay. Does the Department have any
21 regulations or guidelines or standards that
22 differentiate between a gas well and a test well?
23 A. You're talking about written guidelines?
24 Q. If there are unwritten guidelines that you
25 want to tell me about.

1 MR. HOLTZMAN: Objection. He's
2 not a legal expert.
3 MR. YEAGER: Right.
4 MR. HOLTZMAN: But answer if you
5 can.
6 A. Well, this well, when the application came
7 in, it was designated as -- maybe I should back up.
8 Test well, gas well. The purpose of a test well is to
9 describe and analyze what is present in the bore hole.
10 The purpose of a gas well is for their production of gas
11 out of that bore hole.
12 Q. Is there anything in writing within the
13 Department that distinguishes what's required for a well
14 permit when it's a test well versus a well permit when
15 it's a gas well?
16 A. I'm not aware of anything in writing.
17 Q. Are you aware of a practice, any different
18 standards being applied for approval of test well
19 permits versus gas well permits?
20 A. Yes. And, for example, Marcellus wells, if
19 permits versus gas well permits?
20 A. Yes. And, for example, Marcellus wells, if
19 permits versus gas well permits?
20 A. Yes. And, for example, Marcellus wells, if
21 it's a gas well, Marcellus gas well, a water management
22 plan is required, and for a test well, a water
23 management plan is not required.
24 Q. Well, what about for a non-Marcellus well?
25 Is a water management plan required?

1 A. No.
2 Q. So --
3 A. Let me clarify that.
4 Q. Okay.
5 A. Shale wells, we kind of categorize shale
6 wells as Marcellus wells.
7 Q. Okay. Well, I want to make sure I
8 understand --
9 A. Okay.
10 Q. -- when I look at these forms and I see the
11 words Marcellus, does that mean Marcellus or does that
12 mean shale?
13 A. It -- well -- it definitely means Marcellus.
14 Q. It includes Marcellus?
15 A. Thank you. It includes Marcellus. Staff was
16 putting Marcellus, a note up on the top for Marcellus,
17 but I think they've gone away from that and indicates
18 just shale now, but I'm not sure. But that's one of my
19 checks on this. I see what target formation that
20 they're drilling, and if it's a shale well, then it
19 checks on this. I see what target formation that
20 they're drilling, and if it's a shale well, then it
19 checks on this. I see what target formation that
20 they're drilling, and if it's a shale well, then it
21 needs to have this quote Marcellus conditions on it,
22 which would include a water management plan.
23 Q. How do you make a determination whether it's
24 a shale well from looking at this?
25 A. On the plat, it identifies a target

1 formation. I'm on Page Bates No. 15, target formation.
2 On this one, it says Onondaga. So in that block, they
3 would indicate if it's Marcellus, utica, burkett,
4 Heidelberg. Those are the shales that come to mind.
5 Q. Is this a shale well?
6 A. No.
7 Q. And your conclusion that it's not a shale
8 well is based on what the applicant has identified as
9 the target formation?
10 A. That's correct. Target formation, along
11 with -- it's a test well.
12 Q. A water management plan relates to the source
13 of water that's used in the drilling process? Is that
14 accurate?
15 A. For the fracking process, yes.
16 Q. Okay.
17 A. Source of water for the fracking process.
18 Q. Well, then that doesn't apply to vertical
19 wells, or does it?
20 A. No, it can, because if they're going to frack
19 wells, or does it?
20 A. No, it can, because if they're going to frack
19 wells, or does it?
20 A. No, it can, because if they're going to frack
21 or stimulate the Marcellus, if it's a vertical well, and
22 they're still going to have intentions of producing the
23 Marcellus, they still need to frack that so it would
24 apply to a vertical well also.
25 Q. So other than the presence or absence of a

1 water management plan, is there any difference in
2 practice within the Department for how a test well is
3 handled versus how a gas well is handled?
4 A. No.
5 Q. When you've got -- if you don't -- one of the
6 instructions I should have given you at the beginning is
7 if you don't know, tell me you don't know.
8 A. Um-hum.
9 Q. Look at the first page of the application.
10 And I see a question like No. 8. Will the well site be
11 within 100 feet (measured horizontally) of a stream,
12 spring or body of water identified on the most current
13 seven and a half inch topomap?
14 A. Um-hum.
15 Q. And the applicant, where there's a check in
16 the box no, that's a check -- that's an answer provided
17 by the applicant, correct?
18 A. That's correct.
19 Q. Does the Department do anything in its permit
20 review to determine whether that answer provided by the
19 Q. Does the Department do anything in its permit
20 review to determine whether that answer provided by the
19 Q. Does the Department do anything in its permit
20 review to determine whether that answer provided by the
21 applicant is correct?
22 A. Yes.
23 Q. What's done?
24 A. They took -- they take a look and my
25 geologist and permit chief can give you a better answer

1 than me.

2 Q. Okay.

3 A. But they're going to take a look at the 7 and

4 a half inch topographic map and see if the well location

5 is within 100 feet, but I think they even go out to

6 maybe 150 feet to give them some -- some buffer to

7 making sure that they are satisfying this distance

8 restriction. So they're comparing the well location to

9 the stream that's on the map and what that distance is.

10 Q. Based on the topomaps that the Department

11 has.

12 A. Um-hum.

13 Q. Yes?

14 A. Yes. I'm sorry, yes.

15 Q. That's okay. And how does the Department --

16 and if this is a question for somebody else, let me

17 know, but how does the Department overlay what they get

18 from the applicant versus what the Department has on its

19 maps?

20 A. You'd have to ask one of the technical

19 maps?

20 A. You'd have to ask one of the technical

19 maps?

20 A. You'd have to ask one of the technical

21 reviewers.

22 Q. So looking at No. 9 again on that first page,

23 will the well site be within 100 feet of a wetland or in

24 a wetland? Does the Department do anything to determine

25 whether the answer that the applicant gives there is

1 correct?

2 A. You'll have to ask my technical reviewer how

3 they check that.

4 Q. Okay. If they check that.

5 A. Or if they check that.

6 Q. And the same would be true with regard to No.

7 10, will the well be drilled within 200 feet

8 horizontally from any existing building or existing

9 water supply?

10 A. They get that information off the plat.

11 There's other checks that they do also, but when they

12 look at the plat, which on the Bates code --

13 Q. Page 15?

14 A. 15, and they would measure the distance of

15 water supplies to the proposed well location.

16 Q. Is this to scale?

17 A. It should be. It says scale 1 inch to 400

18 down under the seal there.

19 Q. Do you know whether anything is done to make

20 sure that the designation on the plat is accurate?

19 Q. Do you know whether anything is done to make

20 sure that the designation on the plat is accurate?

19 Q. Do you know whether anything is done to make

20 sure that the designation on the plat is accurate?

21 A. You would have to ask our geologist technical

22 reviewers.

23 Q. Is there -- you see Question No. 10, is the

24 well site in a special protection high quality or

25 exceptional value watershed? Do you see that question

1 on the first page?
2 A. What number?
3 Q. I'm sorry, 12. Yeah, I'm sorry.
4 A. Yes, I see that question.
5 Q. And here it's checked yes? Do you see that?
6 A. Yes.
7 Q. Does that lead to any different treatment by
8 the Department for how the Department conducts its
9 review versus when the well site is not in a special
10 protection high quality or exceptional value watershed?
11 A. I don't think so, not for the drilling
12 permit, but, again, my technical reviewers would answer
13 that a little bit better.
14 Q. Not that you know of?
15 A. Not that I know of, that's correct, for the
16 drilling permit.
17 Q. When is an E&S plan permit required for land
18 disturbance in connection with a gas well or a test
19 well?
20 A. When the project is over five acres, then a
19 well?
20 A. When the project is over five acres, then a
19 well?
20 A. When the project is over five acres, then a
21 permit is required.
22 Q. When I was asking you about the review that
23 the Department conducts in connection with a well site
24 and the special protection -- in a special protection
25 high quality or exceptional value watershed, your answer

1 was, as I understood it, not with regard to the well
2 permit.
3 A. That's correct.
4 Q. Are there other parts of the Department's
5 review that are impacted by the answer to this question?
6 A. This question would be tied into the E&S plan
7 or to the storm water permit. There are additional
8 requirements.
9 Q. When is a storm water permit required?
10 A. When the project is greater than five acres.
11 Q. So when a project is less than five acres,
12 other than what I might hear from the other people
13 involved in the technical review, Mr. Babb and the
14 geologist, is there any aspect of the Department's
15 review that's different when the well sites in a special
16 protection high quality or special exception watershed?
17 A. Not that I'm aware of.
18 Q. Has there been any discussion within the
19 Department about how the Department handles approval of
20 well sites in special protection high quality or
19 Department about how the Department handles approval of
20 well sites in special protection high quality or
19 Department about how the Department handles approval of
20 well sites in special protection high quality or
21 exception value watersheds when the project is not over
22 five acres?
23 A. No. And you're talking about the drilling --
24 you're still talking about the drilling permit.
25 Q. Well, I asked you whether there were any

1 other permits that were impacted?

2 A. Okay.

3 Q. Any other parts of the Department's review

4 that were impacted by the fact that a site would be

5 within the special protection high quality or

6 exceptional value watershed?

7 A. Okay.

8 Q. And as I understood your answer, but please

9 correct me if I'm wrong, that the answer was yes, only

10 if it's a project over five acres.

11 A. Yes, what we do, for projects under five

12 acres, we require an erosion and sedimentation plan, so

13 the extra requirements would be an E&S plan, erosion and

14 sedimentation plan. It's not a permit but a plan.

15 Q. And that requirement is part of the approval

16 process for the well permit?

17 A. No.

18 Q. So under what permitting regime is it

19 required?

20 A. It's required under Chapter 102, which is --

19 required?

20 A. It's required under Chapter 102, which is --

19 required?

20 A. It's required under Chapter 102, which is --

21 it's the storm water regulation, E&S regulations.

22 Q. But you don't grant a permit?

23 A. No.

24 Q. So where in the process of the approval of a

25 project does that plan --

A. Yes, that -- yeah, the E&S plan is mentioned in our Chapter 78 oil and gas regulations. It is not a permit. And that's where, I think -- you're asking me about permits. A permit is not required, but an erosion and sedimentation control plan is still required.

Q. Required as part of what?

A. Required before the applicant can disturb any earth.

Q. Okay.

A. Before they build the site.

Q. Once they get there -- if it's less than five acres, once they get their well permit, can they go?

A. As long as they have an E&S plan on site. They have a -- someone has developed an erosion and sedimentation control plan and that plan is out on site, then they're good to go.

Q. Nobody within the Department needs to review it, correct?

A. That's correct. Prior to any earth disturbance, that's correct.

A. That's correct. Prior to any earth disturbance, that's correct.

A. That's correct. Prior to any earth disturbance, that's correct.

Q. Okay. Nobody in the Department needs to see it prior to any earth disturbance.

A. That's correct.

Q. Nobody in the Department needs to make a determination as to whether it's sufficient prior to

1 earth disturbance?

2 A. That's correct.

3 Q. And after earth disturbance, there's no

4 process by which the Department reviews the sufficiency,

5 the technical sufficiency of the E&S plan, correct?

6 A. I believe the inspector, when they're out on

7 site, if they would see deficiencies in it, they would

8 note it while they're doing their inspection.

9 Q. Well -- I'm sorry.

10 A. Or if there's a malfunction, if there's

11 sediment in the site, then there's a deficiency, you

12 know, either the plan was deficient or was not built to

13 the plan specifications. I don't know if that answers

14 your question.

15 Q. So the Department would -- the Department

16 might determine that there was an insufficiency based on

17 the fact that what was done failed and that there was

18 improper erosion and there wasn't proper sedimentation

19 control?

20 A. Right.

19 control?

20 A. Right.

19 control?

20 A. Right.

21 Q. The inspectors in Wayne County, are those

22 outside of your --

23 A. Yes.

24 Q. -- oversight?

25 A. Yes.

1 Q. Okay.
2 (Recess from 2:42 p.m. to 2:45 p.m.)
3 MR. YEAGER: We took a short
4 break, and I'm sorry to have to
5 get into this, but I saw that you
6 were conferring with counsel.
7 Was there discussion about the
8 questions that have been asked and
9 the topics that have been covered
10 in the deposition? Because it's
11 not appropriate to have a
12 discussion with the witness once a
13 deposition has started about the
14 substance of the deposition.
15 MS. CARSON-BRIGHT: No.
16 MR. YEAGER: Okay. Thank you.
17 BY MR. YEAGER:
18 Q. Are there any other documents that make up
19 the permit file prior to the issuance of the well
20 permit? Any other categories of documents that you
19 the permit file prior to the issuance of the well
20 permit? Any other categories of documents that you
19 the permit file prior to the issuance of the well
20 permit? Any other categories of documents that you
21 would find in the permit file prior to the issuance of
22 the well permit other than what we've talked about and
23 what we see here in Appellant's 1?
24 A. No.
25 Q. Are there any considerations given to the

1 technical aspects of the permit that don't have -- I'm
2 apologizing in advance for this question.
3 A. Okay.
4 Q. Are there technical aspects of the permit
5 approval that don't have documentation reflecting their
6 consideration? Does that make sense?
7 A. No. Why don't you explain it a little bit
8 better.
9 Q. So, for example, on the first page on the
10 permit application, you got a set of questions, 1
11 through 13.
12 A. Um-hum.
13 Q. And we went through some examples of those of
14 technical considerations for the Department based on,
15 for example, distance from a stream or water body,
16 location in relation to an existing building, water
17 supply, so the documentation provides information that
18 the Department considers as part of its technical
19 review.
20 A. Yes.
19 review.
20 A. Yes.
19 review.
20 A. Yes.
21 Q. Are there parts of the defendant's technical
22 review, elements to the Department's technical review
23 that aren't reflected in the documentation? Are there
24 things that the Department is considering in weighing
25 and measuring or considering as it is determining

1 whether to grant the permit or not that wouldn't be
2 reflected in these documents?
3 A. I think that that would be better answered by
4 my permit's chief or the geologist.
5 Q. Do you know whether the Department has given,
6 in issuing this permit -- I understand you don't
7 remember this particular permit, so I guess I have to
8 ask it in the general.
9 A. Okay.
10 Q. Do you know whether the Department considers
11 whether the location of the permit is consistent with
12 the uses that are allowed in that location under local
13 zoning?
14 A. I'm not sure what the local zoning is for
15 this location.
16 Q. And I'm asking it in the question, whether
17 that's one of the Department's considerations.
18 A. No, because when we issue this permit,
19 it's -- the oil and gas act has -- supercedes -- or
20 supercedes local ordinances on -- we're issuing this
19 it's -- the oil and gas act has -- supercedes -- or
20 supercedes local ordinances on -- we're issuing this
19 it's -- the oil and gas act has -- supercedes -- or
20 supercedes local ordinances on -- we're issuing this
21 permit based on environmental impacts and the local
22 ordinance cannot regulate environmental impacts. That
23 doesn't say that the applicant can ignore local zoning
24 ordinances, though. Even on the permit page, it says
25 they have to follow other applicable laws, rules and

1 regulations.

2 Q. But it's your testimony that that's not one

3 of the considerations of the Department.

4 A. That's correct.

5 Q. Okay.

6 A. That's correct.

7 Q. Does the Department consider, in making a

8 determination on a well permit, does the Department

9 consider the impact of the proposed wells, proposed well

10 on national or state scenic rivers?

11 A. I'm sorry, ask the question again.

12 Q. In making a determination on a well permit --

13 A. Yes.

14 Q. -- does the Department consider the impact of

15 the proposed well on national or state scenic rivers?

16 A. Yes.

17 Q. How does the Department consider that? What

18 steps does the Department go through to consider that?

19 A. Well, we have a form, and if the well is

20 located on public lands, national park, scenic rivers,

19 A. Well, we have a form, and if the well is

20 located on public lands, national park, scenic rivers,

19 A. Well, we have a form, and if the well is

20 located on public lands, national park, scenic rivers,

21 that they have a coordination of public resources, I

22 believe is the name of the form, so that would be part

23 of this packet.

24 Q. And that's filled out if the well would be

25 located on public land?

1 A. The well site, the well site.
2 Q. The well site would be located on public
3 lands?
4 A. Um-hum.
5 Q. What about if it's not located on public
6 land?
7 A. Then there is no coordination of public
8 resources.
9 Q. Then there is no what?
10 A. That they're not required to complete the
11 form. It's called coordination of public resources.
12 Q. Okay. So in making the determination on a
13 well permit, the Department considers the impact on
14 national or scenic state -- national or state scenic
15 rivers only if the proposed well would be located on
16 public land. Is that accurate?
17 A. Yes, on that public land, yes.
18 Q. Okay.
19 A. Yes, I'm going to say well site.
20 Q. If the well site is located on the public
19 A. Yes, I'm going to say well site.
20 Q. If the well site is located on the public
19 A. Yes, I'm going to say well site.
20 Q. If the well site is located on the public
21 land.
22 A. Right.
23 Q. Meaning the bore hole and --
24 A. Disturbance.
25 Q. -- and the disturbed area?

1 A. Right, um-hum.
2 Q. Okay. And is the same true with regard to
3 the consideration of the impact of the proposed well on
4 publicly owned parks, forest, game lands, wildlife
5 areas?
6 A. That's correct.
7 Q. It's only considered if the well site is
8 located on public land?
9 A. That's correct.
10 Q. Okay. Is the same true with regard to
11 natural landmarks that the Department only considers the
12 impact on those resources if the proposed well site is
13 on public land?
14 A. I don't know.
15 Q. Okay. Does the Department consider the
16 impact of proposed wells -- in making a determination
17 about the well permit, does the Department consider what
18 the impact of the proposed well would be on historical
19 and archeological sites listed on federal or state list
20 of historical places?
19 and archeological sites listed on federal or state list
20 of historical places?
19 and archeological sites listed on federal or state list
20 of historical places?
21 A. Yes, we consider those impacts, and that
22 would come up in the PNDI, in the search, yes.
23 Q. So is there any consideration beyond what
24 comes back in the PNDI search, any consideration of
25 impact on those resources or those sites?

1 A. That agency would weigh in, whoever -- you
2 know, whoever had jurisdiction over that, whatever
3 artifact is being protected, and then they would have --
4 they would weigh in as far as what requirements that
5 they would have, that they would like to see on the
6 drilling permit.
7 Q. Okay. With regard to consideration of impact
8 on habitats of rare and endangered flora and fauna, is
9 that also limited to the PNDI search?
10 A. That's correct.
11 Q. Does the Department consider -- in issuing
12 individual well permits, does the Department consider
13 the cumulative impact of the broader development of
14 wells on the surrounding resources?
15 A. No.
16 Q. Would you agree with me in looking at
17 Appellant's Exhibit 1, you were mentioning a form that's
18 filled out when a well site is on public land?
19 A. Yes.
20 Q. That there is no such form in this
19 A. Yes.
20 Q. That there is no such form in this
19 A. Yes.
20 Q. That there is no such form in this
21 application package?
22 A. No, I did not see one.
23 Q. Was there an E&S plan in this file?
24 A. In this packet?
25 Q. Yes.

1 A. No.

2 Q. Is there anything in this packet that tells

3 you that prior to issuance of the permit, that there was

4 any consideration to the adequacy of any erosion and

5 sedimentation control plan?

6 A. No.

7 Q. Is there anything in these documents that

8 tell you -- that reveal whether there was any

9 consideration given to the proximity of this project to

10 the Delaware River?

11 A. No.

12 Q. Is there anything in these documents that

13 reveal whether any consideration was given to the impact

14 of the project as proposed on a special protection high

15 quality watershed?

16 A. It was identified on the application page as

17 a high quality. Are you asking for more than that?

18 Q. Yeah, whether there's any reflection that its

19 impact was considered.

20 A. It's meeting all the distance restrictions

19 impact was considered.

20 A. It's meeting all the distance restrictions

19 impact was considered.

20 A. It's meeting all the distance restrictions

21 that are required from those setbacks, making sure that

22 you're meeting 100 feet from the stream or water body.

23 Other than, no. I mean, I think that is a consideration

24 that we're meeting -- that it's meeting all the distance

25 restrictions.

