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

The following summarizes key admissions from these depositions:

Craig Lobins
1. Mr. Lobins is a DEP Regional Manager, for the Department's Oil & Gas Program. (Lobins Dep. at p. 4-5)
2. Mr. Lobins manages oil and gas permitting activity for the Northern half of Pennsylvania. (Lobins Dep. at p. 6).
3. Each oil and gas permit goes to Lobins for final authorization. (Lobins Dep. at p. 8).
4. Lobins and his program issued over 4,600 permits in 2010. (Lobins Dep. at p. 9).
5. Lobins spent, on average, two minutes per permit prior to granting final authorization. (Lobins Dep. at p. 10).
6. There were six (6) geologists working under Lobins performing the technical reviews for the 4,600 permits issued in 2010. (Lobins Dep. at p. 16).
7. Mr. Lobins was not aware of the Department reviewing a well permit application any differently when the project in a special protection high quality or exceptional value watershed. (Lobins Dep. at p. 33-34).
8. Prior to the issuance of a gas well permit, and prior to any earth disturbance on projects under five (5) acres, no one in the Department made a determination as to the sufficiency of any erosion and sedimentation control plan. (Lobins Dep. at p. 37-38).
9. Prior to the issuance of the subject permit, the Department did not consider the adequacy of any erosion and sedimentation control plan. (Lobins Dep. at p. 46).
10. The Department did not consider whether the location of the project is consistent with the uses that are allowed in that location under local zoning. (Lobins Dep. at p. 41-42).
11. The Department did not consider any comprehensive plans adopted by any municipal governments. (Lobins Dep. at p. 50).
12. The impact of a proposed well on national or state scenic rivers is only considered if the proposed well is located on public land. (Lobins Dep. at p. 43).
13. Likewise, the impact of a proposed well on publicly owned parks, forest, game lands and wildlife areas is only considered if the proposed well is located on public land. (Lobins Dep. at p. 44).
14. In issuing individual well permits, the Department does not consider the cumulative impact of the broader development of wells on the surrounding resources. (Lobins Dep. at p. 45).
15. Other than noting whether the proposed project was 100 feet from a stream or water body, as required under the Oil & Gas Act, the Department did not give any consideration to the impact of the project as proposed on a special protection high quality watershed. (Lobins Dep. at p. 45-46).
16. The Department did not consider the proximity of the project to the Delaware River. (Lobins Dep. at p. 46).
17. There was no consideration given to the impact that the proposed project would have on the Wild & Scenic River corridor. (Lobins Dep. at p. 47).
18. There was no heightened scrutiny given to permits issued within the Delaware River watershed. (Lobins Dep. at p. 48).
19. Gas well permits have not been reviewed under the department’s anti-degradation program. (Lobins Dep. at p. 49).
20. The Department did not consider the adequacy of storm water management measures prior to the issuance of the permit. (Lobins Dep. at p. 50-51).
21. The Department did not analyze the impact of the proposed project on groundwater recharge. (Lobins Dep. at p. 51).
22. The Department did not consider the impact of the project on stream flow. (Lobins Dep. at p. 51).
23. Other than noting whether the proposed project met the 100 foot distance restrictions of the Oil & Gas Act, the Department did not consider what impact, if any, the project would have on Hollister Creek. (Lobins Dep. at p. 51).
24. Other than noting whether the proposed project met the 100 foot distance restrictions of the Oil & Gas Act, the Department, in approving the project, did not consider the impact on the water resources of the Delaware River Basin. (Lobins Dep. at p. 51-52).
25. Mr. Lobins testified that he was not familiar with hydrogen sulfide being an issue in the Northeast Region, and that it was not an issue that was considered when the permit was approved. (Lobins Dep. at p. 56).

Brian Babb

26. Mr. Babb is a Professional Geologist Manager, Oil & Gas Program, DEP. (Babb Dep. at p. 5).
27. Mr. Babb was in charge of permitting for oil and gas wells. (Babb Dep. at p. 7).
28. Mr. Babb spent approximately two (2) minutes per gas well permit application. (Babb Dep. at p. 14).
29. There was no difference in the review of drilling applications based to the acreage of the disturbed area. (Babb Dep. at p. 21).
30. Applicants are not required to disclose the amount of acreage of their proposed disturbed area. (Babb Dep. at p. 26).
31. Permit applications are given the same level of review whether or not there will be an E & S permit. (Babb Dep. at p. 21-22).
32. Mr. Babb does not know whether the data the Department relies on from the USGS is accurate. (Babb Dep. at p. 23-24).
33. There is no consideration given in the permit review process for potential cumulative impacts of multiple well projects. (Babb Dep. at p. 26).
34. Other than noting on the permit application forms that a proposed project is in a special protection watershed, there is nothing else different about how the Department handles the permit review for a well permit when the proposed project is within a special protection watershed. (Babb Dep. at p. 31, 38).
35. Mr. Babb was under the impression that the Department had not approved any proposed well project that was close by a National or State Scenic River. (Babb Dep. at p. 31-32).
36. In making a determination on a well permit application, the Department does not give any consideration to municipal zoning or municipal comprehensive plans. (Babb Dep. at p. 34).
37. Mr. Babb was not familiar with how the Department's regulations define, “well site.” (Babb Dep. at p. 50).
38. Mr. Babb testified that there is nothing in the application packet for the subject project that identifies the distance of the proposed well site from Hollister Creek. (Babb Dep. at p. 51-52).
39. Mr. Babb testified that there is nothing in the application packet for the subject project that identifies where the proposed well site is in relation to the Delaware River corridor. (Babb Dep. at p. 52).
40. Mr. Babb also acknowledged that he does not know what is considered to be within and not within the river corridor. (Babb Dep. at p. 52).
41. Mr. Babb did not know of any Departmental analysis to consider what the impacts, if any, might be from this project on Hollister Creek. (Babb Dep. at p. 52).
42. Likewise, Mr. Babb did not know of any Departmental analysis to consider what impact, if any, the project might have on the Delaware River or the Delaware River Basin. (Babb Dep. at p. 53-55).
43. Similarly, Mr. Babb was not aware of any consideration of the impacts on any national Wild & Scenic River. (Babb Dep. at p. 53-54).
44. The permit application file for the subject permit does not reveal whether an erosion and sediment control plan had been prepared prior to the issuance of the permit. (Babb Dep. at p. 53).
45. The Department did not conduct any analysis -- as part of its permit application review -- of the potential impacts that the project would have on groundwater resources. (Babb Dep. at p. 53).
46. The Department did not conduct any analysis to assess the adequacy of any storm water management measures in connection with the subject project. (Babb Dep. at p. 53).
47. The Department, as part of the permitting process, does not communicate or coordinate with local municipalities. (Babb Dep. at p. 53).
48. Mr. Babb testified that the Department has delineated on its maps areas where there is a greater potential for hazards associated with the presence of hydrogen sulfide; in those areas there are special conditions for how to drill and how to case a bore hole. (Babb Dep. at p. 55-60).
49. Mr. Babb testified that it is the responsibility of the geologist to note the special conditions that need to be on a permit in such an area. (Babb Dep. at p. 57).

**Joseph Lichtinger**

50. Mr. Lichtinger is a licensed professional geologist. (Lichtinger Dep. at p. 4).
51. Mr. Lichtinger performed the first line of technical review for well permit applications. (Lichtinger Dep. at p. 6, 8).
52. The review Mr. Lichtinger conducted was no different if the proposed project was less than five (5) acres or greater than five (5) acres. (Lichtinger Dep. at p. 9).

53. He did not make any effort to determine the amount of acreage that would be taken up by the well site. (Lichtinger Dep. at p. 17).

54. The review Mr. Lichtinger conducted was no different if the proposed project was within an a special protection watershed. (Lichtinger Dep. at p. 9).

55. As part of his review Mr. Lichtinger did not consider what, if any, impact the proposed project might have on a high quality or exceptional value watershed. (Lichtinger Dep. at p. 9, 29).

56. Mr. Lichtinger did not consider what impact, if any, the proposed project would have on a national scenic river. (Lichtinger Dep. at p. 10).

57. He testified as follows:

   Q. During the course of your review of well permits, did you consider what, if any, impact the proposed project might have on any national or state scenic rivers?

   A. Yes.

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

   A. Well, the Clarion and the Allegheny River were national scenic rivers --

   Q. Okay.

   A. -- that I was aware of. And we had to make sure they were not in the corridor.

   Q. Okay.

   A. But the corridor is not defined.

   Q. Other than projects that were within the Clarion and Allegheny, any consideration given to national or state scenic rivers?