1 Q. The distance restrictions of the Oil and Gas
2 Act?
3 A. Of the Oil and Gas Act, that's correct.
4 Q. Do you know when the last Natural Diversity
5 Index, when the Pennsylvania Natural Diversity Index was
6 last updated for Wayne County?
7 A. I do not know that.
8 Q. Do you know what a wild and scenic river
9 corridor is?
10 A. Not fully.
11 Q. Well, what's your understanding?
12 A. It's an area that's designated as -- it's an
13 area that's designated to be scenic along the river --
14 along the river.
15 Q. Was there any consideration given for the --
16 in the approval of this permit for the impact that the
17 proposed project would have on the wild and scenic river
18 corridor?
19 A. I do not know of any impacts that were
20 considered.
19 A. I do not know of any impacts that were
20 considered.
19 A. I do not know of any impacts that were
20 considered.
21 Q. Okay. Do you know roughly how many permits
22 have been issued by the Department in the Delaware River
23 watershed?
24 A. No.
25 Q. Do you know whether this project is located

1 within the Delaware River watershed?

2 A. Not for a fact, but I assume that it is, but

3 I -- but I have not seen where the boundary is and where

4 this well location is. I mean --

5 Q. I'm sorry.

6 A. I mean -- yeah, I think I'll just leave it at

7 that.

8 Q. Was there any heightened scrutiny given to

9 the permits issued within the Delaware River watershed?

10 A. No.

11 Q. When a person within the Department who's

12 involved in the review, either the administrative review

13 or technical view, has a phone call with the applicant,

14 should that be reflected in the file?

15 A. I think there should be a phone log of that,

16 yes.

17 Q. Is there a log of the time spent by any of

18 the people involved in the review?

19 A. No.

20 Q. So other than the individual memories of the

19 A. No.

20 Q. So other than the individual memories of the

19 A. No.

20 Q. So other than the individual memories of the

21 people who were involved, and other than the documents

22 we have here, is there any other way to identify what

23 went into the Department's review and what was

24 considered?

25 A. No other documents I'm aware of.

1 Q. Does the Department have an anti-degradation
2 program?
3 A. Yes.
4 Q. Why don't you define what that is.
5 A. I don't know what -- I really don't know what
6 that is, though. I could not explain it.
7 Q. Okay. Is there anything from the documents
8 in this file that reflect that this project was
9 considered under the Department's anti-degradation
10 program?
11 A. No, there's nothing in here that indicates it
12 was -- that was part of the review.
13 Q. And is there anyplace else we would look to
14 find evidence that it was?
15 A. No.
16 Q. From that, is it fair to conclude that this
17 project was not reviewed under the department's anti-
18 degradation program?
19 A. From my knowledge, maybe my section chief or
20 geologist will tell you something different, but I'm not
19 A. From my knowledge, maybe my section chief or
20 geologist will tell you something different, but I'm not
19 A. From my knowledge, maybe my section chief or
20 geologist will tell you something different, but I'm not
21 aware of us doing that type of review.
22 Q. Are you aware of any well permits that have
23 included review under the department's anti-degradation
24 program?
25 A. No.

1 MS. CARSON-BRIGHT: Now, that
2 question that you just asked is
3 just pertaining to oil and gas,
4 correct?
5 MR. YEAGER: Yes.
6 MS. CARSON-BRIGHT: Okay.
7 MR. YEAGER: Yes.
8 Q. Bear with me for just a minute. Is there any
9 indication from the file that the Department considered
10 any comprehensive plans adopted by any municipal
11 governments?
12 A. No.
13 Q. Now, I had asked you earlier about the extent
14 of the Department's review of erosion and sediment
15 control measures. I want to ask you the same question
16 about the Department's review of storm water management
17 measures to the extent that it would be different.
18 Is there any indication from the file that
19 the Department considered the adequacy of storm water
20 management measures prior to issuance of the permit?
19 the Department considered the adequacy of storm water
20 management measures prior to issuance of the permit?
19 the Department considered the adequacy of storm water
20 management measures prior to issuance of the permit?
21 A. I believe the technical reviewer, you would
22 see on the plat the disturbance is greater than five
23 acres, that would -- no, let me -- no, let me strike
24 that if I can.
25 Q. Okay. Sure.

1 A. No, there's nothing in here that would be for
2 review of storm water management.
3 Q. Now, other than what you've already told me
4 with regard to the location of the site as reflected on
5 the application, is there any indication from the file
6 that the Department considered the impact, if any, that
7 the project would have on Hollister Creek?
8 A. Other than meeting the distance restrictions,
9 no.
10 Q. The distance restrictions of the Oil and Gas
11 Act?
12 A. Of the Oil and Gas Act, correct.
13 Q. Is there any indication from the file that
14 the Department analyze the impact of the proposed
15 project on groundwater recharge?
16 A. No.
17 Q. Any indication from the file that the
18 Department considered the impact of the project on
19 stream flow?
20 A. No.
19 stream flow?
20 A. No.
19 stream flow?
20 A. No.
21 Q. Is there any indication from the file that
22 the Department has, in approving the project, considered
23 the impact on the water resources of the Delaware River
24 basin?
25 A. Other than meeting the distance restriction,

1 no.

2 Q. Again, you're referring to the distance

3 restriction of the Oil and Gas Act?

4 A. Oil and Gas Act, that's correct.

5 Q. If we turn to Bates Page 2 of Appellant's

6 Exhibit 1, do you see that dark section on the map in

7 the middle?

8 A. Yes.

9 Q. Do you know what that is?

10 A. I believe that's the corridor -- I think

11 that's the corridor for the Delaware River.

12 Q. And the star in that, in roughly the middle

13 of that map --

14 A. Yes.

15 Q. -- do you know what that is?

16 A. The well location.

17 Q. Going to Page 15, the well location plat, can

18 you identify any of the handwriting on here?

19 A. Joe Lichtinger's signature initials.

20 Q. Top right?

19 A. Joe Lichtinger's signature initials.

20 Q. Top right?

19 A. Joe Lichtinger's signature initials.

20 Q. Top right?

21 A. Top right, yes. And I believe this is his

22 writing for the Hollister Creek too.

23 Q. Where it's stamped HQ?

24 A. HQ water shed, yes, and that's it.

25 Q. Okay. Do you see where, in the center it

1 says proposed well pad and there's a circle around a
2 square of four squares?
3 A. Um-hum.
4 Q. Do you know who did that?
5 A. I assume Joe did because he's a technical
6 reviewer, and those are usually the marks that a
7 technical reviewer would put on the plat.
8 Q. Okay. On the left, top left, where you had
9 pointed earlier to the longitude and latitude, do you
10 see where it says well northing and well easting?
11 A. Yes.
12 Q. What's that?
13 A. I don't know.
14 Q. And if you look at Page 17 and 18 where the
15 permit and corrected permit are, do you see where it
16 says offset in the box?
17 A. Yes.
18 Q. It says, offset distances?
19 A. Um-hum.
20 Q. Reference in northeast corner of map section?
19 A. Um-hum.
20 Q. Reference in northeast corner of map section?
19 A. Um-hum.
20 Q. Reference in northeast corner of map section?
21 A. Yes.
22 Q. Do you know what those numbers are?
23 A. Yes.
24 Q. What is that?
25 A. Those are numbers, if you go back to Page 15,

1 the numbers at the very top it says, wells located on
2 topomap, and then down on the right-hand column, it has
3 the same thing.
4 Q. I see. Now, you see in the -- you had
5 pointed out earlier the difference between the well
6 permit and the corrected well permit, under well type it
7 says GS and on the corrected permit it says TE?
8 A. Yes.
9 Q. Do you see where it says Department Use Only
10 top right?
11 A. Yes.
12 Q. Watershed name appears on the corrected
13 permit, and it looks like there was a check that was
14 then crossed off under water quality but it says HQ. Do
15 you see quality?
16 A. Yes.
17 Q. But the Hollister Creek and HQ do not appear
18 on the corrected well permit the next page, Page 18?
19 A. Yes.
20 Q. Do you know why that is?
19 A. Yes.
20 Q. Do you know why that is?
19 A. Yes.
20 Q. Do you know why that is?
21 A. Oversight.
22 Q. There's no question in your mind that the
23 well was located in the Hollister Creek watershed which
24 is a high quality watershed?
25 A. That's the way my geologist indicated it,

1 from the plat. It's designated as a high quality
2 watershed Hollister Creek.
3 Q. And on the first page of the sheet, it also
4 designates that?
5 A. Yes.
6 Q. Who does Stephen Watson report to or who was
7 he reporting to back --
8 A. It would be to the east region and their
9 program manager is Jennifer Means.
10 Q. And that would have been true back in the
11 summer and fall of 2010?
12 A. Yes.
13 Q. Do you know what an H2S issue is?
14 A. Where do you see --
15 Q. Turn to Page 32. This is an e-mail from
16 Jennifer Means to a number of different people.
17 A. Okay.
18 Q. And if you go down about two-thirds of the
19 way or three-quarters of the way, the section in bold --
20 A. Yes.
19 way or three-quarters of the way, the section in bold --
20 A. Yes.
19 way or three-quarters of the way, the section in bold --
20 A. Yes.
21 Q. -- she's writing about a bad odor emanating
22 from the site. She says, however, I do have a concern
23 because we understand that there are some areas of our
24 region including the northeast where we could be running
25 into H2S issues during drilling. This is an extremely

1 dangerous situation and I think the ER folks need to be
2 aware of this possibility and understand that a
3 complaint of a rotten egg odor or sulphur smell may not
4 just be a malodor complaint. Do you see that?
5 A. Yes.
6 Q. Do you know what an H2S issue is?
7 A. Hydrogen sulfide, but I'm not familiar with
8 this issue, though.
9 Q. You're not familiar with hydrogen sulfide
10 being an issue in the northeast region?
11 A. No.
12 Q. Is it fair to say then that there was -- that
13 that wasn't a matter of consideration when the permit
14 was approved?
15 A. Not to my knowledge.
16 Q. Okay. For wells that are developed -- when I
17 say developed, wells that there drilled in the northeast
18 region, in the northeast, in Wayne County --
19 A. Okay.
20 Q. -- once the permit has been issued, do you
19 A. Okay.
20 Q. -- once the permit has been issued, do you
19 A. Okay.
20 Q. -- once the permit has been issued, do you
21 personally have any continuing involvement in the
22 project?
23 A. No.
24 MR. YEAGER: I don't have anything
25 else for him.

MR. ZIMMERMAN: I have a few questions, if that's all right.

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Lobins, again, my name is Jeff Zimmerman. I have a couple of things I wanted to see if I could clarify with you. On the plat on Page 15, there's a large dotted circle?

A. Yes.

Q. What does that represent?

A. That's the 1,000 foot radius from the bore hole, 1,000 foot radius.

Q. Okay. In the upper right-hand box where we were talking about the northing and the easting --

A. Yes.

Q. -- at the top of that box, it says there's this square box with four smaller square boxes denotes location of well on topomap.

this square box with four smaller square boxes denotes location of well on topomap.

this square box with four smaller square boxes denotes location of well on topomap.

A. Yes.

Q. And I see that figure has been put on the plat right next to where it says proposed well pad and it's been circled by someone.

A. Yes.

1 Q. Can you explain to me why that would be
2 considered to be the well location but then the actual
3 well location is in a different place?
4 A. Yes, and my geologist would be able to
5 explain this much better than me, but they overlay this
6 onto a topomap and the topomap has nine sections on it,
7 and they lay this down there and this gives them the
8 location on the topomap, the seven and a half degree
9 topomap. So this plat identifies two things. It
10 actually marks a spot on this big seven and a half
11 degree topomap, but then also it zooms in on the exact
12 location. So that mark represents a location on the
13 topomap, and then they kind of zoom in and do this plat,
14 which shows the actual drilling location. It represents
15 two different things. That square box is for a mark on
16 the topomap, and then this plat identifies -- basically,
17 you're zooming in, and it identifies the well location
18 with other features at a much smaller scale.
19 Q. So the actual location of the well bore on
20 this plat is where that well bore --
19 Q. So the actual location of the well bore on
20 this plat is where that well bore --
19 Q. So the actual location of the well bore on
20 this plat is where that well bore --
21 A. Yes.
22 Q. -- had to go?
23 A. Yes, where it's identify as woodland, right
24 in the very center there where that little circle is.
25 Q. And why would it be in a different location

1 than -- I mean, I think you may have tried to answer,
2 and I just didn't understand your answer.
3 A. Yeah. On a seven and a half degree topomap,
4 it's probably about 2 feet wide and 3 feet tall. And
5 now, this is just one -- yes, and then actually, if you
6 did three of these boxes -- or nine of them actually,
7 three of these, this square box here, if you did three
8 of them in a row and then went up, had nine of these
9 boxes, that would represent the entire area on a
10 topomap. So you could actually put a pin prick, you lay
11 this on that section, whatever -- Section 7 down here on
12 the box right above total vertical depth, Section 7. So
13 you lay this on Section 7 on the topomap, and you can
14 put a pinprick in the center of that little box, and
15 that's the location that's going to be on that bigger
16 map. And then on this plat, essentially kind of
17 centered that well and showed the nearby features, water
18 supplies. It gives you more detail.
19 Q. So would a little four square box always be
20 in a different location than the actual well bore or
19 Q. So would a little four square box always be
20 in a different location than the actual well bore or
19 Q. So would a little four square box always be
20 in a different location than the actual well bore or
21 sometimes or do you know?
22 A. 99.9 percent of the time. It would be
23 remarkable if it would end up laying in the dead center.
24 It's going to be in a different spot. In all
25 practicality, it's going to be in a different spot.

Q. In your experience, how big of deviation and difference typically is it?

A. Yeah, and that's what those offsets are at the very top here, 9,393, you're actually 9,000 feet from the north line of section -- of box -- of map section seven, so we're 9,000 feet down, 9,393 feet down from it.

Q. From the point that's 41 degrees 37 minutes and 30 seconds?

A. 41 degrees, 37 and 30 seconds, that's right, right.

Q. Okay.

A. Yes.

Q. A couple other questions from the plat.

A. Just to clarify.

Q. Go right ahead.

A. And if this is more like 100 feet, if the well is located on topomap 100 feet south, that little square box would be crowding that 9,300 all the way to the top of this map, of this plat. If this offset -- if
square box would be crowding that 9,300 all the way to the top of this map, of this plat. If this offset -- if
square box would be crowding that 9,300 all the way to the top of this map, of this plat. If this offset -- if
this offset -- right now we're saying we're 9,000 feet below this line, if there's only 100 feet below it, this box would be all the way up here, and then they put the same drawing.

Q. Okay.

A. My geologist would be able to explain that much better than me.

Q. Now, on the -- where it says Woodland Management Partners, the boring not quite centered in that rectangle. There are two black rectangles, one larger than the other, and then outside that, there's another dashed line that seems to be running parallel to the sides of the two rectangles.

A. Yes.

Q. What does that represent?

A. It's the 100 foot buffer around the disturbed area. I believe what's being depicted here, the bold black box is going to be the disturbed area. That's 100 foot buffer. If the disturbance -- it just shows where 100 feet would be from the disturbed earth.

Q. Is the -- so the dashed line, the area that's sort of the doughnut around the center disturbed area, that's not considered disturbed area; is that correct?

A. That's right. The dashed line is not disturbed.

A. That's right. The dashed line is not disturbed.

A. That's right. The dashed line is not disturbed.

Q. And with what looks like an access connecting to Callicoon Road --

A. Yes.

Q. Do you know -- again, we've got four dashed lines now, two of them smaller and two of them bold.

1 There is a -- what does that represent?

2 A. I would assume the inside one would be the

3 road and then some type of a buffer on the outside. It

4 looks like a little smaller than the 100 foot buffer

5 that they drew on the other box.

6 Q. Let me bring your attention to the lower box

7 on the lower right where you were referring to map

8 section 7.

9 A. Um-hum.

10 Q. Where it says surface elevation and feet, is

11 that where the topomap small four boxes locates it, or

12 is that the elevation of the actual bore site?

13 A. It's actually both, because this box with the

14 four squares in it is actually locating this well on

15 that topomap. It's locating that well on a different

16 map. It's locating on the seven and a half degree

17 quadrangle.

18 Q. Right.

19 A. So that's what that elevation would

20 correspond to 1,193 feet, and the well that's being

19 A. So that's what that elevation would

20 correspond to 1,193 feet, and the well that's being

19 A. So that's what that elevation would

20 correspond to 1,193 feet, and the well that's being

21 drilled is going to be located at that same elevation,

22 1,193 feet.

23 Q. So when there's a difference in the location

24 of the actual bore and the four square box, the

25 elevation is always the same?

A. It's the same spot. See, and that's where this box -- the only thing that box represents is a location on a larger map, and now we can just kind of ignore that box, because we're actually doing two maps in one, so that elevation is -- you know, it's 1,193 feet where the location of the well is going to be bored -- drilled.

Q. Okay. So the surface elevation in this box is the actual location, not the one depicted on the USGS map?

A. I don't know how else to explain it. The square box, if you lay this plat onto Section 7 of the USGS topomap and put a pinprick -- if you laid it right on there -- we use the light tables.

Q. Right.

A. And then put a pinprick there and would remove this. Then we would know where that well is drilled on that seven and a half. Instead now on that seven and a half degree quadrangle, now what they do is they wanted to draw a map showing more detail, so that's

seven and a half degree quadrangle, now what they do is they wanted to draw a map showing more detail, so that's

why they're using this plat down to a scale of one inch

in one, so that elevation is -- you know, it's 1,193 feet where the location of the well is going to be bored -- drilled.

Q. Okay. So the surface elevation in this box is the actual location, not the one depicted on the USGS map?

A. I don't know how else to explain it. The

1 A. So, yeah, the elevation is 1,193 feet.
2 (Discussion off the record.)
3 A. This thing is representing -- it has a
4 detailed map, but then it also shows a location on this
5 much bigger map.
6 MR. YEAGER: I had asked off the
7 record whether there were actually
8 two different scales represented
9 in this one document, and I
10 understand the answer to be --
11 THE WITNESS: Yes.
12 MR. YEAGER: Okay, that helps me
13 make sense of it.
14 THE WITNESS: And the scale being
15 9,000, you know, from the top down
16 to the bottom, it's probably
17 almost 16,000 feet, so it depends
18 how far you're away from that
19 latitude line is where the square
20 box is going to be drawn, the same
19 latitude line is where the square
20 box is going to be drawn, the same
19 latitude line is where the square
20 box is going to be drawn, the same
21 for longitude too.
22 Q. One final question, I think, on the plat.
23 Above the boxes at the bottom, at the left it says
24 surveyor, engineer, phone number, drawing number, date,
25 scale. On the right side it says tract acreage, and

1 there's no number showing there. Do you know whether it
2 should be there or why there's no number?
3 A. I do not know.
4 Q. And when it says tract acreage, would that be
5 the area within the thousand foot circle or the area of
6 the rectangular property line?
7 A. I do not --
8 Q. All right. A couple of questions on Page 2
9 and 3. Page 2 it says PNDI project environmental review
10 receipt. Who gathers the information that's on Pages 2
11 and 3?
12 A. The applicant.
13 Q. And on Page 3, there are -- appear to be
14 responses from the game commission, the DCNR, Fish and
15 Boat Commission, Fish and Wildlife Service. Are those
16 actual communications, e-mails, letters? Does the
17 applicant have to have a letter from each one of these
18 reviewing entities, agencies?
19 A. No. I believe this as printout they enter
20 their data into the PNDI system, and this is the report
19 A. No. I believe this as printout they enter
20 their data into the PNDI system, and this is the report
19 A. No. I believe this as printout they enter
20 their data into the PNDI system, and this is the report
21 that it generates so the applicant puts this information
22 in the header here, and then the PNDI generates this
23 report, so this report is generated by --
24 Q. So it's based on the information that's
25 already in a database of some nature.

1 A. Yes, yes, that's correct.
2 Q. So under the US Fish and Wildlife Service,
3 which seems to be the only sort of substantive response
4 other than no impact, that's already in the database?
5 A. Yes, that's generated by the database, I
6 believe. My geologist would be able to answer that much
7 better.
8 Q. When it says no impacts to federally listed
9 or proposed species are anticipated, federally is
10 underlined. Do you have any idea why?
11 A. No.
12 Q. And when it says no impacts are anticipated,
13 is there a proximity component involved in that? Does
14 that mean on the project itself or would it include a
15 larger area?
16 A. I believe it includes a larger area but
17 you --
18 Q. Do you have any idea how big an area?
19 A. No. I think there's different buffers for
20 different species.
19 A. No. I think there's different buffers for
20 different species.
19 A. No. I think there's different buffers for
20 different species.
21 Q. Okay. Would your geologist --
22 A. They would have a better idea what those
23 distances are than -- they probably -- they wouldn't
24 know them all because I think there are different
25 buffers. Eagles would be one thing and then muscles

1 would be another, so it depends on what species you're
2 dealing with.
3 Q. You mentioned muscles. Is there some
4 particular reason you mentioned muscles?
5 A. No, just an example.
6 Q. Are muscles typically something that is an
7 endangered species near these types of projects?
8 MR. HOLTZMAN: Objection to the
9 form of the question. You can
10 answer it if you know.
11 A. When you say these types of projects --
12 MR. HOLTZMAN: Exactly.
13 Q. All right. Gas well projects. Have you seen
14 gas well projects that have impacts on endangered muscle
15 species?
16 A. No, and muscles comes up because of MPDS
17 discharges, I guess, is probably why -- if a discharge
18 is going to a stream from an industrial facility then --
19 doing a comparison of water -- an organism in the water
20 versus a bird.
19 doing a comparison of water -- an organism in the water
20 versus a bird.
19 doing a comparison of water -- an organism in the water
20 versus a bird.
21 Q. Okay. Would the proximity to Hollister Creek
22 be factored into that consideration then?
23 A. I think it would be part of the PNDI search.
24 Q. Okay.
25 MR. ZIMMERMAN: I think that's all

1 I have. Thank you.

2 (Recess from 3:45 p.m. to 3:57 p.m.)