   A. I did not.

   Q. Okay.

   A. Because I was not aware of any other.

58. Mr. Lichtinger acknowledged that the mapping data he utilized in conducting his review of well permit applications do not reflect site specific conditions. (Lichtinger Dep. at p. 14-15).

59. Mr. Lichtinger did not go on site to conduct his permit application reviews, nor did anyone else. (Lichtinger Dep. at p. 15-16, 41-42).

60. Mr. Lichtinger acknowledged that if an applicant represented to the Department that a proposed well was not within 200 feet of a publicly owned property, no consideration was given to the impact of the proposed project on publicly owned parks, forests, game lands or wildlife areas. (Lichtinger Dep. at p. 16-17).

61. Mr. Lichtinger did not assess the adequacy of any erosion and sediment control plans or of any storm water management plans. (Lichtinger Dep. at p. 17).

62. As part of his review, Mr. Lichtinger never considered the cumulative impact of a project in connection with other projects in the area. (Lichtinger Dep. at p. 20).

63. In looking at the application package, Mr. Lichtinger could not determine the distance of the project from Hollister Creek or from the Delaware River. (Lichtinger Dep. at p. 37).
64. No consideration was given to the distance of the project from any Wild and Scenic River Corridor. (Lichtinger Dep. at p. 38).

65. As part of his permit application review, Mr. Lichtinger did not consider municipal comprehensive plans or municipal zoning. (Lichtinger Dep. at p. 37). Likewise, Mr. Lichtinger did not communicate with any local municipalities. (Lichtinger Dep. at p. 40).

66. As part of his permit application review, Mr. Lichtinger did not consider whether the proposed project’s location would have any impact on water resources or the watershed in which it was located. (Lichtinger Dep. at p. 39).

67. As part of his permit application review, Mr. Lichtinger did not consider which way runoff would flow. (Lichtinger Dep. at p. 39).

68. As part of his permit application review, Mr. Lichtinger did not consider whether there were alternative siting or design options or whether the project could be developed with a smaller disturbed area. (Lichtinger Dep. at p. 41).

69. Mr. Lichtinger was not familiar with the level of protection afforded high quality watersheds. (Lichtinger Dep. at p. 39-40).

70. As part of his permit application review, Mr. Lichtinger did not analyze or consider what impact, if any, the proposed project might have on stream flow or on groundwater recharge. (Lichtinger Dep. at p. 40).

71. In reviewing permit applications, Mr. Lichtinger did not consider the presence of hydrogen sulfide, and no effort was made to avoid hitting hydrogen sulfide during drilling. (Lichtinger Dep. at p. 42, 43).

72. Mr. Lichtinger was not aware of any mapping being available that showed regions where hydrogen sulfide might be encountered during drilling. (Lichtinger Dep. at p. 43-44).

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

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

Sincerely,

Jordan B. Yeager
Curtin & Heefner LLP

Counsel to the Delaware Riverkeeper and the Delaware Riverkeeper Network
COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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

v.

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

Deposition of BRIAN THOMAS BABB, taken before and
by Lisa Willow Weiss, Notary Public in and for the
Commonwealth of Pennsylvania, on Thursday, March 24,
2011, commencing at 9:00 a.m. at the Pennsylvania
Department of Environmental Protection, 230 Chestnut
Street, Meadville, Pennsylvania.

Street, Meadville, Pennsylvania.

Street, Meadville, Pennsylvania.

Willow Reporting Service
8400 Franklin Pike
Meadville, Pennsylvania 16335
814-337-6622
APPEARANCES

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

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

For the Appellants:

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

For the Commonwealth of Pennsylvania, Department of Environmental Protection:

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

For Newfield Appalachia PA, LLC:

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

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

BRIAN THOMAS BABB

Direct examination by Mr. Yeager .................. 4
Cross-examination by Mr. Zimmerman ............... 61
Cross-examination by Ms. Gallogly ................. 65
Cross-examination by Mr. Holtzman ................. 66
Recross-examination by Mr. Zimmerman ............ 73
Redirect examination by Mr. Yeager ................. 75
Recross-examination by Ms. Gallogly ............... 76
Recross-examination by Mr. Holtzman ............... 77
Further Recross-examination by Mr. Zimmerman .. 78
BRIAN THOMAS BABB, first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YEAGER:

Q. Good morning, sir. Can you please state your name and spell your last name?
A. Brian Thomas Babb, B-A-B-B.
Q. Okay. Sir, have you ever sat for a deposition before?
A. Once in an insurance claim.
Q. Okay. Well, same kind of thing -- well, I don't know what your deposition was like there, but it's basically just a question and answer session. The court reporter is here to take down everything. As skilled as she is, she can only take us down when one of us is speaking at a time and can only take down words, so um-hums and huh-huhs end up coming out a lot alike in a deposition transcript, and shakes and nods don't come um-hums and huh-huhs end up coming out a lot alike in a deposition transcript, and shakes and nods don't come um-hums and huh-huhs end up coming out a lot alike in a deposition transcript, and shakes and nods don't come out at all, so I'll remind you to use words as much as you can, okay?
A. Okay.
Q. And I'll ask you to let me finish asking before you start answering, and I'll try not to
interrupt you as well, okay?

A. All right.

Q. If at any time you need to take break, let me know. It's my hope that we'll be through this fast enough that you won't need to, but if you do, don't be shy.

A. Okay.

Q. What position do you currently hold?

A. I'm a professional geologist manager.

Q. And what position did you hold before that?

A. I was a sanitary supervisor.

Q. Sanitarian supervisor?

A. Yes, and water supply.

Q. When you say and water supply, is that a program within DEP?

A. Yes.

Q. What program are you associated with now or do you work with now?

A. Oil and gas.

Q. How long were you in water supply as a

A. Oil and gas.

Q. How long were you in water supply as a

A. Oil and gas.

Q. How long were you in water supply as a sanitary supervisor roughly?

A. 22 months.

Q. And prior to that?

A. Oil and gas.

Q. Doing what?
A. Permitting, drilling wells.

Q. What was your position?

A. Licensed professional geologist.

Q. And how long had you been doing that?

A. 11 years.

Q. And prior to that?

A. Water quality specialist and water management.

Q. Doing what?

A. Inspecting sewage treatment plants and industrial waste.

Q. How long have you been with DEP overall?

A. 17 years.

Q. So did you start in water quality?

A. Yes, that's where I started.

Q. And any advanced degrees?

A. Bachelor's degree in geography actually.

Q. In geography?

A. Yes. I have three minors in geology.

Q. Any licenses?

A. Yes. I have three minors in geology.

Q. Any licenses?

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

Q. And prior to that?

A. Water quality specialist and water management.

Q. Doing what?

A. Inspecting sewage treatment plants and 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.
Q. Okay. So how much of your time -- can you differentiate between your time to say how much of it is associated with the well permits versus E&S permits versus any other permits that you deal with?

A. I can come close, I think.

Q. Okay.

A. I think I probably spend 20 to 25 percent on drilling permit applications.

Q. And what about on E&S?

A. E&S, 30 percent.

Q. Okay. Why does E&S take more?

A. This first year that I've been there, it's more of a learning curve for me.

Q. Okay. Is that because you had been doing the drilling permits yourself when you had been in that role earlier?

A. Probably that's why, yes.

Q. Okay.

A. I understood them better. I understand them better --

A. I understood them better. I understand them better --

A. I understood them better. I understand them better --

Q. Okay.

A. -- than the EMS plans or the water management plans.

Q. Okay. Overall how many permits a year -- in 2010, do you know how many permits went by -- how many
permits you dealt with?

A. Drilling applications -- this will be a real close estimate, 4,500.

Q. Okay. And that's just drilling applications?

A. Yes.

Q. And what about all together?

A. With the E&S, erosion and sedimentation plans and water management plan approvals, they're a lot less, but they're -- not a lot more complicated. There's less of them.

Q. Okay.

A. In 2010, I wasn't there the whole year, but I'm going to say there was 40 E&S plans. We have different types of E&S plans, too.

Q. Okay.

A. There's ESGPls and there's joint permits, but about 40, I'd say.

Q. Okay. That's just the E&S?

A. Yes, and the water management plans, 15.

Q. Oh, okay. And what is your -- so when we

A. Yes, and the water management plans, 15.

Q. Oh, okay. And what is your -- so when we

A. Yes, and the water management plans, 15.

Q. Oh, okay. And what is your -- so when we talk about the 4,500 -- and I understand you weren't doing it for the whole of the year, but when we talk about the well drilling permits, what are you doing in connection with the Department's review and approval of 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.