3

4 CROSS-EXAMINATION

5 BY MR. HOLTZMAN:

6

7 Q. Mr. Lobins, my name is Tony Holtzman. I'm

8 counsel for the permittee in this matter. I'm hoping to

9 ask you a couple follow-up questions to clarify some of

10 the points you made earlier during your testimony.

11 A. Okay.

12 Q. First, if you could go over for me again

13 because I sort of missed some of the essence of what it

14 is you exactly do when you sign off on a permit. I

15 think you said -- and correct me if I'm wrong -- it

16 comes to you for final authorization, and then if it's

17 acceptable, you sign?

18 A. That's correct.

19 Q. Can you please fill in the details of that

20 process for me?

19 Q. Can you please fill in the details of that

20 process for me?

19 Q. Can you please fill in the details of that

20 process for me?

21 A. Yes. Well, a lot of it is quality control.

22 Q. Okay.

23 A. And I'm taking a look at -- I have the

24 printed permit and I'm comparing the data that's on the

25 printed permit to the plat, making sure that it's a

1 correct latitude longitude depth that's being drilled
2 and the right special conditions are on the permit, and,
3 for example, if it's a Marcellus application, we have
4 four or five different special conditions for all
5 Marcellus wells, if it's a horizontal well, making sure
6 that the deviation survey is on there.
7 And then also if there's -- if the site would
8 have any type of a compliance history, you know, should
9 we be issuing this permit, so that's -- so basically,
10 it's quality control and -- yeah, quality control and
11 then I sign the permit.
12 Q. Okay. So is it fair to say that you check
13 and make sure that information on one document matches
14 with what's supposed to be on another document?
15 A. That's fair. That's a fair statement, yes.
16 Q. Okay. And that conditions and things of that
17 nature that are supposed to be included have been
18 included?
19 A. That's correct.
20 Q. Would you describe it as a fairly
19 A. That's correct.
20 Q. Would you describe it as a fairly
19 A. That's correct.
20 Q. Would you describe it as a fairly
21 administrative process?
22 A. Yes.
23 Q. And you said it typically takes you
24 approximately two to five minutes to complete each one?
25 A. Yes.

1 Q. Is that right?
2 A. Yes, yes.
3 Q. Thank you. And correct me if I'm wrong, but
4 I think you said earlier in your testimony that you have
5 a general understanding of what goes into a technical
6 review of a permit application, but because it's not
7 your role, you don't really have a specific
8 understanding of all the elements of the technical --
9 A. That's correct, I wouldn't know all the
10 nuances and every step that they go to.
11 Q. You've never performed a technical review,
12 have you?
13 A. No, I haven't.
14 Q. If the technical reviewer encounters an issue
15 in the process of performing that technical review, they
16 wouldn't bring it immediately to your attention, would
17 they?
18 A. No.
19 Q. And correct me if I'm wrong, but you don't
20 recall the particular permit application that we have
19 Q. And correct me if I'm wrong, but you don't
20 recall the particular permit application that we have
19 Q. And correct me if I'm wrong, but you don't
20 recall the particular permit application that we have
21 been looking at today, Bates labeled 1 through 16,
22 correct, you don't remember this one in particular?
23 A. No.
24 Q. Okay. Could you flip to Page 15, please,
25 Bates label 15. And I think you said that you

1 recognized potentially some handwriting on this?
2 A. Yes.
3 Q. And whose handwriting did you say you thought
4 that might have been?
5 A. Joe Lichtinger's.
6 Q. Okay. Thank you. And there's an item
7 circled in the middle of the well plat.
8 A. Yes.
9 Q. And you said, I think, that you don't know
10 exactly whose handwriting that would be?
11 A. That's correct.
12 Q. If you could turn to Page 18 of Appellant's
13 Exhibit 1, this is the Corrected Well Permit. I think
14 you said -- correct me if I'm wrong -- that it was
15 brought to your attention that the well type had been
16 mislabeled GS as opposed to TE.
17 A. Yes.
18 Q. Do you recall how that came to your
19 attention?
20 A. No.
19 attention?
20 A. No.
19 attention?
20 A. No.
21 Q. Okay. And it's correct, isn't it, that an
22 applicant for a test well is not required to submit a
23 water management plan?
24 A. That's correct.
25 Q. Thank you. Because you aren't familiar with

1 the intricacies of a technical review when it comes to a
2 permit application, you wouldn't know for certain, would
3 you, whether if an applicant checks the high quality
4 watershed box if that invokes some sort of special
5 technical review process?
6 A. That's correct.
7 Q. And correct me if I'm wrong, but your
8 testimony was that for the purposes of what you do in
9 your role, the checking of the high quality box doesn't
10 affect your particular role?
11 A. That's correct.
12 Q. Thanks. I think you said that there are
13 certain extra requirements that go into an E&S plan if
14 the proposed well site is going to be within a high
15 quality watershed; is that correct?
16 A. That's correct.
17 Q. What is the nature of those requirements if
18 you know?
19 A. I do not know.
20 Q. Okay. Is it your understanding that when an
19 A. I do not know.
20 Q. Okay. Is it your understanding that when an
19 A. I do not know.
20 Q. Okay. Is it your understanding that when an
21 inspector does a site visit for a well site, that they
22 would check to see if the E&S plan is being maintained
23 onsite?
24 A. Yes.
25 Q. Thank you.

1 A. And I should clarify. We have two classes of
2 inspectors. We have a water quality specialist and an
3 oil and gas inspector. A water quality specialist would
4 be the one that would be looking at -- we don't call him
5 an inspector but that's what he is. He would be looking
6 at the E&S.
7 The water quality specialist is responsibile
8 for surface activities, things you can see. The oil and
9 gas inspector is responsible for stuff that's
10 subsurface. I call them -- they're both inspectors. A
11 lot of times somebody will just say WQS. Well, a WQS is
12 an inspector, but he's not an oil and gas inspector.
13 He's a surface inspector.
14 Q. Okay. That's helpful. Thank you. And you
15 don't know for certain because you were not involved in
16 the technical review of this application, whether the
17 Department took into account the relationship between
18 the proposed well site and local zoning ordinances, do
19 you?
20 MR. YEAGER: I just want to object
19 you?
20 MR. YEAGER: I just want to object
19 you?
20 MR. YEAGER: I just want to object
21 to the use of leading questions,
22 so I'm going to object to the
23 form. You've been doing it some,
24 and I've let you go.
25 MR. HOLTZMAN: That's fine.

1 MR. YEAGER: But it's not
2 appropriate, so I'd ask you to
3 rephrase the question.
4 Q. You can answer it if you --
5 A. You should ask it again.
6 MR. HOLTZMAN: Could you please
7 read the question back.
8 (Question read.)
9 MR. YEAGER: Object further then,
10 contrary to the testimony. He was
11 involved in the review. He was in
12 charge of the review.
13 Q. You can answer the question, Mr. Lobins.
14 A. I do not know if the technical reviewer took
15 into consideration local zoning ordinances.
16 Q. Thank you. Do you know for certain whether
17 the technical reviewers that reviewed this permit
18 application took into account the impacts of the
19 proposed well on national or scenic rivers, or state and
20 scenic rivers?
19 proposed well on national or scenic rivers, or state and
20 scenic rivers?
19 proposed well on national or scenic rivers, or state and
20 scenic rivers?
21 A. I do not know if they took that into
22 consideration.
23 Q. Thank you. I believe you were asked to
24 indicate whether you saw an E&S plan in this particular
25 pack of documents, Bates 1 through 38 and you said no.

1 Would you expect to see an E&S plan among the documents
2 that are submitted by an applicant for a gas well permit
3 if the proposed well site will affect less than five
4 acres?
5 A. No, I would not expect to see it.
6 Q. Do you know for sure whether your technical
7 reviewers took into account the proximity of the
8 proposed project to the Delaware River when they
9 reviewed this application?
10 A. No. They would be looking at distance
11 restrictions.
12 Q. So you don't know for certain?
13 A. I do not know for certain.
14 Q. Thank you. And correct me if I'm wrong, but
15 you said that there's nothing in this packet of
16 documents to indicate to you that the proposed
17 project --
18 MR. YEAGER: I object. You got to
19 be able to ask your questions in a
20 non-leading way.
19 be able to ask your questions in a
20 non-leading way.
19 be able to ask your questions in a
20 non-leading way.
21 MR. HOLTZMAN: It's not a leading
22 question, if you'd let me finish
23 asking it.
24 MR. YEAGER: Because from the
25 first clause it's leading.

1 MR. HOLTZMAN: I'll rephrase.
2 Q. Do you see anything in this packet of
3 information labeled 1 through 38 to suggest that the
4 proposal did not meet the distance restrictions of the
5 Oil and Gas Act as far as you understand those
6 restrictions?
7 A. I do not see anything that would -- and I do
8 not see anything that would indicate that they do not
9 meet the distance restrictions.
10 Q. Thank you. Is it correct that you don't know
11 whether this project is in the Delaware watershed?
12 A. That's correct.
13 Q. Do you know for certain whether your
14 technical reviewers conducted a review of this proposed
15 project under the department's anti-degradation program?
16 A. I do not know if that's part of the review.
17 Q. Thank you. Do you know whether for certain
18 technical reviewers, in considering this application
19 took into account any comprehensive plans adopted by a
20 local government or municipal government?
19 took into account any comprehensive plans adopted by a
20 local government or municipal government?
19 took into account any comprehensive plans adopted by a
20 local government or municipal government?
21 A. I do not know if they took that into
22 consideration.
23 Q. Thanks. Do you know for certain whether any
24 of your technical reviewers took into account
25 the location -- strike that.

1 Do you know for certain whether your
2 technical reviewers took into account the proposed
3 project's impact on groundwater recharge?
4 A. I do not know that for certain.
5 Q. Thank you. Do you know for certain whether
6 they took into account the proposed project's potential
7 impacts on stream flow?
8 A. I do not know that for certain.
9 Q. Could you turn to Page 2, of the documents,
10 please. And I think you stated that the map at the
11 center of the page, the darkened section of the map is
12 the river corridor for the Delaware River; is that
13 right?
14 A. Yes.
15 Q. And I think you also testified that the star
16 that's beneath that darkened section is the location of
17 the proposed well site?
18 A. Yes.
19 Q. Is the proposed well site located within the
20 Delaware River corridor?
19 Q. Is the proposed well site located within the
20 Delaware River corridor?
19 Q. Is the proposed well site located within the
20 Delaware River corridor?
21 A. No.
22 Q. Could you turn to Page 32, please. I think
23 you were asked questions about this particular e-mail
24 earlier. Did you receive this particular e-mail, to
25 your knowledge?

1 A. No.

2 Q. Thanks. Do you know for certain whether your

3 technical reviewers took into account the potential

4 impacts of the proposed project on public -- potential

5 public resources?

6 A. No.

7 Q. What about national landmarks?

8 A. No.

9 Q. National parks?

10 A. No.

11 Q. Is it fair to say that you don't have any

12 first-hand knowledge of what exactly the nature of your

13 technical reviewer's review was?

14 A. No first-hand knowledge, no.

15 MR. HOLTZMAN: Thanks. That's all

16 the questions I have.

17 MR. YEAGER: Wendy, do you have

18 some? I have some follow-up.

19 MS. CARSON-BRIGHT: No, I don't

20 have any.

19 MS. CARSON-BRIGHT: No, I don't

20 have any.

19 MS. CARSON-BRIGHT: No, I don't

20 have any.

21

22 REDIRECT EXAMINATION

23 BY MR. YEAGER:

24

25 Q. I just have a few. You don't know for

1 certain that the information that Newfield supplied on
2 its forms is accurate, do you?
3 A. No.
4 Q. When you look at this map on Page 2 and you
5 see the location of what you've identified the dark area
6 as the Delaware River corridor --
7 A. Yes.
8 Q. -- and the star as the location of the then
9 proposed well site --
10 A. Yes.
11 Q. -- working from the assumption that this is
12 accurate, is it your -- and you're a geologist, been
13 working for the Department for, how long has it been?
14 A. Almost 25 years.
15 Q. Does it appear to you that the site is within
16 the Delaware River watershed?
17 A. Yes, I would think it is, but I do not know
18 that for certain.
19 Q. Okay. You're the top level reviewer signing
20 off on permits, on these permits, correct?
19 Q. Okay. You're the top level reviewer signing
20 off on permits, on these permits, correct?
19 Q. Okay. You're the top level reviewer signing
20 off on permits, on these permits, correct?
21 A. Yes.
22 Q. And you've got time pressures that you act
23 under?
24 A. Yes.
25 Q. Is there a certain turnaround time that you

1 have to act on the permits?
2 A. 45 days.
3 Q. The Department has 45 days?
4 A. Yes, the Department has 45 days.
5 Q. By the time you get it, are you under time
6 pressures yourself to do what you need to do?
7 MR. HOLTZMAN: Objection, form of
8 the question.
9 A. Do I answer?
10 Q. Yes.
11 A. Occasionally.
12 Q. You have less than 45 days because --
13 A. I have less than 45 days, yes.
14 Q. You've had somebody do the administrative
15 completeness review.
16 A. Yes.
17 Q. It's then passed to Mr. Babb, correct?
18 A. Right.
19 Q. He's then passed it to one of the geologists,
20 correct?
19 Q. He's then passed it to one of the geologists,
20 correct?
19 Q. He's then passed it to one of the geologists,
20 correct?
21 A. Yes.
22 Q. Geologist works on it and then sends it back
23 to Mr. Babb?
24 A. Yes.
25 Q. And then Mr. Babb sends it to you?

1 A. To clerical actually.
2 Q. Okay.
3 A. Administration, yeah, clerical.
4 Q. Permit gets typed up?
5 A. Um-hum.
6 Q. By them. And then the whole -- all complete
7 package comes to you?
8 A. That's correct.
9 Q. And so by that point, more than half of that
10 45-day period used up generally?
11 A. Yes, yes.
12 Q. Is there a general amount of time that you
13 have left to act by the time it gets to you? A week,
14 less than a week, more than a week?
15 A. Yeah, a week.
16 Q. Okay.
17 A. Typically, yeah, a week would be a good
18 average.
19 Q. And you're responsible for the work of
20 Mr. Babb and the geologists that work under you and
19 Q. And you're responsible for the work of
20 Mr. Babb and the geologists that work under you and
19 Q. And you're responsible for the work of
20 Mr. Babb and the geologists that work under you and
21 under him?
22 A. Yes.
23 Q. And you're independent on them to make sure
24 that the documents that get forwarded to you are a
25 complete representation of what was considered in the

1 consideration of the permit?

2 A. Yes.

3 Q. And so you're expecting to see in the

4 documentation that if there were issues that are

5 identified and if there were considerations that were

6 made, that those would be reflected in the documents?

7 A. Yes.

8 Q. And you rely on those documents?

9 A. Yes. And I'm sorry, to clarify, you said if

10 they had issues?

11 Q. Right.

12 A. Yes, yes.

13 Q. And you rely on getting a complete file in

14 order for you to give final approval that the proposed

15 project meets both the administrative and technical

16 requirements of the law?

17 A. That's correct.

18 Q. And you wouldn't sign off on a permit unless

19 you were comfortable that there had been a full

20 consideration and that the permits met the technical and

19 you were comfortable that there had been a full

20 consideration and that the permits met the technical and

19 you were comfortable that there had been a full

20 consideration and that the permits met the technical and

21 administrative requirements of the law, correct?

22 A. That's correct.

23 MR. YEAGER: I don't have any

24 other questions.

25

RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. I have one further redirect. In your response to one of Mr. Holtzman's questions, you indicated that there are two types of inspectors?

A. Yes.

Q. One does water quality and one does oil and gas; is that correct?

A. Well -- yes. I think that's -- well, they both work for the oil and gas program, and their titles are different. One is a water quality specialist, but his job, he's actually an inspector, and he does the surface inspection, surface activities.

So, for example, it would be the storm water, making sure the proper BMPs, the proper BMPs are on site, encroachments, if there's any type of encroachments, so things that you can actually see.

Q. I see.

A. But then the oil and gas inspectors, also

Q. I see.

A. But then the oil and gas inspectors, also

Q. I see.

A. But then the oil and gas inspectors, also

with the oil and gas program, he's responsible for down hole actual drilling operation as far as casing, cementing, fracking the well, well records, completion reports.

Q. In the exhibit, if you could turn to Pages 25

1 through 29, 25 and 26, the inspector's signatures for
2 Steve Watson, and for -- actually, he's on Page 25, 26
3 and 27.
4 A. Yes.
5 Q. And then 28 and 9 is a report signed by Ray
6 Klemish. Do you know whether Mr. Watts and Mr. Klemish
7 are water quality specialists?
8 A. I know that Steve Watson is an oil and gas
9 inspector. I do not know Brian Klemish, so I'm not sure
10 what his title is.
11 MR. ZIMMERMAN: Thank you. I
12 don't have anything further.
13 MR. HOLTZMAN: I have one or two
14 final questions.
15
16 RECROSS-EXAMINATION
17 BY MR. HOLTZMAN:
18
19 Q. Mr. Lobins, I think you said during questions
20 that I asked you the first time around, if in performing
19 Q. Mr. Lobins, I think you said during questions
20 that I asked you the first time around, if in performing
19 Q. Mr. Lobins, I think you said during questions
20 that I asked you the first time around, if in performing
21 a technical review, a technical reviewer ran into an
22 issue, they would tend to take that to their direct
23 superior in the first instance as opposed to bringing it
24 to you; is that right?
25 A. That's correct.

1 Q. And when you get a package from the
2 inspectors and the others who were involved in the
3 review process at the end of the day, it comes to you
4 for your signature, would you expect to see notations in
5 that packet if things -- of things that were problems
6 along the way?
7 A. Yes, and typically, when you say problems, I
8 think of technical deficiencies, and then there would be
9 a record of that technical deficiency.
10 Q. And I'm sorry, that's exactly what I was
11 looking for. But if there were not a technical
12 deficiency, you would not expect to see a notation of
13 that necessarily; is that right?
14 A. That's correct.
15 MR. HOLTZMAN: I have no further
16 questions.
17
18 FURTHER RECROSS-EXAMINATION
19 BY MR. ZIMMERMAN:
20
19 BY MR. ZIMMERMAN:
20
19 BY MR. ZIMMERMAN:
20
21 Q. Actually, if I could with one more. I forgot
22 about it, and I apologize. In response to one of
23 Mr. Holtzman's questions, you mentioned the four or five
24 special conditions that you would be looking at when a
25 package arrives on your desk for Marcellus projects.

1 You also mentioned something about compliance
2 history. Are you looking at compliance history of the
3 applicant for the well or compliance history of the
4 site? I don't understand whether there is a difference.
5 A. For the applicant, looking for compliance
6 history of the applicant.
7 Q. And what would knowing the compliance history
8 of the applicant cause you to do?
9 A. If we have an order issued to that -- for
10 example, if we have an order issued to that applicant
11 and the applicant is not in compliance with his order,
12 then after -- after the appeal period is over, I cannot
13 issue -- if there's a compliance issue with that order,
14 then I cannot issue a permit to that applicant, an oil
15 and gas permit to that applicant.
16 Q. Does that apply whether the site where you
17 would issue the permit is the one where the compliance
18 history issue arose or it would be for a different site?
19 A. No, it could be for a different site because
20 it's an administrative order to that applicant, and if
19 A. No, it could be for a different site because
20 it's an administrative order to that applicant, and if
19 A. No, it could be for a different site because
20 it's an administrative order to that applicant, and if
21 it's -- I think it's a final administrative action by
22 the Department, if they're not in compliance with that,
23 then I cannot issue that permit.
24 MR. ZIMMERMAN: Thank you.
25 MR. HOLTZMAN: Nothing further.

1 MR. YEAGER: You're free.

2 THE WITNESS: Okay.

3

4 (Deposition concluded at 4:22 p.m.)

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1 **REPORTER'S CERTIFICATE**

2

3

4

5

6 I, Lisa Willow Weiss, a Court Reporter and Notary
7 Public in and for the Commonwealth of Pennsylvania, do
8 hereby certify that the foregoing is a true and accurate
9 transcription of my stenographic notes in the
10 above-captioned matter.

11

12

13

14

15

16 Lisa Willow Weiss
17 Lisa Willow Weiss
Court Reporter and Notary Public
COMMONWEALTH OF PENNSYLVANIA
18 Notarial Seal
Lisa Willow Weiss, Notary Public
City of Meadville, Crawford County
19 My Commission Expires July 31, 2012
Member, Pennsylvania Association of Notaries

20
City of Meadville, Crawford County
19 My Commission Expires July 31, 2012
Member, Pennsylvania Association of Notaries

20
City of Meadville, Crawford County
19 My Commission Expires July 31, 2012
Member, Pennsylvania Association of Notaries

20
Dated: March 29, 2011
21

22

23

24

25

1 **COMMONWEALTH OF PENNSYLVANIA**
ENVIRONMENTAL HEARING BOARD
2
3
4 **DAMASCUS CITIZENS FOR**
SUSTAINABILITY, THE DELAWARE
5 **RIVERKEEPER, DELAWARE**
RIVERKEEPER NETWORK, MR. JAMES R.
6 **WILSON, MR. JONATHAN B. GORDON AND**
MESSRS. THOMAS AND MICHAEL COONEY
7
8 **v.** **EHB Docket No. 2010-102M**
9 **COMMONWEALTH OF PENNSYLVANIA,**
DEPARTMENT OF ENVIRONMENTAL
10 **PROTECTION AND NEWFIELD**
APPALACHIA PA, LLC, Permittee
11
12
13
14 Deposition of **JOSEPH F. LICHTINGER**, taken before and
15 by Lisa Willow Weiss, Notary Public in and for the
16 Commonwealth of Pennsylvania, on Thursday, March 24,
17 2011, commencing at 11:30 a.m. at the Pennsylvania
18 Department of Environmental Protection, 230 Chestnut
19 Street, Meadville, Pennsylvania.
20
19 Street, Meadville, Pennsylvania.
20
19 Street, Meadville, Pennsylvania.
20
21
22
23

1 **APPEARANCES**

2

3

4 **For the Appellants, the Delaware Riverkeeper and Delaware Riverkeeper Network:**

5

Jordan B. Yeager, Esquire
6 Curtin & Heefner LLP
Heritage Gateway Center
7 1980 South Easton Road, Suite 220
Doylestown, Pennsylvania 18901

8

9 **For the Appellants:**

10 John J. Zimmerman, Esquire
Zimmerman & Associates
11 13508 Maidstone Lane
Potomac, Maryland 20854

12

13 **For the Commonwealth of Pennsylvania, Department of Environmental Protection:**

14

Stephanie K. Gallogly, Esquire
15 Pennsylvania Department of Environmental Protection
230 Chestnut Street
16 Meadville, Pennsylvania 16335-3481

17

For Newfield Appalachia PA, LLC:

18

Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101

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JOSEPH F. LICHTINGER

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1 J O S E P H F. L I C H T I N G E R, first having
2 been duly sworn, testified as follows:
3
4 DIRECT EXAMINATION
5 BY MR. YEAGER:
6
7 Q. I good morning, sir.
8 A. Good morning.
9 Q. Could you state and spell your full name,
10 please?
11 A. Joseph F. Lichtinger, J-O-S-E-P-H, F.
12 L-I-C-H-T-I-N-G-E-R.
13 Q. And how are you currently employed, sir?
14 A. I'm a licensed professional geologist.
15 Q. Is that your title?
16 A. Yes.
17 Q. How long have you had that position?
18 A. Two years.
19 Q. And that's with the DEP, correct?
20 A. Correct.
19 Q. And that's with the DEP, correct?
20 A. Correct.
19 Q. And that's with the DEP, correct?
20 A. Correct.
21 Q. And what were you doing prior to that?
22 A. I was a geologic specialist with DEP.
23 Q. What's the difference between the two roles?
24 A. Well, I was hired as a geologic specialist,
25 and then while still having my professional geologist

1 licensure, I then was upgraded, I guess, to the higher
2 classification.
3 Q. Okay.
4 A. But I was hired while I was a geologic
5 specialist. I had my PG.
6 Q. Okay. And when did you get hired?
7 A. September 15th, 2008.
8 Q. And what were you doing prior to that?
9 A. I worked for an environmental consulting
10 firm.
11 Q. Which?
12 A. Nutec Design, N-U-T-E-C.
13 Q. What were you doing there?
14 A. I was a geologist, a professional geologist.
15 Q. What kind of projects were you working on?
16 A. Geotechnical, environmental, land
17 development, civil.
18 Q. And how long had you been there?
19 A. Ten years.
20 Q. And in school prior to that?
19 A. Ten years.
20 Q. And in school prior to that?
19 A. Ten years.
20 Q. And in school prior to that?
21 A. Correct.
22 Q. How have your duties changed, if at all,
23 between being a geologic specialist and a licensed
24 professional geologist?
25 A. They have not.

1 Q. Okay. So what are your duties here?
2 A. Currently, I work on gas migrations.
3 Q. What's that mean?
4 A. Gas migrations occur sometimes either from
5 new well drilling, old wells that are in the area,
6 people end up with either gas in their water wells or
7 they end up with gas in their structures.
8 Q. What does it mean you work on gas migrations?
9 A. If it's determined that a water supply has
10 been compromised by natural gas or methane, I then come
11 in and help with the investigation on determining what
12 the source of that methane is.
13 Q. And how long have you been doing that?
14 A. Six months.
15 Q. What were you doing prior to that?
16 A. Reviewing permits.
17 Q. How long have you been doing that?
18 A. Since I started here.
19 Q. Okay.
20 A. Roughly two years, yeah.
19 Q. Okay.
20 A. Roughly two years, yeah.
19 Q. Okay.
20 A. Roughly two years, yeah.
21 Q. And can you identify what you would do
22 generally, go through what your role was in reviewing
23 permits?
24 A. I would be the first line of technical review
25 for the permit application.

1 Q. And that entails what?
2 A. Reviewing the permit application that's sent
3 in by the applicant: The plat, the notifications,
4 checking on setback requirements. It's pretty
5 complicated for me to list everything I looked at.
6 Q. How long would you spend on each application?
7 A. Variable.
8 Q. Ranging from what to what?
9 A. From a half-hour to maybe a day.
10 Q. Would you prepare any documents as part of
11 your review?
12 A. Sometimes.
13 Q. What kind of documents would you prepare?
14 A. Sometimes denial letters.
15 Q. Anything else?
16 A. Water supply notification letters.
17 Q. Anything else?
18 A. Coal determination, not letters, but just --
19 internal for the application. That's primarily it, I
20 think.
19 internal for the application. That's primarily it, I
20 think.
19 internal for the application. That's primarily it, I
20 think.
21 Q. Okay. And during the two-year period that
22 you were doing -- that you were reviewing the permits,
23 did you have other duties?
24 A. Very limited. I worked on a case where I had
25 to look at a mining operation to determine if they were

1 going to dewater a wetland.
2 Q. And let's limit my question to the time
3 frame, the spring and early summer of 2010. Did you
4 have other duties besides permit review then?
5 A. I don't remember.
6 Q. Okay.
7 A. I don't think so.
8 Q. Okay. What kinds of permits were you
9 reviewing during that time frame?
10 A. Any type of permit from a shale well to a
11 Marcellus well.
12 Q. Were you reviewing permits besides well
13 permits?
14 A. No.
15 Q. Were you reviewing E&S permits?
16 A. No.
17 Q. During the time that you were doing those
18 permit reviews, were you aware of any distinction the
19 Department drew between gas wells and something called a
20 test well?
19 Department drew between gas wells and something called a
20 test well?
19 Department drew between gas wells and something called a
20 test well?
21 A. No.
22 Q. The issues that you were looking at, and the
23 review that you would conduct be the same regardless of
24 whether it was classified by the applicant as a gas well
25 or a test well?

1 A. Or oil well or any of the other, yeah.
2 Q. Okay.
3 A. Excuse me, except for injection. Injection
4 well is another approved by EPA.
5 Q. Okay. Would the review that you would
6 conduct be any different if the project was five acres
7 or greater versus a project that was less than five
8 acres?
9 A. No, no bearing.
10 Q. Would the review that you would conduct be
11 different in any way if the proposed project was within
12 a special protection watershed high quality or
13 exceptional value?
14 A. No.
15 Q. As part of your review, would you consider
16 what, if any, impact the proposed project might have on
17 a high quality or exceptional value watershed?
18 A. Only if that was within the 100 foot setback
19 that we had. It would be the same whether high quality
20 or not, so no, I guess, would be the answer.
19 that we had. It would be the same whether high quality
20 or not, so no, I guess, would be the answer.
19 that we had. It would be the same whether high quality
20 or not, so no, I guess, would be the answer.
21 Q. Okay. During the course of your review of
22 permits, did you consider what, if any, impact the
23 project, proposed project might have on any national or
24 state scenic rivers?
25 A. This one in particular? Could you restate

1 the question?

2 Q. Yes. During the course of your review of

3 well permits, did you consider what, if any, impact the

4 proposed project might have on any national or state

5 scenic rivers?

6 A. Yes.

7 Q. What was the -- how did you go about those

8 considerations?

9 A. Well, the Clarion and the Allegheny River

10 were national scenic rivers --

11 Q. Okay.

12 A. -- that I was aware of. And we had to make

13 sure they were not in the corridor.

14 Q. Okay.

15 A. But the corridor is not defined.

16 Q. Other than projects that were within the

17 Clarion and Allegheny, any consideration given to

18 national or state scenic rivers?

19 A. I did not.

20 Q. Okay.

19 A. I did not.

20 Q. Okay.

19 A. I did not.

20 Q. Okay.

21 A. Because I was not aware of any other.

22 Q. And I take it even within those that you were

23 aware of, that -- well, within those that you were aware

24 of, what was the -- how did you go about that

25 consideration?

1 A. I don't believe I ever had any in it.
2 Q. Okay.
3 A. So we have on our -- part of our process
4 delineates those scenic rivers.
5 Q. Okay.
6 A. If you had one that was in a range you needed
7 to check on, you did, but I never had one that fell in
8 what I think would be the corridor.
9 Q. But you said the corridor wasn't defined.
10 A. Not that I knew of.
11 Q. So how did you determine whether something
12 was in the corridor?
13 A. I didn't have one in the corridor.
14 Q. How did you know?
15 A. Because I didn't have -- well, no, I didn't.
16 Q. How did you know whether it was within the
17 corridor or not?
18 A. Because the corridor is likely not more than
19 5,000 feet away.
20 Q. Okay.
19 5,000 feet away.
20 Q. Okay.
19 5,000 feet away.
20 Q. Okay.
21 A. I would assume something not within a mile is
22 not within a corridor.
23 Q. Okay. Would you assume that something within
24 a mile is within a corridor?
25 A. No.

1 Q. You wouldn't know.
2 A. I had no reason to assume anything.
3 Q. Okay. I take it you never had a project that
4 was within a mile of those scenic corridors that you
5 understood involving the Clarion and the Allegheny?
6 A. That would be a guess.
7 Q. Is that your best estimate?
8 A. Probably, yeah.
9 Q. Now, I got the sense that there was some
10 document that you looked at that gave you some
11 information to assist in this process?
12 A. Correct.
13 Q. What's that document?
14 A. Part of our mapping system.
15 Q. What's that called?
16 A. A USGS topomap, and then we have a mylar
17 overlay.
18 Q. What's the source of the data on the mylar
19 overlay?
20 A. Well, from inking in the wells, locating the
19 overlay?
20 A. Well, from inking in the wells, locating the
19 overlay?
20 A. Well, from inking in the wells, locating the
21 wells on the mylar from the permit application.
22 Q. That's something you do?
23 A. I did. Something I did. I don't anymore.
24 Q. When you were doing that permit review.
25 Other than the data supplied by the USGS, was there

1 other data that you were relying on?
2 A. Yes.
3 Q. What were the sources of that other data?
4 A. The federal wetlands inventory mapping. We
5 would rely on the USDA soil survey, geologic mapping.
6 Q. From what source is my question.
7 A. Well, it would be watershed information from
8 the GIS of -- Pennsylvania provides GIS. I don't know.
9 I don't know. Yeah, I don't know.
10 Q. Okay.
11 A. But they are delineated watersheds.
12 Q. Okay. And I apologize, I didn't give you a
13 set of instructions at the beginning. First of all,
14 have you ever sat for a deposition?
15 A. No, this is my first one, thank you.
16 Q. You're welcome. It's a question and answer
17 session.
18 A. Yeah.
19 Q. Not a memory test. If you don't remember,
20 tell me vou don't remember.
19 Q. Not a memory test. If you don't remember,
20 tell me vou don't remember.
19 Q. Not a memory test. If you don't remember,
20 tell me you don't remember.
21 A. Okay.
22 Q. If you're not sure, tell me you're not sure.
23 A. Okay.
24 Q. It might be -- you know, give me your best
25 estimate, okay?

A. Sure.

Q. The court reporter takes down what we all have to say, so she can't take down nods and shakes. Um-hums and huh-huh's are hard to read in the transcripts and it's hard when two people are talking at one time.

A. Okay.

Q. So I'll try to use words and I'll try not to talk when you're talking and I'll ask you to do the same.

A. Sure.

Q. My hope is we'll be able to get you out of here before any need for a break, but if you need a break, don't be shy, take what you need, okay?

A. Yes, thank you.

Q. If you don't understand a question that I ask or a part of my question, let me know and I'll try to rephrase it, okay?

A. Yes.

Q. Okay. The data from the USGS that you were

A. Yes.

Q. Okay. The data from the USGS that you were

A. Yes.

Q. Okay. The data from the USGS that you were utilizing, do you know how current that data was?

A. No.

Q. If I asked you that -- and I know you didn't know all the sources but if I asked you that for each of the sources that you knew what they were, would you know

1 how current they were?
2 A. No.
3 Q. Okay. Is it your understanding that the data
4 provided by those agencies are general data that don't
5 reflect site specific conditions?
6 A. Yes.
7 Q. And that the only -- is it accurate then in
8 order to determine, for example, wetlands you to have a
9 site specific wetlands delineation?
10 A. Yes.
11 Q. Now, when you got information from an
12 applicant on the application, did you do any
13 investigation to determine whether the information that
14 they were providing was accurate?
15 A. Define information.
16 Q. Whatever they provided you in their forms.
17 A. Well, that's what I was verifying that
18 certain things were present or not present.
19 Q. Okay. And as I understood what you were
20 talking about earlier, the extent of your effort to
19 Q. Okay. And as I understood what you were
20 talking about earlier, the extent of your effort to
19 Q. Okay. And as I understood what you were
20 talking about earlier, the extent of your effort to
21 verify was to compare what they provided on their plat
22 versus what you had from these data sources; is that
23 correct?
24 A. For -- yes, yes.
25 Q. Okay. As a general rule, is it accurate that

1 you didn't do -- that you didn't go on site?

2 A. I did not go on site.

3 Q. And that you didn't have a representative of

4 the Department go on site to verify?

5 A. Certain times you would.

6 Q. Okay.

7 A. Yeah.

8 Q. When you did that, would that be documented

9 in the file?

10 A. Yes.

11 Q. Okay. Now, did you make any effort, as you

12 were working on a determination for approval or not of a

13 well permit, was there any consideration given to the

14 impact of the proposed well on publicly owned parks,

15 forests, game lands, wildlife areas?

16 A. A public resource form should be included if

17 it's within 200 feet of a public serviced owned property

18 municipal whether it's local, federal or state.

19 Q. Okay.

20 A. Or within that, within the property.

19 Q. Okay.

20 A. Or within that, within the property.

19 Q. Okay.

20 A. Or within that, within the property.

21 Q. Okay.

22 A. So there's a 200 foot buffer.

23 Q. If it's outside that 200 foot buffer, it

24 wasn't a consideration?

25 A. No.

1 Q. You're agreeing with me?
2 A. Yes, I think so.
3 Q. You're agreeing with me it was not a
4 consideration if it was outside that 200 foot buffer.
5 A. Yes.
6 Q. Okay. As part of your review of the permit
7 applications, did you assess the adequacy of any erosion
8 and sediment control plans?
9 A. No.
10 Q. Did you assess the adequacy of any storm
11 water management plans?
12 A. No.
13 Q. Did you make any effort as part of your
14 review of well permits to determine the amount of
15 acreage that was taken up by the well site?
16 A. No.
17 Q. Did you make any effort to determine the
18 distance from the well site to any wetlands?
19 A. Yes.
20 Q. What effort?
19 A. Yes.
20 Q. What effort?
19 A. Yes.
20 Q. What effort?
21 A. Part of the review was to check the well
22 location, to anything that would show up on their plat
23 and/or check the topo, the USGS quad to see if there was
24 a stream or body of water, and to check the wetlands in
25 inventory mapping.

1 Q. You used the term well location. Are you
2 talking about the bore hole?
3 A. The bore hole, but if the bore hole was
4 within a certain distance of any of those streams,
5 spring, body of water, wetlands, if it was 140 feet,
6 just throwing an arbitrary number -- if it's close
7 enough to think that the well pad would impact that 100
8 foot distance, then I would call the surveyor, the
9 individual preparer, to see if the pad would be within
10 that and, say, hey, you know what, you better take a
11 look at this because you're awfully close.
12 Q. Okay.
13 A. I don't want you to have a problem after the
14 fact.
15 Q. Did you have -- in your own review, did you
16 have a distance in your mind that you -- that raised
17 that question for you?
18 A. Yes.
19 Q. What distance did you utilize?
20 A. About 140, 150 for a shallow well and then
19 Q. What distance did you utilize?
20 A. About 140, 150 for a shallow well and then
19 Q. What distance did you utilize?
20 A. About 140, 150 for a shallow well and then
21 possibly 200 feet for a Marcellus well or a deeper well.
22 Eventually Brian Babb came out with an e-mail that
23 stated that. He wanted us to look at any -- call on any
24 well location that was within that distance.
25 Q. Within the distance that you're referring to

as the distance between the bore hole and what?

A. Any type of spring, stream, body of water, welt land, yes.

Q. Okay. When was that e-mail?

A. I don't know.

Q. Was it --

A. It was after he started.

Q. Okay. Do you think that directive was in placed in the spring, summer of 2010?

A. I don't know.

Q. Do you know what the term "well site," do you know that what that -- what's your understanding of what that term means?

A. The well pad.

Q. Okay.

A. That's my interpretation.

Q. Okay. And what's included within the well pad? What's made up of the well pad or what's the well pad made up of?

A. The limit of disturbance from creating the

pad made up of?

A. The limit of disturbance from creating the

pad made up of?

A. The limit of disturbance from creating the

pad. Again, my opinion.

Q. Does that include the area where the facilities that are associated with the well are stored onsite?

A. Well, by facilities, what do you mean?

1 Q. Does that term mean anything to you in your
2 position?
3 A. Facilities?
4 Q. Yes.
5 A. No.
6 Q. What about the equipment that's used?
7 A. Sure.
8 Q. So is where that equipment is located, is
9 that part of the well pad?
10 A. Yes, I would -- yeah.
11 Q. Okay. The well plat -- the plats that you
12 reviewed as part of your permit review process, did
13 those delineate the well pad, where the well pad was
14 located and the extent of the well pad?
15 A. Sometimes.
16 Q. As part of your review, did you ever consider
17 the cumulative impact of a project in connection with
18 other projects in the area?
19 A. No.
20 Q. Do you know, the information that's reflected
19 A. No.
20 Q. Do you know, the information that's reflected
19 A. No.
20 Q. Do you know, the information that's reflected
21 in the PNDI search, do you know how current that
22 information is kept?
23 A. I do not.
24 Q. All right. We've had this marked previously
25 as Appellant's 1. It's a set of documents that were

1 provided to us as part of discovery in this matter
2 provided by the Department. And they have a numbering
3 system at the bottom. Do you see down here?
4 A. Sure.
5 Q. Those are called Bates numbering, so
6 sometimes I might refer to the Bates page and that's
7 what I'm referring to, okay?
8 A. Yes.
9 Q. If you could take a moment to look through
10 it. I'm going to ask you some questions, and if I ask
11 you a question about a specific document, I'm going to
12 give you an opportunity to look at that. I just want
13 you to get generally familiar with what this packet is,
14 okay?
15 A. Okay.
16 Q. Do you recall working on this permit
17 application review?
18 A. No.
19 Q. In looking at the documents that are Page 1
20 through 16 --
19 Q. In looking at the documents that are Page 1
20 through 16 --
19 Q. In looking at the documents that are Page 1
20 through 16 --
21 A. Okay.
22 Q. Looking at the documents that come after 16,
23 17 on, are those the types of documents that get
24 generated after your -- and, again, I'm just limiting my
25 questions to the time that you were doing permit review.