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.
Q. Okay. And then what?
A. Then I -- if everything is fine with it, I take it up front for processing to permit -- at this point it's still an application, for processing it to become a permit.

Q. It initially comes in, and the first people it's touched by is clerical support?
A. Um-hum.
Q. Yes?
A. Yes.
Q. That's okay. And from clerical support, it goes to you. From you it goes to a geologist who is doing some level of technical review.
A. Yes.
Q. From that geologist it comes back to you?
A. Yes.
Q. And then you get it back to clerical support?
A. Yes.
Q. And then am I correct, the clerical support then gets it to your supervisor?
Q. And then am I correct, the clerical support then gets it to your supervisor?
Q. And then am I correct, the clerical support then gets it to your supervisor?
A. Yes.
Q. Does it come back to you?
A. No.
Q. Okay. So let's then focus in on that part 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 survey because they're more complicated 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 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
it's a conservation well, which means they have to look
at depths and make sure we have distance restrictions.
That's what the yes boxes are for. If there's anything
that we have to look at a little closer, we do.

Q. And when you -- so when you see a yes and
you're looking to see whether it's been addressed, what
are you looking at to determine whether it's been
addressed?

A. Well, like I said, in the waivers, if they're
within 100 feet of a wetland, they say yes. I look on
the plat to make sure it's on the plat, the map, and if
so, do you have a waiver involved. I look at the waiver
to make sure it addresses the issue, and those are going
to be special conditions on the permit.

If it's a conservation well, I look to make
sure the depth is there, to make sure it's a
conservation well, which means it's 3,800 feet and
penetrates the Onondaga. If they say it's a Marcellus
well, make sure we have a directional survey that makes
sense, that matches the information that's also on the
well, make sure we have a directional survey that makes
sense, that matches the information that's also on the
well, make sure we have a directional survey that makes
sense, that matches the information that's also on the
well, total vertical depth, total measured depth.

Q. So you're looking at the other paperwork that
has come back to you from the geologist as part of the
application package? Is that what you're looking at?

A. I'm looking at everything that the -- that
came in.

Q. Okay.

A. Occasionally we'll have waivers come in, like for the distance restrictions, and those come in with the application, but then it gets sent out to the field so they can do a field review, and they might put special conditions on that waiver. When it comes back, we match them up and then I make sure that those were addressed and that we're going to make those special conditions.

Q. Are you just looking at paperwork or are you also going on and looking at a computer system?

A. I'm just looking at the paperwork.

Q. Okay. Can you say how many of these you would be able to do, conduct this review of in a month, a week, a day?

A. I generally review 20 to 25 of them each morning.

Q. And how long does it take you to review 20 to 25?

Q. And how long does it take you to review 20 to 25?

Q. And how long does it take you to review 20 to 25?

A. 45 minutes.

Q. So roughly two minutes, a little bit more, an application package; is that fair?

A. That sounds about right.

Q. Okay.
A. If there's no issues with it.
Q. Sure, sure. And if there are issues with it, would you then be documenting that?
A. If there's issues with one, I'll generally get back to the geologist and see what was the issue. If I can't understand it, I'll try to understand it and we'll figure it out.

Generally, we've worked out -- that's how I do it in the morning. Now, I've worked on these with them. If there's an issue while we were working on it, they would come and talked to me, and hopefully I can remember and say, okay, that's the one we were talking about.

Q. Would there be documentation in the file if there was an issue that required that kind of discussion?
A. Between myself and the geologist?
Q. I don't know.
A. Well, generally, there's an issue. I don't know what it would be. And then we have to have -- the
A. Well, generally, there's an issue. I don't know what it would be. And then we have to have -- the
A. Well, generally, there's an issue. I don't know what it would be, and then we have to have -- the operator would have to submit something else to us.
Q. Okay.
A. That's in there.
Q. Okay.
A. That type of thing. Anything we get,
anything associated with the permit. I do not write up
special things. Sometimes I'll ask the staff, hey,
write in here that you talked to this operator about
this or -- I can't think of a good issue right now.