1 Are those the types of documents that were generated
2 after your part of the process was complete?
3 A. Yes.
4 Q. And the documents then that are 1 through 16,
5 are those the materials that you would be looking at as
6 part of your permit review?
7 A. Yes.
8 Q. Are there any other documents that you would
9 expect to see in a permit file other than what's here?
10 A. Yes.
11 Q. What else would you expect to see?
12 A. Well, it would depend on the area that
13 they're drilling.
14 Q. Okay.
15 A. Again, I may expect to see a public resource
16 form.
17 Q. Okay.
18 A. I may expect to see a coal determination
19 letter. I may see a gas storage letter. That's about
20 it.
19 letter. I may see a gas storage letter. That's about
20 it.
19 letter. I may see a gas storage letter. That's about
20 it.
21 Q. Okay. And if you had correspondence with the
22 applicant, would that be contained in the file?
23 A. If it was written correspondence.
24 Q. Is there other type of correspondence?
25 A. Phone call.

Q. Okay.

A. Oral.

Q. Okay. And did you keep a phone log?

A. No.

Q. Of your phone conversations?

A. No.

Q. Do you remember being directed to keep a phone log?

A. No.

Q. Did you ever exchange e-mails with anybody in connection with a permit review?

A. Yes.

Q. What type of people would you be exchanging e-mails with?

A. Surveyors, operators, secretaries, any number of individuals involved in the permitting process.

Q. And would those e-mails then make it into the permit file?

A. Sometimes.

O. Have vou conducted a review of vour -- of the

A. Sometimes.

O. Have vou conducted a review of vour -- of the

A. Sometimes.

Q. Have you conducted a review of your -- of the files that -- the documents, e-mails that you have access to to determine whether you have any documents related to this project?

A. I have no e-mails.

Q. My first question was whether you conducted a

1 review.

2 A. No.

3 Q. How do you know you don't have any e-mails?

4 A. Because I don't have any e-mails from

5 permitting.

6 Q. What happened to those?

7 A. Deleted.

8 Q. Who deleted them?

9 A. Me, if I even had any.

10 Q. Well, you were telling me a minute ago about

11 the types of people you would be e-mailing with.

12 A. Sure.

13 Q. So certainly at some point you had e-mails.

14 A. At some point, yes.

15 Q. Did you have a schedule that you followed for

16 deleting things?

17 A. No.

18 Q. Did you delete things every day?

19 A. I had no schedule.

20 Q. Did you delete things when you were leaving

19 A. I had no schedule.

20 Q. Did you delete things when you were leaving

19 A. I had no schedule.

20 Q. Did you delete things when you were leaving

21 that role?

22 A. Likely.

23 Q. Well, do you recall deleting things when you

24 were leaving that role?

25 A. Oh, you mean by role, the position I was in?

1 Q. The position that you were in. You changed
2 roles to doing permit reviews to doing --
3 A. No, I would say I deleted as I determined the
4 correspondence was not relevant anymore.
5 Q. How did you make that determination that it
6 wasn't relevant anymore?
7 A. If they satisfied what I found to be
8 delinquent in their permit application.
9 Q. Okay. Were there e-mails that you had in
10 connection with a permit review other than documenting
11 with the applicant or one of its consultants a
12 delinquency?
13 A. Not that I'm aware of.
14 Q. Did you ever have e-mails with Brian Babb
15 about review of a particular application?
16 A. Not that I'm aware of.
17 Q. If there was a deficiency in a file and we
18 wanted to -- that had been cleared up to your mind and
19 we wanted to go back and figure out whether at one point
20 there had been a deficiency, would we be able to do
19 we wanted to go back and figure out whether at one point
20 there had been a deficiency, would we be able to do
19 we wanted to go back and figure out whether at one point
20 there had been a deficiency, would we be able to do
21 that?
22 A. I don't know. If there was a deficiency and
23 I had to take the -- I don't know how familiar you are
24 with the process, but take the permit off the clock, in
25 eFACTS, it would show I took the permit off the clock

1 and it would have a little blurb that explained why,
2 like within 100 feet of wetlands.
3 Q. Okay.
4 A. So it would be recorded in eFACTS.
5 Q. Okay. If you had a question about something
6 on the application that you didn't determine that it was
7 a deficiency but you had a question or a concern, did
8 that ever happen?
9 A. Yes.
10 Q. What would you do when that would happen?
11 A. Call --
12 Q. Okay.
13 A. -- the preparer.
14 Q. And would there be any way to look back at
15 any records within the Department and figure out that
16 that had happened?
17 A. No.
18 Q. The first page of this application has some
19 handwriting on it. Can you identify what of that
20 handwriting is yours?
19 handwriting on it. Can you identify what of that
20 handwriting is yours?
19 handwriting on it. Can you identify what of that
20 handwriting is yours?
21 A. You want me to point to it or --
22 Q. Just if you can identify it, you can identify
23 what it is by the box that it's in perhaps.
24 A. There's a box with a C.
25 Q. Right.

1 A. Then there's a G. That's my writing with a
2 date, 5-3-10 and then my initials.
3 Q. And that's in the top box under permit
4 application, DEP use only, correct?
5 A. Right. In the same box, there's an objection
6 date, do not issue before. There's a 5-3-10, that's my
7 writing.
8 Q. Okay.
9 A. And then same upper box, there's a watershed
10 name. I have Hollister Creek, and then I have circled
11 the designation high quality.
12 Q. Okay. Do you see where it stays INV in that
13 same set of box to the left and then it says 5-27-10?
14 A. Yes.
15 Q. Do you know whose that is?
16 A. I do not.
17 Q. Do you know what that category represents?
18 A. No.
19 Q. All right. How did it come about that you
20 would have -- and I understand you don't have a specific
19 Q. All right. How did it come about that you
20 would have -- and I understand you don't have a specific
19 Q. All right. How did it come about that you
20 would have -- and I understand you don't have a specific
21 recollection of this permit.
22 A. Sure.
23 Q. But generally, was that part of your role was
24 to write in the name of the watershed?
25 A. Yes.

1 Q. And to identify its designation?
2 A. Yes.
3 Q. How did you go about doing that?
4 A. With the GIS layers that delineated the
5 watershed.
6 Q. Okay.
7 A. And it let you know if it was high quality,
8 EV.
9 Q. Once you made that determination, did that
10 change the nature of your review at all?
11 A. No.
12 Q. Did you make, when you identified a high
13 quality watershed or an EV watershed, did you make any
14 effort to determine what impact, if any, the project, as
15 proposed, would have on that watershed?
16 A. No.
17 Q. All right. Now having this document in front
18 of you, can you explain in any further detail what you
19 did to -- when you would get a set of documents like
20 this, what your next steps would be?
19 did to -- when you would get a set of documents like
20 this, what your next steps would be?
19 did to -- when you would get a set of documents like
20 this, what your next steps would be?
21 A. I could do it in great detail.
22 Q. Okay.
23 A. Or I can do it in little detail.
24 Q. Well --
25 A. I would first take a look at the plat, which

1 is document --

2 Q. 15?

3 A. Yes, it's 15. Typically, I would check to

4 make sure that the plat is to scale, okay?

5 Q. And simply that it shows there's a scale

6 identified?

7 A. Well, that's one thing and then to make sure

8 the document is actually to that scale.

9 Q. Okay.

10 A. And not to a scale that's not within that

11 range.

12 Q. How would you know?

13 A. We have a scale and you measure a distance.

14 There's this line that says it's 1,061 feet.

15 Q. Okay.

16 A. I use an engineer's scale on -- and this one

17 in particular, it would be 1 to 400. You use the 40

18 scale and make sure it measured that distance.

19 Q. But you wouldn't know whether that's an

20 accurate reflection of what was going on on the ground.

19 Q. But you wouldn't know whether that's an

20 accurate reflection of what was going on on the ground.

19 Q. But you wouldn't know whether that's an

20 accurate reflection of what was going on on the ground.

21 A. No, I'm only checking to make sure this

22 document is to scale.

23 Q. All right. Go ahead, I didn't mean to

24 interrupt. Actually, I meant --

25 A. And you must remember, I haven't done these

1 for six months.

2 Q. Okay.

3 A. I would then -- part of the process would be

4 to check, to make sure that the well location --

5 Q. You're talking about the well bore hole?

6 A. Well bore hole.

7 Q. Okay.

8 A. Had two points, was located from two

9 permanent points, property corners, roads. I would

10 verify that the distance they provided was accurate.

11 Q. Again, based on the scale they provided?

12 A. Yes.

13 Q. Not based on any site review.

14 A. No.

15 Q. Okay.

16 A. I would verify that it is not within 100 feet

17 of a spring, stream, or body of water.

18 Q. And again, that's not based on any site

19 specific information that you had?

20 A. It's based on the plat and the USGS.

19 specific information that you had?

20 A. It's based on the plat and the USGS.

19 specific information that you had?

20 A. It's based on the plat and the USGS.

21 Q. Okay.

22 A. And/or the federal wetlands inventory.

23 Q. Yes.

24 A. For all these I did no site specific check.

25 Q. Okay.

A. I would then verify that the water supplies, bearing distance was accurate, water locations that they provided. I would verify that the latitude and longitude matched the offsets that they provided, okay?

Q. Why is that important?

A. Well, because we want to make sure that it's accurately located, because I am using the data, plotting this on a USGS via lat long, and I'm trying to verify using these documents that I said that it's within or not within a certain distance from another object.

Q. Okay.

A. So if the lat long is not correct, it's not properly located on the USGS.

Q. Okay.

A. Let's see. I would then verify it's not within 200 feet of a structure.

Q. On that, you didn't have the benefit of any USGS mapping of that -- of those types of resources, elements?

USGS mapping of that -- of those types of resources, elements?

USGS mapping of that -- of those types of resources, elements?

A. Well, USGS does show structures.

Q. Okay.

A. Yeah, there are times when it may show a structure that appears within 200 feet of a well.

Q. Okay.

1 A. And, again, you make a phone call and say,
2 hey, is that there or not and they say, no, that's been
3 demolished.
4 Q. Okay.
5 A. So USGS does show structures. I would then
6 verify that, back to Page 1 because Page 1 has
7 information that correlates back to the plat or No. 15
8 here. I would make sure that the well applicant, well
9 operator matched, address, try to make sure all the
10 information in these grids matched with the front page,
11 check the target formation, because that has some
12 bearing on whether it's a conservation or a non-
13 conservation well and that then in turn kicks in
14 setbacks. I would verify the elevation based on the
15 USGS elevation, verify that the USGS quad matched.
16 That's all I can remember at this time.
17 Q. Okay. You had said you could give me a
18 detailed or a not detailed version. Well, which did you
19 give me?
20 A. It's mv detailed.
19 give me?
20 A. It's mv detailed.
19 give me?
20 A. It's my detailed.
21 Q. Okay. This page -- I'm sorry, go ahead.
22 A. Would you like me to keep going?
23 Q. Oh, sure, I thought you said you were done.
24 Absolutely.
25 A. Well, as far as permit, so I start with that

page, and then I would go back to verify on the PNDI that the date that they ran the PNDI was within a year of this -- of the time that I'm reviewing it, because that is -- they're only valid for a year, and the latitude and longitude that they provided on the plat matched on the PNDI, and then I would check to see if they had any hits.

Q. Okay.

A. If they have no hits, then PNDI is satisfied.

Q. Let me ask you a question while you're on that.

A. Sure.

Q. And this is Bates Page 2.

A. Um-hum.

Q. There's like a little plat map in the middle. Do you look at that at all, or did you look at that at all when you were doing these reviews?

A. Sometimes.

Q. In looking at this, do you know what that dark section is?

Q. In looking at this, do you know what that dark section is?

Q. In looking at this, do you know what that dark section is?

A. No.

Q. Okay. The star there, do you have any sense of what that is?

A. The site.

Q. Okay. Do you know what scale this would be

1 to?

2 A. No.

3 Q. All right. Thank you.

4 A. Yes. I would then verify the -- in this case

5 this is their coal determination.

6 Q. You're looking at Page 4?

7 A. I'm sorry, Page 4.

8 Q. That's all right.

9 A. In Wayne County, which is the county of

10 interest, does not show any coal in this quad. The next

11 step would be to make sure that the surface land owner

12 and water supplies were notified via page, what we call

13 Page 2, but Page 5 and 6.

14 Q. Okay.

15 A. And 7 and 11, and 12.

16 Q. And so what you're looking at is whether the

17 applicant has provided you the documentation of the

18 mailing of the notice?

19 A. Either written consent or the US Post Office

20 green card sign notification and verifying that it

19 A. Either written consent or the US Post Office

20 green card sign notification and verifying that it

19 A. Either written consent or the US Post Office

20 green card sign notification and verifying that it

21 matches the plat.

22 Q. Okay.

23 A. Water supplies.

24 Q. So do you do anything to determine whether

25 the people identified are the right people or whether

1 there are additional people that need to be identified
2 and notified?
3 A. By "right," do you mean --
4 Q. Do you make a determination as to whether --
5 I guess I'm more interested in whether there are people
6 who aren't listed here who should be listed here.
7 A. No, I don't.
8 Q. Okay.
9 A. And this is -- I'm sorry, but I do check to
10 make sure that the PNDI was signed.
11 Q. Okay.
12 A. This would be Page 13. I did no review of
13 Page 16.
14 Q. Okay.
15 A. Of course, if I noticed it was EV or HQ, I
16 would stamp it on the plat.
17 Q. Okay.
18 A. And then I would also on Page 1, write it
19 down and circle it.
20 Q. Let me ask you a question about that. Why
19 down and circle it.
20 Q. Let me ask you a question about that. Why
19 down and circle it.
20 Q. Let me ask you a question about that. Why
21 would you do that?
22 A. Because I was told that's what was required,
23 yeah.
24 Q. Okay.
25 A. Okay, then I would check 1 through 12, 13,

1 just to take a look to make sure that the appropriate
2 boxes were checked.
3 Q. What do you mean by "appropriate"?
4 A. Well, in this case, this well is an Onondaga
5 well, which means it's a conservation well, and
6 Pennsylvania has setback requirements for conservation
7 wells, so that needs to be checked yes and yes.
8 The coal question, I want to make sure that
9 they have that correct. And if any of these other
10 questions, for example, if they had yes or will it
11 penetrate or be within 2,000 feet of an active gas
12 reservoir or boundary, if it said yes and they didn't
13 have notification, I'd need to have notification for
14 that. That's just an example of why I'm checking.
15 Q. On the coal, you're looking at the map that
16 they provided --
17 A. Um-hum.
18 Q. -- to see whether, in fact, it appears to be
19 in a region where there's a coal seam or not?
20 A. Yes.
19 in a region where there's a coal seam or not?
20 A. Yes.
19 in a region where there's a coal seam or not?
20 A. Yes.
21 Q. That was the Page 4?
22 A. Yes.
23 Q. Okay.
24 A. I want to make sure the signatures are there
25 for the preparer. And then I verify that the dates of

1 notification, that the individuals who were notified
2 have 15 days to respond, so I wanted to make sure that
3 the date they received notification and/or signed was at
4 least 15 days in the date box.
5 Q. Okay.
6 A. So if it was greater than 15 days, I just put
7 the date that I reviewed it.
8 Q. Okay.
9 A. I would look at PNDI, the various boxes.
10 That's primarily it.
11 Q. Okay. Anything else you can think of?
12 A. No.
13 Q. Do you from looking at these documents from
14 the permit application and review, can you determine
15 what the distance of the project is from Hollister
16 Creek?
17 A. No.
18 Q. Can you determine what its distance is from
19 the Delaware River?
20 A. No.
19 the Delaware River?
20 A. No.
19 the Delaware River?
20 A. No.
21 Q. Did you consider municipal comprehensive
22 plans or municipal zoning at all?
23 A. No.
24 Q. Can you tell from this whether there would
25 have been any analysis of the distance of the project

1 from any wild and scenic river corridor?

2 A. Can you say that again?

3 Q. Can you tell from the review of these

4 documents whether any consideration would have been

5 given to the distance of the project from any wild and

6 scenic river corridor?

7 A. No.

8 Q. Can you tell from the documents here and what

9 you would have reviewed as part of the permit review

10 where the project is, in terms of being up gradient or

11 down gradient from Hollister Creek?

12 A. Could you ask that again?

13 Q. Yes. From the documents that you would have

14 from the application package and from the other

15 materials that you would have consulted as part of your

16 review, would you have made a determination about

17 whether the project was up gradient or down gradient of

18 Hollister Creek?

19 A. Well, there's contours on the USGS.

20 Q. Was that something you looked at?

19 A. Well, there's contours on the USGS.

20 Q. Was that something you looked at?

19 A. Well, there's contours on the USGS.

20 Q. Was that something you looked at?

21 A. Part of our review processes an NHD portion

22 of eFACTS where -- and I'm going to struggle with this

23 because I haven't done it for six months, but there's a

24 point that shows the well location, and then you have to

25 look at the stream -- it's kind of an odd system, look

1 at the stream and determine whether, if you're standing
2 at the head waters, whether it's coming from the right
3 side or the left side of the stream. So I did have to
4 take look at the contours, but for nothing other than
5 that NHD part of the process.
6 Q. With what goal? Why were you looking at it?
7 A. I have no idea.
8 Q. Were you considering whether its location
9 would have an impact on those water resources or
10 watershed?
11 A. No.
12 Q. Were you considering which way runoff would
13 flow?
14 A. No.
15 Q. Did you consider whether there were
16 alternative sighting or design options?
17 A. No.
18 Q. Do you have -- well, at the time that you
19 were conducting permit reviews, did you have any
20 understanding of what it means to be an HO watershed?
19 were conducting permit reviews, did you have any
20 understanding of what it means to be an HO watershed?
19 were conducting permit reviews, did you have any
20 understanding of what it means to be an HQ watershed?
21 A. Only that it means high quality.
22 Q. Any understanding what high quality means?
23 A. No.
24 Q. Do you have any understanding what EV means?
25 A. Exceptional value.

1 Q. And any understanding what exceptional value
2 mean?
3 A. Other than, I would assume to be high quality
4 watersheds, that's all.
5 Q. Okay.
6 A. I don't know how they're determined.
7 Q. Okay. Do you know what that means in terms
8 of the level of protection that they have under the law?
9 A. (Witness shakes heads negatively.)
10 Q. No?
11 A. No.
12 Q. Did you, as part of your review of well
13 permits, did you communicate with any local
14 municipalities?
15 A. No.
16 Q. Did you consider or analyze what impact, if
17 any, the proposed project might have on stream flow?
18 A. No.
19 Q. Did you consider or analyze the impact the
20 proposed project might have on groundwater recharge?
19 Q. Did you consider or analyze the impact the
20 proposed project might have on groundwater recharge?
19 Q. Did you consider or analyze the impact the
20 proposed project might have on groundwater recharge?
21 A. No.
22 Q. Now, if you look at Page 1 of the Exhibit,
23 Question No. 11, did you do this -- will the well be
24 located where it may impact a public resource as
25 outlined in the coordination of a well location with

1 public resources from 5500-PM-060076. Did you make any
2 effort to determine whether that was accurate, the
3 answer -- and they checked no. The applicant checked
4 no.
5 A. The property is not owned by a public entity.
6 That's how I verified that.
7 Q. Based on the information the applicant gave
8 you.
9 A. Yeah.
10 Q. Other than the ownership of the site where
11 the well would be located?
12 A. The surface.
13 Q. Any other effort to verify the information on
14 No. 11?
15 A. No.
16 Q. Did you make any effort to analyze whether
17 the project could be developed with a smaller disturbed
18 area?
19 A. No.
20 Q. Do vou know whether there's a -- whether
19 A. No.
20 Q. Do vou know whether there's a -- whether
19 A. No.
20 Q. Do you know whether there's a -- whether
21 there are personnel within DEP that are responsible for
22 the special protection programs involving the HQ and EV
23 watersheds?
24 A. I don't know.
25 Q. In looking at these documents, can you

1 identify whether there was any site visit conducted as
2 part of the permit review?
3 A. I cannot.
4 Q. Do you see anything that indicates that there
5 was?
6 A. By whom?
7 Q. By anyone associated with the permit review.
8 A. Oh, no, I would say no.
9 Q. Do you see anything that indicates that there
10 was any communication with anybody as part of the permit
11 review outside of DEP?
12 A. I don't know.
13 Q. You don't see anything that indicates such
14 communication?
15 A. I don't see anything that indicates.
16 Q. Okay. Do you know what H2S is?
17 A. Hydrogen sulfide.
18 Q. Okay. When you're reviewing a permit, is
19 that something you consider, presence of hydrogen
20 sulfide? When you were reviewing permits, was that
19 that something you consider, presence of hydrogen
20 sulfide? When you were reviewing permits, was that
19 that something you consider, presence of hydrogen
20 sulfide? When you were reviewing permits, was that
21 something you considered?
22 A. No.
23 Q. What's your understanding of what hydrogen
24 sulfide is?
25 A. Gas. That's about it.

1 Q. Is it volatile, dangerous?
2 A. I don't think it's good for you, no.
3 Q. Where do you find hydrogen sulfide?
4 A. I've heard of it in drilling activities.
5 Q. Okay. Is it localized or is it everywhere?
6 A. I don't know.
7 Q. What have you heard about it in drilling
8 activities?
9 A. Just that you can run into it sometimes.
10 Q. Okay. Is that a bad thing?
11 A. I don't know. Based on conversations, I
12 would assume it is.
13 Q. What have you --
14 A. I overheard people saying H2S is not good to
15 hit.
16 Q. Any effort as part of the review process when
17 you were doing permit reviews to avoid hitting H2S?
18 A. No.
19 Q. Do you have any understanding what the risk
20 is if you do hit H2S?
19 Q. Do you have any understanding what the risk
20 is if you do hit H2S?
19 Q. Do you have any understanding what the risk
20 is if you do hit H2S?
21 A. No, I do not.
22 Q. Did you ever hear that there was some mapping
23 available that showed regions where you might find H2S?
24 A. No. Mapping by whom?
25 Q. Mapping that was utilized by the Department

1 and available to the Department.
2 A. No.
3 Q. No? You have to answer out loud.
4 A. No, I'm sorry.
5 Q. That's okay. Now, as wells were being
6 developed that had gone through the permit process and
7 permits had been approved, was there information coming
8 back to the permitting program, the people who were
9 involved in the permitting to modify how you were going
10 about the permitting to learn from the wells that had
11 been developed?
12 A. Nothing came back to me.
13 MR. YEAGER: I don't have any
14 further questions for you, sir.
15 MR. ZIMMERMAN: I have just one
16 question.
17 THE WITNESS: Okay.
18
19 CROSS-EXAMINATION
20 BY MR. ZIMMERMAN:
19 CROSS-EXAMINATION
20 BY MR. ZIMMERMAN:
19 CROSS-EXAMINATION
20 BY MR. ZIMMERMAN:
21
22 Q. In response to one of Mr. Yeager's questions
23 about streams, you referred to the NHD portion of
24 eFACTS. Can you tell me what NHD means?
25 A. No. I don't know what NHD stands for.

1 Q. What does the NHD portion of eFACTS tell you
2 then?
3 A. I don't know. It's data collected that's
4 analyzed by somebody else elsewhere.
5 Q. Well, when you access the NHD portion of
6 eFACTS, what do you see?
7 A. This would be from recollection because I
8 never looked at it that closely, but it does give
9 information on the watershed, I believe, and the stream
10 that is downstream of the activity.
11 Q. And you referred to in your answer to one of
12 the questions, whether something was coming from the
13 right or coming from the left, what did you mean by
14 that?
15 A. Well, as it was explained to me, if you have
16 a topo, if you have a site that shows contours, a USGS,
17 you're familiar with it, it shows contours.
18 Q. Yes, sir.
19 A. Of course, water flows downhill, watersheds.
20 If your project was on one side of the watershed and
19 A. Of course, water flows downhill, watersheds.
20 If your project was on one side of the watershed and
19 A. Of course, water flows downhill, watersheds.
20 If your project was on one side of the watershed and
21 drained down towards the creek, they wanted you to
22 assume if you were standing at the headwaters of that
23 stream and you looked downstream, was the project on the
24 right or the left. I agree with you, I don't know.
25 That's all the more I can tell you.

1 MR. ZIMMERMAN: I have no more
2 questions. I don't have anything
3 further.
4 MR. HOLTZMAN: Can we take a break
5 before we resume?
6 MR. YEAGER: Sure.
7 MS. GALLOGLY: Sure.
8 (Recess from 1220 p.m. to 12:30 p.m.)
9 MR. HOLTZMAN: Did you have a
10 question, Stephanie?
11 MS. GALLOGLY: I don't. I have
12 nothing.
13
14 CROSS-EXAMINATION
15 BY MR. HOLTZMAN:
16
17 Q. Joe, my name is Tony Holtzman. I'm counsel
18 for the permittee in this matter, and I'm just going to
19 ask you a few questions to follow up and clarify some
20 points that you made earlier today.
19 ask you a few questions to follow up and clarify some
20 points that you made earlier today.
19 ask you a few questions to follow up and clarify some
20 points that you made earlier today.
21 A. Okay.
22 Q. My first one is, you had mentioned that a
23 variety of features are displayed on the USGS service
24 that you used when you were reviewing permit
25 applications; is that correct?

1 A. Well, the USGS is a map that's published by
2 USGS that shows certain features.
3 Q. Right. And you said that among those
4 features include buildings, for example?
5 A. Yes.
6 Q. What, to your recollection, are the other
7 features that are displayed?
8 A. Barns.
9 Q. Okay.
10 A. As far as structures?
11 Q. In general. We'll start with structures.
12 A. They show structures, residence. They show
13 barns as an open square. They show streams. They show
14 swamps. I don't know if I'd call them wetlands. They
15 show lakes. They show ponds. They show -- sometimes
16 they show the green -- when they did their aerial
17 photography for it, they show whether it's wooded or not
18 wooded, roads, churches. There's other -- not the whole
19 list but --
20 Q. Those are what vou recall?
19 list but --
20 Q. Those are what vou recall?
19 list but --
20 Q. Those are what you recall?
21 A. Those are what I recall.
22 Q. Okay. And did you then consider the proposed
23 well site relative to those various features?
24 A. Yes.
25 Q. Each and every one of the features?

1 A. Yes, sure.
2 Q. Are you familiar with E&S plans?
3 A. Yes. Well, I've heard about them, yes.
4 Q. Okay. What do you know about that?
5 A. That they are erosion and sedimentation
6 control plans, that they are developed and designed by
7 engineers to help control erosion and sedimentation
8 throughout some type of construction project.
9 Q. Okay. Do you know if there are any special
10 features of an E&S plan if a proposed project is going
11 to be located in a high quality watershed?
12 A. No, I'm not aware of.
13 Q. If you could look at the documents for just a
14 moment. We'll start with Page 1, and there's a box near
15 the top right-hand side of Page 1 that says type of
16 well.
17 A. Um-hum.
18 Q. And you see that the term "other" has an X
19 next to it.
20 A. Yes.
19 next to it.
20 A. Yes.
19 next to it.
20 A. Yes.
21 Q. And it says vertical test well underneath
22 that, correct.
23 A. Yes.
24 Q. And what's your understanding of a vertical
25 test well, if you have any?

1 A. I don't have one.
2 Q. Okay.
3 A. It's a vertical well.
4 Q. Okay. What about Page 18? Do you see that
5 there's a box designated well type.
6 A. Yes.
7 Q. And there's the letter TE -- the letters TE,
8 I'm sorry. Correct?
9 A. Yes.
10 Q. Okay. Do you know what TE means?
11 A. No.
12 Q. Okay. I think you mentioned earlier on that
13 there's some distinctions in the review process for an
14 injection well?
15 A. Yes.
16 Q. And did you say that it involved something
17 special relating to the EPA?
18 A. Yes.
19 Q. Is there anything you saw in this packet of
20 materials in front of you that would suggest that this
19 Q. Is there anything you saw in this packet of
20 materials in front of you that would suggest that this
19 Q. Is there anything you saw in this packet of
20 materials in front of you that would suggest that this
21 was an injection well?
22 A. No.
23 Q. Okay. You also said, I believe, and correct
24 me if I'm wrong that the NHD of the eFACTS system is
25 used by somebody else generally.

1 A. Yes.
2 Q. Do you know who uses it?
3 A. I do not.
4 Q. And you, therefore, I assume, don't know what
5 they do with it?
6 A. I do not.
7 Q. Okay. And just to clarify, you don't recall
8 this particular permit application, correct?
9 A. No, I do not.
10 MR. HOLTZMAN: I don't have any
11 other questions.
12 MR. YEAGER: I don't have
13 anything.
14 MR. ZIMMERMAN: Nothing from me.
15 MS. GALLOGLY: Nothing.
16
17 (Lichtinger deposition concluded at 12:35 p.m.)
18
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25

1 **REPORTER'S CERTIFICATE**

2

3

4

5

6 I, Lisa Willow Weiss, a Court Reporter and Notary
7 Public in and for the Commonwealth of Pennsylvania, do
8 hereby certify that the foregoing is a true and accurate
9 transcription of my stenographic notes in the
10 above-captioned matter.

11

12

13

14

15

16 Lisa Willow Weiss

Lisa Willow Weiss
17 Court Reporter and Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
18 Lisa Willow Weiss, Notary Public
City of Meadville, Crawford County
My Commission Expires July 31, 2012
19 Member, Pennsylvania Association of Notaries

20

19 Member, Pennsylvania Association of Notaries

20

19 Member, Pennsylvania Association of Notaries

20 Dated: March 29, 2011

21

22

23

24

25

1 **COMMONWEALTH OF PENNSYLVANIA**
ENVIRONMENTAL HEARING BOARD

2

3

4 **DAMASCUS CITIZENS FOR**
SUSTAINABILITY, THE DELAWARE
5 **RIVERKEEPER, DELAWARE**
RIVERKEEPER NETWORK, MR. JAMES R.
6 **WILSON, MR. JONATHAN B. GORDON AND**
MESSRS. THOMAS AND MICHAEL COONEY

7

8 **v.** **EHB Docket No. 2010-102M**

9 **COMMONWEALTH OF PENNSYLVANIA,**
DEPARTMENT OF ENVIRONMENTAL
10 **PROTECTION AND NEWFIELD**
APPALACHIA PA, LLC, Permittee

11

12

13

14 Deposition of **MARY SLYE**, taken before and
15 by Lisa Willow Weiss, Notary Public in and for the
16 Commonwealth of Pennsylvania, on Wednesday, March 23,
17 2011, commencing at 12:00 p.m. at the Pennsylvania
18 Department of Environmental Protection, 230 Chestnut
19 Street, Meadville, Pennsylvania.

20

19 Street, Meadville, Pennsylvania.

20

19 Street, Meadville, Pennsylvania.

20

21

22

23

1 **APPEARANCES**

2

3

4 **For the Appellants, the Delaware Riverkeeper and Delaware Riverkeeper Network:**

5

Jordan B. Yeager, Esquire
6 Curtin & Heefner LLP
Heritage Gateway Center
7 1980 South Easton Road, Suite 220
Doylestown, Pennsylvania 18901

8

9 **For the Appellants:**

10 John J. Zimmerman, Esquire
Zimmerman & Associates
11 13508 Maidstone Lane
Potomac, Maryland 20854

12

13 **For the Commonwealth of Pennsylvania, Department of Environmental Protection:**

14

Wendy Carson-Bright, Esquire
15 Pennsylvania Department of Environmental Protection
230 Chestnut Street
16 Meadville, Pennsylvania 16335-3481

17

For Newfield Appalachia PA, LLC:

18

Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101
Anthony Holtzman, Esquire
19 K&L Gates, LLP
17 North Second Street, 18th Floor
20 Harrisburg, Pennsylvania 17101

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I N D E X

MARY SLYE

Direct examination by Mr. Yeager. 4

EXHIBITS

Appellant's Exhibit No. 1. 26

1 M A R Y S L Y E, first having been
2 duly sworn, testified as follows:
3
4 DIRECT EXAMINATION
5 BY MR. YEAGER:
6
7 Q. Could you state your name and spell your last
8 name, please?
9 A. Mary Slye, S-L-Y-E.
10 MS. CARSON-BRIGHT: Before we get
11 started, I just want to note an
12 objection for the record regarding
13 Mr. Zimmerman. I understand
14 there's a motion before the board,
15 pro hac vice, but as of right now,
16 you're not permitted to practice
17 law in Pennsylvania, so I would
18 just note that objection for the
19 record.
20 MR. YEAGER: Are you opposing the
19 record.
20 MR. YEAGER: Are you opposing the
19 record.
20 MR. YEAGER: Are you opposing the
21 motion pro hac vice?
22 MS. CARSON-BRIGHT: I don't know.
23 MR. YEAGER: Mr. Holtzman?
24 MR. HOLTZMAN: I'm not.
25 MR. YEAGER: Could we get that

1 sorted out today what the
2 Department's position is going to
3 be on that so we can make sure.
4 Obviously, if all sides agree,
5 it's not going to be an issue.
6 MS. CARSON-BRIGHT: Right.
7 MR. YEAGER: And I would expect we
8 could get the Department's
9 cooperation on that, so if you
10 could check, that would be great.
11 MS. CARSON-BRIGHT: I would need
12 to consult with co-counsel.
13 MR. YEAGER: Sure, sure, I
14 understand.
15 MR. ZIMMERMAN: And just in
16 anticipation of that comment, I
17 won't be asking questions. If I
18 have questions, I will write them
19 out and hand them to Mr. Yeager to
20 ask, if that's all right with you.
19 out and hand them to Mr. Yeager to
20 ask, if that's all right with you.
19 out and hand them to Mr. Yeager to
20 ask, if that's all right with you.
21 MS. CARSON-BRIGHT: Well, I guess
22 that's still participating in the
23 deposition.
24 MR. HOLTZMAN: This is
25 Mr. Holtzman. I agree with the

1 nature of the objection.
2 Mr. Zimmerman is not currently
3 admitted to practice in
4 Pennsylvania, and his pro hac
5 motion has not yet been granted by
6 the board and, therefore,
7 technically should not be asking
8 questions or enabling another to
9 ask questions during this
10 deposition in his capacity as an
11 attorney.
12 MR. YEAGER: To suggest that
13 Mr. Zimmerman can't sit here as if
14 you had a representative of your
15 client could and aid you in
16 conducting a deposition, to
17 suggest that that's somehow
18 improper, really reflective of a
19 problem, and we'll address it in
20 due course if we need to. but whv
19 problem, and we'll address it in
20 due course if we need to. but whv
19 problem, and we'll address it in
20 due course if we need to, but why
21 don't we move forward.
22 Q. I think I had asked you to spell your last
23 name, and I don't know whether we got there.
24 A. Yes, but I can do it again.
25 Q. That's okay. How are you currently employed,

1 ma'am?

2 A. With the DEP.

3 Q. What's your position?

4 A. Clerical support.

5 Q. What do you do as a clerical support person

6 for DEP?

7 A. For the oil and grass program, basically any

8 of their administrative needs, processing applications.

9 Q. Have you ever sat for a deposition before?

10 A. Yes.

11 Q. Okay. So you know it's just a question and

12 answer session.

13 A. Right.

14 Q. It's not a memory test. If you don't

15 remember something, tell me you don't remember

16 something, okay?

17 A. (Witness nods head affirmatively.)

18 Q. The court reporter is taking down everything

19 we have to say, so shakes of the head and nods don't

20 show up in the transcript.

19 we have to say, so shakes of the head and nods don't

20 show up in the transcript.

19 we have to say, so shakes of the head and nods don't

20 show up in the transcript.

21 A. Yes.

22 Q. So I'll ask you to use words. Um-hums and

23 huh-huhs come out an awful lot alike in a transcript as

24 well so, again, I'll just ask you to try to verbalize as

25 much as you can, okay?

1 A. I understand.
2 Q. Okay. If at any point you need to take a
3 break, just let me know, okay?
4 A. Okay.
5 Q. And if at any point you don't understand a
6 question that I ask or a part of a question I ask, let
7 me know, okay?
8 A. I understand.
9 Q. Thank you. How long have you been with DEP?
10 A. Four years.
11 Q. And have you been in the same position for
12 the whole time?
13 A. No.
14 Q. What positions did you hold prior to that?
15 A. Clerical support in different programs for
16 the DEP.
17 Q. Okay. Which programs were you?
18 A. I started out in oil and gas, but it was
19 different duties. I was there for four months, worked
20 in the water quality program for. I think it was about
19 different duties. I was there for four months, worked
20 in the water quality program for. I think it was about
19 different duties. I was there for four months, worked
20 in the water quality program for, I think it was about
21 three and a half years, and I have been with oil and gas
22 for 16 months now.
23 Q. So the whole time you've been with DEP,
24 you've been in the clerical support position?
25 A. Yes.

1 Q. And what were you doing in the oil and gas
2 program for that initial roughly four months when you
3 started four years ago?
4 A. It was administrative support as well but
5 different duties. I was doing well records and things
6 of that nature, not actually working on permits.
7 Q. Okay. So explain for me as best you can what
8 you do.
9 A. I review the things that are submitted by the
10 companies for administrative completeness, not
11 necessarily the accuracy, but that what is required to
12 be submitted was submitted, and then I pass it on to
13 whichever individual is responsible for reviewing it.
14 Q. So how do you go about determining whether
15 what's required to be submitted has been submitted? How
16 do you make that determination?
17 A. We have instructions and checklists for every
18 item that we receive.
19 Q. So you go down the checklist and compare it
20 with the documents that vou have in front of vou?
19 Q. So you go down the checklist and compare it
20 with the documents that vou have in front of vou?
19 Q. So you go down the checklist and compare it
20 with the documents that you have in front of you?
21 A. Yes.
22 Q. And what happens if you determine that there
23 is something incomplete?
24 A. Depending on what type of issue it is, I'll
25 either receive a phone call stating this is what we need

1 corrected or we'll issue an administrative
2 incompleteness letter.
3 Q. Who makes that determination whether to do it
4 by phone call or issue an administrative incompleteness
5 letter?
6 A. Mostly it's a judgment call on our side or if
7 we have a question, we'll ask a supervisor how we should
8 handle this.
9 Q. So when you say judgment call on our side,
10 you're talking about you and the other clerical support
11 personnel?
12 A. Yes.
13 Q. Okay. So you have the initial -- am I
14 correct in understanding you have an initial ability to
15 say I think we ought to do this by call or to do a
16 letter, but if you're not certain, you'll go to your
17 supervisor; is that fair?
18 A. Yes, yes.
19 Q. And do you have one supervisor who you report
20 to or multiple?
19 Q. And do you have one supervisor who you report
20 to or multiple?
19 Q. And do you have one supervisor who you report
20 to or multiple?
21 A. Mostly just one.
22 Q. Okay. Who's that?
23 A. Renee Lee.
24 Q. Could you spell that?
25 A. R-E-N-E-E, and it's L-E-E.

1 Q. L-E?
2 A. L-E-E.
3 Q. And what's her position?
4 A. Clerical supervisor.
5 Q. You said "mostly". Is there somebody else
6 you report to as well?
7 A. There's the department head also, but we
8 report to Renee.
9 Q. And then Renee reports to the department
10 head?
11 A. Yes.
12 Q. Who's the department head?
13 A. Craig Lobins.
14 Q. And once you make a determination that the
15 file is administratively complete, what happens next?
16 A. We enter into eFACTS, the computer system
17 that we use, and then give it to -- for a permit, we
18 give it to Brian Babb. He's the permit chief, and he
19 assigns it to a geologist.
20 Q. And you're doing this administrative
19 assigns it to a geologist.
20 Q. And you're doing this administrative
19 assigns it to a geologist.
20 Q. And you're doing this administrative
21 completeness review for things other than permits?
22 A. For well records, site restoration reports,
23 the other reports that are necessary to submit with a
24 permit.
25 Q. Meaning through the life of the permit?

1 A. Yes, sorry.
2 Q. That's okay. Once a file has been assigned
3 to you to do that initial review for administrative
4 completeness, do you continue to have a role in that
5 same file for the life of the permit?
6 A. Not necessarily.
7 Q. So is it random whether a file comes back to
8 you for other parts of the process?
9 A. Yes. If it's a specific issue, they may ask
10 us to work on it, but as far as when it's actually due
11 to be issued, any of us could get it back.
12 Q. Okay. So after you make a determination of
13 administrative completeness, is it possible that you
14 might never see that file again?
15 A. Yes.
16 Q. And if there are other determinations about,
17 or other recordkeeping roles that are handled by
18 clerical support, that might be handled by one of your
19 colleagues?
20 A. Yes.
19 colleagues?
20 A. Yes.
19 colleagues?
20 A. Yes.
21 Q. If we wanted to figure out what -- if we had
22 a permit file in front of us, could we determine who the
23 clerical support person was who did the administrative
24 completeness review?
25 A. Yes.