Q. Is that part of what the geologists are doing
is keeping a paper record of those types of
communications?

A. Yes.

Q. Okay. So that you can then, as part of your
review, look at what communications have been had?

A. Right. We have phone logs that are sometimes
in there.

Q. Okay.

A. We have standard letters we put out with
objections, if someone has an objection and we call and
talk to them, and that information goes in there, if
there's an objection.

Q. Are the geologists expected to use those
phone logs to document to use those discussions?

A. Yes.

Q. And do you ever have e-mail exchanges with
the geologists about an application or a review of an
application?

A. I can't think of one. There's so many that
it wouldn't make sense. I can't think of one, so no, we
generally don't.

Q. When you say there's so many, it wouldn't make sense, what do you mean?

A. If there's issues on permits, I get enough e-mails as it is now, and they know they can come right in my office and talk about it.

Q. There are six geologists that report to you; is that correct?

A. Yes.

Q. And do each of them work out of this office?

A. Yes.

Q. Do they conduct site visits as part of their technical review of a permit application?

A. Rarely, very rarely.

Q. Under what circumstances would that happen?

A. Most cases would be an objection where we have either an issue we can't solve on the phone. That might be the only one we would have people go out on.

Q. Would there be documentation if a site visit were done?

Q. Would there be documentation if a site visit were done?

Q. Would there be documentation if a site visit were done?

A. Yes.

Q. What's the difference -- do you know what Craig Lobins does in connection with these applications?

A. Not everything probably.

Q. Do you know to what extent there's any
difference between what you are doing and what he is
doing?

A. The big difference is he sees the permit. I
don't see the permit.

Q. Okay.

A. It gets issued. They type up the permit.

And he sees the permit. Now, he can look at the permit
and see how it makes sense with either typos on the
permit or, oh, this lat and long doesn't match up or
something, so he gets to see that. Any special

conditions I said should go in, he can look and make

sure that they're in there. I'm hoping they go in.

They generally do, and he's ensuring. I would think he

would ensure that they would go in.

Q. And I think I asked this before. I just want
to make sure. After it leaves your desk when you've
done your review of the application, do you see that

permit file again?

A. Generally not.

Q. Okay. Under what circumstances would you?

A. Generally not.

Q. Okay. Under what circumstances would you?

A. Only if Craig brings it back to me and says

there's something wrong.

Q. And would there be some sort of paper trail

that would reflect that?

A. Probably on, let's say -- the lat long was
Q. Okay.
A. Somehow it's wrong, he figured that out. We would note that we changed it.
Q. Okay.
A. Generally, it's -- we just note that we change it right on the plat or on the permit, but there's not a separate piece of paper for something like that.
Q. When you say a Marcellus well, what do you mean by a Marcellus well?
A. A well that's in a shale formation. We call them Marcellus wells, but it's not --
Q. Okay.
A. The ones that are Marcellus, they're in a Marcellus formation, but any that are in a shale formation where they're going to use a substantial horizontal lateral and fracture it.
Q. Okay. So a Marcellus well doesn't necessarily mean -- doesn't exclusively mean a well
Q. Okay. So a Marcellus well doesn't necessarily mean -- doesn't exclusively mean a well
Q. Okay. So a Marcellus well doesn't necessarily mean -- doesn't exclusively mean a well drilled into the Marcellus shale. It would include wells drilled into other shale formations; is that correct?
A. Um -- sorry, I didn't mean to say that.
Q. No, no, that's okay. That was a reasonable
"um."

A. A Marcellus well is a Marcellus well. I mean, if it's Marcellus shale, it's Marcellus shale. We found that they're starting to drill into other shales with similar characteristics and we put special conditions on the permits.

Q. Right.

A. And we label them with an M so we call them Marcellus wells, and we want to make sure those special conditions get onto those other shale wells where they're going to fracture, so we have been calling them Marcellus wells. I wish we would have -- I shouldn't say that.

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

MS. GALLOGLY: Don't speculate.

Q. Oh, I'm not asking you to speculate. One of the elements of the definition you gave to the label of a Marcellus well was that it's a horizontal well that's being fractured. Is that accurate?