1 Q. How do we do that?
2 A. On the top of the application, there's a
3 square that has a C and a colon, and we put the date and
4 initials of when we did the review on it.
5 Q. Okay.
6 A. So you can tell by the initials who did it.
7 Q. Okay. And then can we tell in the later
8 parts of the process which clerical support person was
9 involved?
10 A. No.
11 Q. Okay. When you're conducting your
12 administrative completeness review, are you simply
13 looking at what documents have been submitted or are you
14 also looking at the content of those documents?
15 A. The document and very little as far as the
16 content. Certain documents we have to check that they
17 were submitted in a certain format, but that's it.
18 Q. Okay. Can you identify which those are?
19 A. On the plans that they have to submit, it has
20 to be sealed by a land surveyor or professional
19 A. On the plans that they have to submit, it has
20 to be sealed by a land surveyor or professional
19 A. On the plans that they have to submit, it has
20 to be sealed by a land surveyor or professional
21 engineer, so we have to check that it bears that seal
22 signature and we also have to check that the horizontal
23 reference datum was submitted in Version NAD83 so we
24 have to check for that.
25 On the PNDI, if there's any type of issue, if

1 a hitch shows up, we have to show that either there's a
2 signature or that there was a response, if it's
3 necessary, and I guess the -- no, that's it, yeah.
4 Q. Okay. Now, are all permit applications that
5 come into the oil and gas program, do they have the same
6 checklist that you use for making your administrative
7 completeness review?
8 A. Yes, yes.
9 Q. How are E&S permits handled as part of this
10 process?
11 A. They are not handled as part of this process
12 any longer. You cannot -- the E&S module is no longer
13 accepted, so are you referring to the USGS?
14 Q. Well, I'm asking you at all, do you play any
15 role in reviewing erosion and sediment control permits?
16 A. I review them as well.
17 Q. But do you not consider them part of the oil
18 and gas program?
19 A. They are, but it's separate from the drilling
20 permits now.
19 A. They are, but it's separate from the drilling
20 permits now.
19 A. They are, but it's separate from the drilling
20 permits now.
21 Q. Do you get those at the same time?
22 A. If the company submits it like that.
23 Q. Okay. When you are looking at the drilling
24 permit --
25 A. Um-hum.

1 Q. -- is one of the determinations for
2 completeness that you're making about whether there has
3 been an erosion and sediment control permit application
4 submitted as well?
5 A. No.
6 Q. To somebody within the Department that you
7 know of, is there some role within the Department of a
8 person who makes that determination about whether you
9 need see an E&S permit application as well?
10 A. I guess I'm not quite sure I understand the
11 question.
12 Q. Okay. Well, do you know when an E&S permit
13 needs to be submitted and when it doesn't?
14 A. Yes.
15 Q. When?
16 A. To the best of my knowledge, one has to be
17 submitted with the application if the application area
18 will cover five acres or more.
19 Q. So is there anyone within DEP who looks at
20 the application for the drilling permit and says, this
19 Q. So is there anyone within DEP who looks at
20 the application for the drilling permit and says, this
19 Q. So is there anyone within DEP who looks at
20 the application for the drilling permit and says, this
21 covers five acres or more, you're going to need an E&S
22 permit, I don't see an E&S permit, so, therefore, it's
23 incomplete?
24 A. I think someone farther down the line does
25 but I don't know for sure.

1 Q. Okay.
2 A. I specifically don't.
3 Q. Okay. What other permit applications -- so
4 if an E&S permit application is submitted, you review
5 that for administrative completeness as well?
6 A. Yes.
7 Q. What other permit applications do you review
8 for administrative completeness?
9 A. GPs, just any of the general permits. Those
10 are the only ones that oil and gas is handling now.
11 Q. Okay. Now, what about back in the spring and
12 summer of 2010, would those answers have been the same
13 in terms of what your role has been?
14 A. Yes.
15 Q. Can you estimate how many well permits you've
16 conducted administrative completeness reviews for?
17 A. We review 3 to 600 a month.
18 Q. When you say "we" --
19 A. The -- all of the clerical. We've been
20 receiving 3 to 600 a month. I've probably been
19 A. The -- all of the clerical. We've been
20 receiving 3 to 600 a month. I've probably been
19 A. The -- all of the clerical. We've been
20 receiving 3 to 600 a month. I've probably been
21 reviewing 40 percent of them. I honestly couldn't say
22 how many total I've done.
23 Q. How many --
24 A. Well over 1,000.
25 Q. You have a time period within which you're

1 supposed to complete your administrative completeness
2 review?
3 A. Yes.
4 Q. How long is that?
5 A. I believe we're -- eFACTS, I think we have
6 seven days to complete it. I think that's really the
7 only guideline we have for it.
8 Q. Is there a typical amount of time it takes to
9 conduct one administrative completeness review?
10 A. Once it's assigned to us, we usually complete
11 it within two days.
12 Q. I guess my question is, from when you -- you
13 got a lot that are being assigned to you --
14 A. Um-hum.
15 Q. -- on a daily basis, I'm assuming.
16 A. Yes.
17 Q. Once you turn to that file and start your
18 review of that file, are you working on one file at a
19 time?
20 A. Yes.
19 time?
20 A. Yes.
5 A. I believe we're -- eFACTS, I think we have
6 seven days to complete it. I think that's really the
7 only guideline we have for it.
8 Q. Is there a typical amount of time it takes to
9 conduct one administrative completeness review?
10 A. Once it's assigned to us, we usually complete
11 it within two days.
21 Q. Okay. So how long -- is there a general

1 Q. Okay. Now, you said 300 to 600 a month and
2 that you do 40 percent of them.
3 A. Yes.
4 Q. How many clerical support people are there
5 handling oil and gas permits?
6 A. Right now there is five of us.
7 Q. I'm not a math whiz, but if there are five of
8 you, why are you handling 40 percent of them?
9 A. I have the most experience, and one of them,
10 her main aspects with them is issuing. I'm the main
11 entering.
12 Q. Have you done the issuing as well?
13 A. Yes.
14 Q. Who is it that has that responsibility, the
15 main responsibility for issuing?
16 A. Betsy Miller.
17 Q. You've mentioned Craig Lobins, I believe.
18 A. Yes.
19 Q. And he's the department head. Is that for
20 the oil and gas program?
19 Q. And he's the department head. Is that for
20 the oil and gas program?
19 Q. And he's the department head. Is that for
20 the oil and gas program?
21 A. Oil and gas program manager.
22 Q. Manager. And what's Brian Babb's title?
23 A. Permit chief.
24 Q. And who is Joseph Lichtinger? How do you say
25 it?

1 A. Lichtinger, I think.
2 Q. Okay.
3 A. He's a geologist.
4 Q. So you said Betsy Miller has her primary
5 focus is on issuing?
6 A. Yes.
7 Q. But that you issue as well?
8 A. Yes.
9 Q. So you told me -- have you told me the
10 general outline of what you do as part of the
11 administrative completeness review?
12 A. No.
13 Q. Okay. What else do you do as part of the
14 administrative completeness review?
15 A. We -- I guess maybe I misunderstood the
16 question. I think I primarily have -- I receive it,
17 look through it, make sure everything necessary was
18 submitted, enter into eFACTS and pass it to Brian. I
19 guess that's basically it.
20 Q. Okay. Well, I think you did answer that.
19 guess that's basically it.
20 Q. Okay. Well, I think you did answer that.
19 guess that's basically it.
20 Q. Okay. Well, I think you did answer that.
21 A. Sorry.
22 Q. That's all right. Is there anything else
23 that you do as part of the administrative completeness
24 review other than what you already told me?
25 A. No, that's it.

1 Q. Okay. So when a permit application is
2 assigned to you to issue the permit -- I want to get to
3 the same questions that I've been asking as it related
4 to the administrative completeness review.
5 First of all, how would we determine, from
6 looking at a file -- can we determine from looking at a
7 file who was the issuing clerical support person?
8 A. No.
9 Q. Okay. Is there someplace in the system to
10 identify that?
11 A. In eFACTS, you can look at who issued it. It
12 would show issued by and that would show who did the
13 paperwork for the issuance.
14 Q. What are the responsibilities of the clerical
15 support person who is the issuing -- what do we call,
16 the issuing clerk? Is that the appropriate way to
17 identify a person?
18 A. Yeah, it would fit.
19 Q. Okay. Is there a way you refer to it?
20 A. We all refer to ourselves as permit clerks.
19 Q. Okay. Is there a way you refer to it?
20 A. We all refer to ourselves as permit clerks.
19 Q. Okay. Is there a way you refer to it?
20 A. We all refer to ourselves as permit clerks.
21 Q. Okay.
22 A. As far as what they would do, they receive
23 the permit from Brian Babb, and you go into eFACTS,
24 issue it, print off the appropriate document, and give
25 it to Craig for signature.

1 Q. So is there any -- it sounds very much like,
2 more like a clerical role than the completeness review.
3 Is that --
4 A. Yes.
5 Q. -- a fair characterization?
6 A. Yes.
7 Q. Besides making sure the information is
8 entered correctly into eFACTS, are there any aspects of
9 that role that would allow you to say there's something
10 incomplete here or this is a permit that shouldn't be
11 issued? Do you have any kind of role like that when
12 you're the issuing permit clerk?
13 A. No. By the time it's reached issuing, that's
14 all been addressed. It's been done and we've been told
15 it's okay for issue.
16 Q. Okay. Now, did you bring with you any
17 documents today in response to the deposition notice?
18 A. No.
19 MR. YEAGER: Does the Department
20 have any additional documents?
19 MR. YEAGER: Does the Department
20 have any additional documents?
19 MR. YEAGER: Does the Department
20 have any additional documents?
21 MS. CARSON-BRIGHT: We've provided
22 all the documentation to you.
23 There's nothing more.
24 Q. Where are permit files maintained?
25 A. It depends on the county of the permit.

1 Q. What about for Wayne County?
2 A. And the Williamsport office.
3 Q. And what's contained in a permit file?
4 A. Anything that was submitted for the permit
5 application as well as a copy of their issued permit
6 application and then any of the supporting documents
7 submitted afterwards.
8 Q. Are there other files that are maintained by
9 the Department that you're aware of in connection with
10 permits?
11 A. There will be an inspection folder. I
12 believe that's the only other one. I believe the well
13 records and reports of that nature go into the permit
14 folder, and then there's just the inspection folder
15 also.
16 Q. And what's contained in an inspection folder?
17 A. The oil and gas inspector and water quality
18 specialist's inspection reports.
19 Q. So is that then after the permit has been
20 issued?
19 Q. So is that then after the permit has been
20 issued?
19 Q. So is that then after the permit has been
20 issued?
21 A. Yes.
22 Q. Is there any file maintained that reflects
23 any of the Department's review of permit applications?
24 A. Just the permit application itself.
25 Q. You described earlier on that there may be

1 times when you would check with the supervisor to make a
2 determination about whether to make a phone call, if
3 there's an incompleteness.
4 A. Yes.
5 Q. To make a phone call or to issue a letter
6 about the incompleteness?
7 A. Yes.
8 Q. Is that communication done orally or by
9 e-mail or how is that done?
10 A. Usually, orally.
11 Q. Are you familiar within the Department
12 whether there are ever any e-mails that go around among
13 department personnel about the review of a particular
14 file or application?
15 A. There could be, and if there are, we print
16 them off and attach them to the application.
17 Q. Okay. So if there were such e-mails, it's
18 your understanding that they would make it into the
19 permit file that you described earlier?
20 A. Yes.
19 permit file that you described earlier?
20 A. Yes.
19 permit file that you described earlier?
20 A. Yes.
21 Q. Now, do you know what, if any, paperwork is
22 prepared by Brian Babb in the permit process?
23 A. I'm not sure that he produces any paperwork.
24 Q. Okay.
25 A. There's blocks on the permit where people

1 sign off, but I don't believe he does anything, any
2 paperwork on it.
3 Q. Okay. You mentioned a checklist that you use
4 as part of the administrative completeness review?
5 A. Yes.
6 Q. Do you physically check things off on the
7 checklist?
8 A. I have the sheet beside me and use it to
9 bounce back and forth between them, but it does not get
10 attached to the application. I make -- I guess would
11 make a note to myself that this would be an issue.
12 Q. And what happens with those notes?
13 A. I either make the phone call or the letter
14 off of that.
15 Q. Do those notes get preserved in any way?
16 A. If I do write it out on a sticky, it will get
17 attached to the application and stay with that
18 application for the life of it --
19 Q. Okay.
20 A. -- to include going to the file, but if it's
19 Q. Okay.
20 A. -- to include going to the file, but if it's
19 Q. Okay.
20 A. -- to include going to the file, but if it's
21 something along the lines of a bad permit fee, we'll
22 just call. There's no need to make a note.
23 Q. If there's a note made, it's your
24 understanding it --
25 A. It's in the application.

1 Q. -- it's gets in the file? Yes?
2 A. Yes.
3 Q. Do you know whether there are any other
4 checklists that are used in the permitting process by
5 DEP for gas permits?
6 A. I'm not sure. I don't know.
7 Q. Now, you've identified people who are
8 involved in the permit process and positions that are
9 involved in the permit process, the clerical support,
10 personnel, the program manager, the permit chief and a
11 geologist.
12 A. Yes.
13 Q. Are there other personnel in the department
14 who are involved in the permit approval process for gas
15 well permits?
16 A. Not that I'm aware of.
17 Q. Do you have an understanding of what role the
18 geologist plays in permit review?
19 A. Vaguely. I know they double-check the plat
20 information, but as far as anything else, I really don't
19 A. Vaguely. I know they double-check the plat
20 information, but as far as anything else, I really don't
19 A. Vaguely. I know they double-check the plat
20 information, but as far as anything else, I really don't
21 know.
22 Q. Okay.
23 (Discussion held off the record.)
24 MR. YEAGER: Why don't we mark
25 this as Appellant's 1.

1 (Appellant's Exhibit No. 1
2 marked for identification.)
3 MR. YEAGER: I've provided counsel
4 and the witness with a copy of
5 what's been marked Appellant's 1.
6 Q. What I'd like to do is -- and it's a set of
7 Bates page documents. When I say Bates page, I don't
8 know if you're familiar where Bates numbering.
9 A. No.
10 Q. See that numbering at the bottom?
11 A. Yes.
12 Q. That's referred to as a Bates stamped number,
13 and it's a way of adding pagination to a set of
14 documents. So from time to time, I may refer to a Bates
15 page or I may ask you to refer to a Bates page. That's
16 what I'm talking about.
17 A. I understand.
18 Q. And we received these from the Department by
19 e-mail on Monday, Monday afternoon, I believe. And
20 Ms. Carson-Bright has represented that these are all the
19 e-mail on Monday, Monday afternoon, I believe. And
20 Ms. Carson-Bright has represented that these are all the
19 e-mail on Monday, Monday afternoon, I believe. And
20 Ms. Carson-Bright has represented that these are all the
21 documents the Department has responsive to our document
22 request. What I'd like to do is give you a moment to go
23 through that. We can go off the record for a few
24 minutes.
25 A. Okay.

1 Q. Before you do that -- I'm sorry. Have you
2 looked over any documents in preparation for your
3 deposition today?
4 A. No.
5 Q. Okay. So why don't we go off the record a
6 minute. I'll give you time to familiarize yourself with
7 that document set.
8 A. Okay.
9 (Brief recess at this time.)
10 Q. We took a break and I had asked you to review
11 what we had marked as Appellant's Exhibit 1. Have you
12 had a chance to do that?
13 A. Yes.
14 Q. In looking at -- well, can you identify
15 what's here, what this represents?
16 A. Yes.
17 Q. What is it?
18 A. The drilling permit application.
19 Q. Did you look through the whole set of
20 documents?
19 Q. Did you look through the whole set of
20 documents?
19 Q. Did you look through the whole set of
20 documents?
21 A. Yes. I saw the drilling permit application,
22 the issue -- a copy of the issued permit. There's the
23 Well Record and Completion Report, a couple inspection
24 reports, and some accompanying e-mails.
25 Q. Okay. Are you in a position to say whether

1 this is the complete file for this project?
2 A. It would look definitely like it is.
3 Q. Okay.
4 A. It has all the necessary papers.
5 Q. Okay. In looking at this, can you identify
6 what role, if any, you had in DEP's processing of this
7 project?
8 A. Yes.
9 Q. What roles did you have?
10 A. I did the administrative review. I did the
11 initial review of it when we received it and the initial
12 entry into our system, eFACTS.
13 Q. Okay. And am I correct from my understanding
14 of your prior answers that in looking at this, you can't
15 tell who was the issuing clerk, correct?
16 A. Correct.
17 Q. Okay. In reviewing this, can you tell
18 whether -- first of all, do you remember this file?
19 A. I -- no.
20 Q. Okay. In reviewing this, can you tell
19 A. I -- no.
20 Q. Okay. In reviewing this, can you tell
19 A. I -- no.
20 Q. Okay. In reviewing this, can you tell
21 whether you had found that it was administratively
22 complete?
23 A. There is no notes attached to it, so I would
24 say it was administratively complete.
25 Q. Based on the absence of any notes otherwise?

A. Yes. Yeah, I didn't see anything on here that would state it hadn't been.

Q. Now, there's handwriting -- on the permit application which is Bates Page 1. There's handwriting in the top section where it says DEP use only. Do you see that?

A. Yes.

Q. Well, actually, there's two places where it says DEP use only. There's the top right where it says CNC?

A. Yes.

Q. Do you know what CNC represents?

A. Conservation non-coal.

Q. And whose handwriting is that?

A. Mine.

Q. Okay. And then in the top block below that, if that makes any sense --

A. Yes.

Q. Where it says DEP use only, there's an OGO number. What's that stand for? What's OGO?

Q. Where it says DEP use only, there's an OGO number. What's that stand for? What's OGO?

Q. Where it says DEP use only, there's an OGO number. What's that stand for? What's OGO?

A. The oil and gas operator's number.

Q. So that's Newfield's number?

A. Yes.

Q. Okay. And is that your handwriting then as well?

1 A. Yes.
2 Q. And then there's a bond number and then
3 there's a C colon. You had referred to that early.
4 A. Yes, that's my initials and date from when I
5 did my administrative review.
6 Q. So this has a date stamp of received about
7 two-thirds of the way down, April 12th, 2010, and then
8 it looks like you did the administrative review the next
9 day. Is that --
10 A. Yes.
11 Q. And then there's handwriting in a darker pen
12 on that same line, it looks like five, three. Do you
13 see what I'm --
14 A. Yes, 5, 3, 10, J. L. That's Joe Lichtinger's
15 initials, the geologist.
16 Q. Okay. So what does that tell us?
17 A. That that's when he did his review.
18 Q. And then under that line, it says INV,
19 5-27-10. Do you know what that represents?
20 A. I believe that that's when it was approved to
19 5-27-10. Do you know what that represents?
20 A. I believe that that's when it was approved to
19 5-27-10. Do you know what that represents?
20 A. I believe that that's when it was approved to
21 be issued.
22 Q. Well, if you look in the next block over to
23 the right, it says date approved. That's the date
24 approved box?
25 A. Yes.

1 Q. 5-11-10 and that looks like Babb?
2 A. That would have been when Brian Babb signed
3 off on it.
4 Q. Okay. Is that the approval date?
5 A. That's the date that Brian Babb approved it.
6 Q. What happens after Brian Babb approves it?
7 A. After he approves it, it's put into the stack
8 to be issued, and depending on the date stamp of when we
9 received it and how many days it has left out of the 45
10 days we're allotted to complete the application,
11 whatever is most current is issued first, and it would
12 be put into the stack according to the date.
13 Q. So Mr. Babb's approval, according to this,
14 was on May 11th, and then the final approval when you
15 got through that paperwork stack to deal with the
16 earlier applications first, then it would have gotten
17 its final approval on 5-27?
18 A. Yes.
19 Q. And whose handwriting is that, 5-27-10?
20 A. I'm not sure.
19 Q. And whose handwriting is that, 5-27-10?
20 A. I'm not sure.
19 Q. And whose handwriting is that, 5-27-10?
20 A. I'm not sure.
21 Q. Okay. Who gives it that final approval?
22 A. I don't know that that's a final approval.
23 The last approval on this is Brian Babb.
24 Q. Okay. So do you know what that number
25 represents, that 5-27 number represents?

A. I'm not sure.

Q. Okay.

A. I think it's the day we issue -- that we do print out the paperwork for issue, but I'm not positive.

Q. All right. Now, is there, on the middle right-hand side of the page, DEP use only date stamp notes. Do you see that?

A. Yes.

Q. Those look like your numbers and your handwriting?

A. That's me as well, yes.

Q. Can you tell me what those categories mean?

A. The first one that says off, these are eFACTS numbers. The authorization that I entered into eFACTS, that's the number of the authorization. The site that it was issued. That's the site number. CLNT. That's Newfield's client number. APS, that's -- there's an application screen in eFACTS. That's the number of the screen. And then PF is primary facility. That's the primary facility number. SF is subfacility.

screen. And then PF is primary facility. That's the primary facility number. SF is subfacility.

screen. And then PF is primary facility. That's the primary facility number. SF is subfacility.

Q. And the account, is that on the monetary sign?

A. Yeah, that's just an eFACTS account number for their permit fee.

Q. Okay. And you've got some math up at the top

1 right. Can you explain what that represents?
2 A. That's their permit fee. After looking at
3 their depth, it was determined that for the depth, the
4 permit would be $1,250. The surcharge -- there's two
5 surcharges. One will be 200. One would be 250. And
6 that's the breakdown written out.
7 Q. So is that a determination that you make as
8 part of your administrative completeness review?
9 A. Yes.
10 Q. So it sounds like we might have been able to
11 identify another element to your administrative
12 completeness review in that you look at the depth and do
13 some calculations to determine the permit fees to
14 determine that depth?
15 A. Correct. I used the permit fee calculator.
16 Q. Okay. Now, still in the DEP Use Only box at
17 the top where it had Mr. Babb's signing and dating the
18 far right-hand column, it says well permit number?
19 A. Yes.
20 Q. Is that your handwriting?
19 A. Yes.
20 Q. Is that your handwriting?
19 A. Yes.
20 Q. Is that your handwriting?
21 A. Yes.
22 Q. When does that get put in there?
23 A. The initial review.
24 Q. Okay. It gets assigned a number then?
25 A. Yes.

1 Q. At the initial review stage?
2 A. As soon as it's administratively complete, it
3 gets assigned a number.
4 Q. Special conditions, I'm assuming that's what
5 the cond. stands for?
6 A. Yes.
7 Q. What's A B C D E F represent?
8 A. Different conditions that can be assigned to
9 the permit.
10 Q. Are those set conditions assigned to those
11 letters?
12 A. Yes.
13 Q. So can you tell me what they are?
14 A. I don't have them memorized.
15 Q. Okay. Who is responsible for making that
16 determination, do you know?
17 A. I believe Brian Babb and the geologist assign
18 those.
19 Q. Okay. Now, underneath special conditions, it
20 says watershed name, Hollister Creek, and then
19 Q. Okay. Now, underneath special conditions, it
20 says watershed name, Hollister Creek, and then
19 Q. Okay. Now, underneath special conditions, it
20 says watershed name, Hollister Creek, and then
21 designation and HQ is circled?
22 A. Yes.
23 Q. Do you know whose handwriting that is?
24 A. I believe that's Joe.
25 Q. The geologist. Joe the geologist, okay. So

1 when you get this, when you get an application, are you
2 aware whether it's in a watershed that's designated HQ
3 or EV?
4 A. No, that's not part of my review.
5 Q. Do you know who makes that determination?
6 A. I believe it's the geologist.
7 Q. So do you know whether the permit
8 applications for drilling or altering a well are handled
9 by the Department any differently if it's in an HQ or EV
10 watershed as opposed to not?
11 A. I don't know.
12 Q. Who would be the best person to answer that
13 based on your knowledge of the roles within the
14 Department?
15 A. The geologist or Brian Babb.
16 Q. Okay. Is there any additional administrative
17 completeness review that you're required to conduct if
18 the proposed project is in an HQ or EV watershed?
19 A. No.
20 Q. Now, do you see at the -- still on this first
19 A. No.
20 Q. Now, do you see at the -- still on this first
19 A. No.
20 Q. Now, do you see at the -- still on this first
21 page, coordination with regulations and other permits?
22 A. Yes.
23 Q. And then there are checkmarks in some of
24 those boxes. Those checkmarks are entered by the
25 applicant and those are filled in when you get the

application; is that correct?

A. Yes.

Q. Do you do anything to determine whether the information the applicant is providing by checking off particular boxes, whether that information is accurate?

A. No.

Q. Do you know whether there is anybody in the process within DEP who is making an assessment about whether the information that's provided by the applicant in the application is accurate?

A. The geologist does and Brian Babb does as well.

Q. And how do you know that?

A. Because questions have come up on whether -- what our specific role is. If it's a technical issue, the geologist handles the technical issues. We check for the administrative side.

Q. Do you know whether, in fact, Mr. Babb or the geologist looked beyond the information provided in the application to determine whether that information is

geologist looked beyond the information provided in the application to determine whether that information is

geologist looked beyond the information provided in the application to determine whether that information is

accurate?

A. I know they do. I don't know how, though.

Q. Okay.

A. I stay out of their side of it.

Q. How do you know that they do?

1 A. We've had discussions about the different
2 parts. And when I've gone to ask questions so that I
3 better understand the permit, they explain it to me and
4 different parts of what they've done.
5 Q. Do you know what H2S issues are?
6 A. No.
7 Q. If you could turn to Bates Page 5. Well, let
8 me ask you just a general question first. In looking at
9 this set of documents, can you tell from looking at them
10 which would have been received by the Department at the
11 time that you had conducted the administrative review?
12 A. Yes.
13 Q. How can you tell that?
14 A. Some of them are date stamped with the same
15 date, and I would recognize which pages are permit
16 application submissions.
17 Q. As I understood your answer, your answer to
18 one of my questions earlier, because of the volume of
19 permit applications that you've handled, you don't have
20 a specific recollection about this permit, correct?
19 permit applications that you've handled, you don't have
20 a specific recollection about this permit, correct?
19 permit applications that you've handled, you don't have
20 a specific recollection about this permit, correct?
21 A. Correct.
22 Q. So in looking at this file, am I correct that
23 you're not in a position to say this document was in
24 there when I did my administrative review and this
25 document wasn't?

1 A. No.

2 Q. But you can look at it and say, these are the

3 types of documents that are generally in the file when I

4 conduct an administrative review?

5 A. Yes.

6 Q. Okay. In looking at it, if they are in

7 numerical order, meaning up to Page 16, for example --

8 A. Yes.

9 Q. -- are those documents -- can you identify

10 for me by looking at it which are the documents that you

11 would generally find when you do your administrative

12 completeness review?

13 A. Yes.

14 Q. Can you please?

15 A. Sorry. Let me make sure I understand. You

16 want me to look through and tell you which pages I would

17 need?

18 Q. Yes.

19 A. Okay. Page 1.

20 Q. And if you want to just take a minute to go

19 A. Okay. Page 1.

20 Q. And if you want to just take a minute to go

19 A. Okay. Page 1.

20 Q. And if you want to just take a minute to go

21 through it, you don't have to go through it out loud.

22 It looks to me like it may be 1 through 16 just based on

23 the Bates stamps?

24 A. From when I looked at it before, I believe it

25 was Pages 1 through 16. I think 1 through 16 was the

1 only pages submitted with it.

2 Q. Okay. Looking at Bates Page 5, it's got

3 that -- and Page 6 have the 127-20017 number at the top.

4 I take it you would have put that on those documents

5 once you had completed your administrative completeness

6 review?

7 A. Yes.

8 Q. Now, looking at Page 15, Bates Page 15, is

9 there -- I take it the well location plat is one of the

10 documents that you are looking for when you're

11 conducting your administrative completeness review,

12 correct?

13 A. Yes.

14 Q. And I think you indicated earlier that one of

15 the things you do is to look at the content rather than

16 simply looking at whether the document is there, but to

17 make sure that one of the documents is properly sealed.

18 Is that what you were referring to here, the well

19 location plat?

20 A. Yes.

19 location plat?

20 A. Yes.

19 location plat?

20 A. Yes.

21 Q. Is there anything else of substance that

22 you're looking for on the well location plat other than

23 the proper seal for the appropriate professional?

24 A. The other thing that I check for -- this is

25 where the horizontal reference datum was located also.

1 In the bottom left-hand corner, the lat long data box
2 where it says to the right feet, datum, that's one where
3 it's got to be permitted in the proper format.
4 Q. Okay. So there's an X there or there's a --
5 maybe actually just a line. There's some dashes on this
6 page?
7 A. Yes.
8 Q. At the bottom. Are those yours?
9 A. No.
10 Q. Do you know whose those are?
11 A. I believe they're the geologist.
12 Q. Okay. There's a stamp on this sheet that
13 says HQ watershed with a line and in handwriting
14 Hollister Creek. Do you see that?
15 A. Yes.
16 Q. Who puts that on?
17 A. I believe it's the geologist.
18 Q. Okay. So when you get a document like this
19 from the applicant, is it accurate that it would not
20 have that stamp on here?
19 from the applicant, is it accurate that it would not
20 have that stamp on here?
19 from the applicant, is it accurate that it would not
20 have that stamp on here?
21 A. Correct.
22 Q. Now, am I correct that you don't look at the
23 plat itself to make any judgments about the information
24 that's provided on the plat?
25 A. Correct.

1 Q. If you could turn to Page 17, this is the
2 well permit, correct?
3 A. Yes.
4 Q. What's the June 10th date on here tell us?
5 Do you know?
6 A. I think that's the date that they received
7 this in Williamsport.
8 Q. Okay.
9 A. For their files.
10 Q. Okay. So I see there's a difference in the
11 received stamp that's on the pages from the northwest
12 regional office and this received stamp? Do you see the
13 pages, like the first page of the document has Received,
14 April 12th, 2010, Environmental Protection Northwest
15 Regional Office?
16 A. Yes.
17 Q. And then the received stamp on Page 17 says
18 Received, June 10, 2010 Oil and Gas. Is that the stamp
19 that Williamsport uses?
20 A. Yes.
19 that Williamsport uses?
20 A. Yes.
19 that Williamsport uses?
20 A. Yes.
21 Q. Do you see where it says Stephen Watson, Oil
22 and Gas Inspector?
23 A. Yes.
24 Q. What does that designation mean?
25 A. He's the oil and gas inspector for that

county, for Wayne County.

Q. Would he have any role in the permit review or issuance?

A. No.

Q. When is a corrected well permit issued?

A. Any time we've discovered there's been an error on the original permit.

Q. And is there any way to tell when a corrected well permit was issued?

A. There may be accompanying documentation with it, but on the corrected well permit itself, no.

Q. Who makes a determination as to whether a corrected well permit needs to be issued?

A. It could be our clerical supervisor or Brian Babb or Craig Lobins.

Q. Is there any way to tell from looking at the document?

A. No.

Q. Do you know who Jennifer Means is?

A. I believe she's the program manager, I think

Q. Do you know who Jennifer Means is?

A. I believe she's the program manager, I think

Q. Do you know who Jennifer Means is?

A. I believe she's the program manager, I think

for Williamsport. It's either Williamsport or Pittsburgh. I can't remember.

Q. If you turn to Bates Page 33.

A. She's the program manager for Williamsport.

Q. What's EP stand for?

1 A. Environmental Protection.
2 Q. Okay. So is she the equivalent of -- who is
3 she the equivalent of in this office?
4 A. I believe Craig Lobins.
5 Q. Okay. Do you know why permits for Wayne
6 County are being issued out of Meadville instead of out
7 of Williamsport?
8 A. They don't do permitting. We do permitting
9 for the entire northern half of the state.
10 Q. Okay. Now, for administrative completeness,
11 there are, I think you said -- how many different clerks
12 are handling administrative completeness reviews?
13 A. Five.
14 Q. To varying degrees.
15 A. Yes.
16 Q. How many people are there in Brian Babb's
17 position handling the part of the permit process that he
18 handles?
19 A. Just himself, one.
20 Q. How many geologists are there that are
19 A. Just himself, one.
20 Q. How many geologists are there that are
19 A. Just himself, one.
20 Q. How many geologists are there that are
21 handling the permit review process as Mr. -- as Joe, the
22 geologist, was in this case?
23 A. I'm trying to count real quick.
24 Q. Sure.
25 A. Six, I think. It might be seven, but I think

1 it's six.

2 Q. Okay. And are they spread out throughout the

3 state?

4 A. No, they're all in our office as well.

5 Q. And how many people -- as you can tell, I'm

6 trying to identify in the permit process how many

7 different people are handling these things. So you told

8 me about the clerks and their role in the permit

9 process, and you told me about Mr. Babb. What about for

10 Craig Lobins, is he the only program manager who's

11 handling permitting?

12 A. Yes.

13 Q. So when we were talking about the 300 to 600

14 a month that the clerical support staff is handling,

15 would those be the same numbers that Mr. Babb and

16 Mr. Lobins are handling?

17 A. Yes.

18 Q. You had told me earlier that it was your

19 understanding that an E&S permit needed to be submitted

20 with an application if the application area will cover

19 understanding that an E&S permit needed to be submitted

20 with an application if the application area will cover

19 understanding that an E&S permit needed to be submitted

20 with an application if the application area will cover

21 five acres or more?

22 A. It doesn't have to be submitted with the

23 application.

24 Q. Okay. Will it need to be submitted and

25 approved for the drilling permit to be approved?

A. No.

Q. Is there any connection that you're aware of between the approval of the E&S permit and the approval of the well permit?

A. Not that I'm aware of.

Q. As part of the approval of the well permit, is there any assessment that you're aware of whether an E&S permit will also be necessary?

A. Not on administrative. I'm not sure beyond that.

Q. Perhaps Mr. Babb or Mr. Lobins would --

A. I don't know.

Q. Okay. Am I correct, though, that you're not looking at what you get and say, there's more than five acres here; therefore, there's no need for an E&S permit?

A. Correct.

Q. All right.

MR. YEAGER: Why don't we take a brief break and then we'll wrap

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MR. YEAGER: Why don't we take a brief break and then we'll wrap

up.

(Brief recess at this time.)

Q. If you look at the second Bates page, you see there's kind of a map in the middle of that. Do you know what the darkened section on that represents?

A. No.

Q. If you turn to Page 17, do you see where it says in the block under well permit towards the top of the page where it says well type?

A. Yes.

Q. Who fills that in?

A. That is automatically populated from what we enter into eFACTS.

Q. At what point based on --

A. Based on our initial entry, which would have been my review.

Q. Okay. So in looking at this application, can you tell me -- well, first of all, what does GS stand for?

A. GS stands for gas.

Q. Okay. What other well types are there?

A. Gas, oil, combination gas and oil, test. I believe there's others but those are the only ones I've ever had any reference with.

Q. What's the difference between a gas well type
ever had any reference with.

Q. What's the difference between a gas well type
ever had any reference with.

Q. What's the difference between a gas well type and a test well type?

A. I'm not sure.

Q. So how do you determine then what to enter when you are entering it at the beginning of the process?

1 A. From what they mark as far as type of well on
2 Page 1.
3 Q. Okay. Do you see on here on Page 1, where it
4 says there's a permit type, right?
5 A. Yes.
6 Q. And then it says well type to the right.
7 A. Correct.
8 Q. There is no block for test well. Do you
9 agree with me?
10 A. Yes.
11 Q. Do you know what a test well is?
12 A. I have an idea of it.
13 Q. Okay.
14 A. It's my understanding that it's just a well
15 that they're going to drill to test what's in the area.
16 Q. Okay. Is the review that's conducted any
17 different when it's a test well than when it's a gas
18 well?
19 A. Not administratively. It's the same.
20 Q. Now, the text on the permits, who types that
19 A. Not administratively. It's the same.
20 Q. Now, the text on the permits, who types that
19 A. Not administratively. It's the same.
20 Q. Now, the text on the permits, who types that
21 up? And I'm not talking in the blocks. I'm talking the
22 prose that's written there.
23 A. The text above is the standard text printed
24 with every permit.
25 Q. Okay, it doesn't change.

A. No.

Q. Okay. So between 17 and 18, you see the well type is different?

A. Yes.

Q. Do you know how that came about?

A. That was an error that I made because in the review of the applications for the permit fee, when you go to calculate it on the permit fee calculator, it asks you what type of application it is, and before it was changed, there was not a test well option, so I had asked the geologist how do you enter this. They said you review it as a gas well.

Q. Okay.

A. And I misunderstood that that only meant for the permit fee calculator, not how you entered it into eFACTS.

Q. Understood. Is the permit based on the amount of administrative review that's required?

A. No, it's based on the depth, and then the surcharge is based on gas or oil, and then the $50

A. No, it's based on the depth, and then the surcharge is based on gas or oil, and then the $50

A. No, it's based on the depth, and then the surcharge is based on gas or oil, and then the $50

surcharge is standard.

Q. And that applies whether the driller -- the applicant identifies it as a gas well or as a test well?

A. What applies?

Q. Those calculations.

A. Yes.

Q. In your answer to one of the previous couple questions, it sounded like there was a change at one point in how these were handled?

A. The permit fee calculator?

Q. That might have been what you were referring to. Was there a change in now the Department looked at test wells at some point?

A. No, the permit fee calculator has been changed.

Q. Okay.

A. It's been updated. I think it was in October or November of 2009. That's not -- I don't remember. There's been a couple changes.

Q. Okay.

A. That's the only change.

Q. Okay.

A. The review that's necessary for them has stayed the same.

Q. Okay. And as far as you understand, it's the

stayed the same.

Q. Okay. And as far as you understand, it's the

stayed the same.

Q. Okay. And as far as you understand, it's the same level of review whether it's designated by the applicant as a gas well or test well?

A. Yes.

Q. Same level of review whether it's a vertical well or horizontal well?

1 A. Yes.
2 Q. And same level of review whether it's
3 Marcellus or non-Marcellus?
4 A. I believe once they get into the Marcellus,
5 it starts getting more review, but not from the
6 administrative side.
7 Q. Okay. Do you know the difference in depth?
8 Is there a connection between how deep the well is and
9 whether it's Marcellus or not?
10 A. I believe so, but that's specific to certain
11 areas. The permit fee calculator is the only thing that
12 would show me that -- or that's not even accurate. What
13 they check, as far as if it's Marcellus or not, then the
14 geologist would check to see if that's accurate.
15 Q. Okay. If it's accurate at that depth in that
16 location they're either in or not in the Marcellus?
17 A. Yes.
18 Q. Do you know who was responsible for making
19 the change from well type in the well permit that's at
20 17 and the corrected well permit that's at 18?
19 the change from well type in the well permit that's at
20 17 and the corrected well permit that's at 18?
19 the change from well type in the well permit that's at
20 17 and the corrected well permit that's at 18?
21 A. No.
22 Q. And I think I asked you this earlier. I
23 apologize. There's no way to tell when the corrected
24 one was issued, correct?
25 A. Right.

Q. Okay. The request for approval, alternative waste management practices, which starts at Page 19, do you have any role in those?

A. I can enter them into eFACTS when we receive them if they're sent to us.

Q. Okay, and that's it?

A. Yes.

Q. Okay. Do you know who handles those?

A. How do you mean?

Q. From a substantive basis.

A. Oh, the oil and gas inspector. Depending on what they're requesting on -- I guess it would be Page 20. Depending on what type of alternate waste disposal practice requested, it either goes to the oil and gas inspector or it goes to Chris Lasor (phonetic). I don't know what his position is.

Q. Okay. Who makes that determination about who it goes to?

A. The clerical staff does.

Q. Okay.

A. The clerical staff does.

Q. Okay.

A. The clerical staff does.

Q. Okay.

A. It either goes to the oil and gas inspector or it goes to Curtis.

MR. YEAGER: All right. I don't have anything further. I don't have anything further for you.

1 MS. CARSON-BRIGHT: Okay.
2 MR. ZIMMERMAN: Thank you very
3 much.
4 MR. HOLTZMAN: No questions for
5 counsel for the permittee.
6 MS. CARSON-BRIGHT: No questions
7 from counsel for the Department.
8 MR. YEAGER: Okay, you're free to
9 go.
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11 (Slye deposition concluded at
12 1:30 p.m.)
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1 **REPORTER'S CERTIFICATE**

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6 I, Lisa Willow Weiss, a Court Reporter and Notary
7 Public in and for the Commonwealth of Pennsylvania, do
8 hereby certify that the foregoing is a true and accurate
9 transcription of my stenographic notes in the
10 above-captioned matter.

11

12

13

14

15

16 Lisa Willow Weiss

Lisa Willow Weiss
17 Court Reporter and Notary Public

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18 Notarial Seal
Lisa Willow Weiss, Notary Public
City of Meadville, Crawford County
19 My Commission Expires Feb. 31, 2012
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21 Dated: March 29, 2011

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