A. Usually.

Q. Okay.

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

Q. Okay. And can you have a Marcellus well
that's not being fractured?

A. Yes.

Q. Do you know when the Pennsylvania Natural Diversity Index, how often that gets updated?

A. No, I don't.

Q. When an applicant -- is the review of an application different based on the acreage of the disturbed area?

A. For a drilling application? No.

Q. What about for an E&S?

A. Yes.

Q. Is the review of a drilling application any different when there will be an E&S permit versus when there won't be an E&S permit?

A. No, and if there is an E&S permit, they'll put it on the -- I forget what number it is. They'll put that there's an E&S, and they'll put the number if there's one associated. If there's not one, it's not on there.

Q. Okay.

there.

Q. Okay.

there.

Q. Okay.

A. That's the only difference.

Q. Okay. The review that the permit application is given for a well permit is the same level of review, the same components to it, whether there will also be an E&S permit or not?
A. Yes.

Q. Okay. Is there anything done that you're aware of by the Department to confirm the accuracy of the information supplied by the applicant on the application?

A. All of the information?

Q. Any of them.

A. Well, the PNDI, in my memory, we look at the date to see when it was ran. It looks like a PNDI sheet. We look -- the information that's submitted, I guess -- I don't mean to guess but --

Q. Do you know whether there's anything done by the Department to verify the accuracy of the information that the applicant supplies?

A. Only on the plat portion we're actually measuring things -- we're actually measuring items on either distances and the latitude longitude where it is derived. We make sure it makes sense from a topomap that we have and what's on the plat.

Q. If the plat shows a water resource in a that we have and what's on the plat.

Q. If the plat shows a water resource in a that we have and what's on the plat.

Q. If the plat shows a water resource in a certain location in relation to the proposed bore hole, is the Department doing anything to determine whether those relative locations are accurate?

A. If we see them on a topomap, on our own map that we use, we make sure it jives, it makes sense. If
it doesn't make sense, we'll call and say, there's an issue here, so solve this issue or why do I see this, and it doesn't make sense and why does this seem closer and they're farther away.

Q. And this is something that's done by the geologist or done by you?

A. The geologists.

Q. And when you're talking about a topomap, you're talking about a map that's prepared by the USGS?

A. Based on a map prepared by the USGS.

Q. Okay.

A. We have a map system that uses a topomap generated by maptech, and our lat long information feeds a computer system called eFACTS, and we have software that melds those together and the lat long they put on is now able to be shown during their review on this computer system and we look at that and we look at the plat and everything should make sense. If there's any discrepancies, we'll have the operator address those.

Q. The data that is utilized for those maps, discrepancies, we'll have the operator address those.

Q. The data that is utilized for those maps, discrepancies, we'll have the operator address those.

Q. The data that is utilized for those maps, does that include data on the size and location of wetlands and water sources?

A. Yes.

Q. Do you know how old that data is?

A. No.
Q. Do you know what the source of that data is?
A. Not exactly.
Q. Do you know the accuracy of that data?
A. No.
Q. And as part of the well permit application process, are applicants required to submit wetland delineation reports?
A. Only if they are within a certain distance.
Q. Based on their representation of the distance?
A. Yes, and if it's less than an acre, they can delineate out that it's less than an acre so you won't have to submit a waiver. You still can't -- you still can't disturb that wetland, but you don't have to submit a waiver if it's less than 100 feet, but they'll submit a delineation sometimes to show that it's less than an acre.
Q. I want to make sure I understood the pieces of that. The circumstances under which they have to submit a delineation are only if they are within 100 feet, if they represent -- oh, I'm sorry, you're shaking your head so I'm already getting it wrong so go ahead.
A. Well, you asked if they submitted delineations and sometimes they do, but they don't have to submit a delineation.
Q. Okay. Ever?
A. Not with the application.
Q. Okay.
A. No.
Q. Are there circumstances where if they don't, you are always going to require them to?
A. Yes.
Q. What are those circumstances?
A. If we see one on our maps and we think that's close to an acre, we'll have our field guy go out, and if he can't make a determination, we'll have them submit a delineation proving to us that it is less than an acre.
Q. When you say the field guy, you're talking about a geologist?
A. No, I'm talking about a water quality specialist generally.
Q. Okay.
A. It's an oil and gas -- we call them field people. He's a water quality specialist, who's out in the field and one of our field offices or even out of this office.
Q. And who makes a determination as to whether that should happen?
A. Which should happen?
Q. That one of these field people should go out.
A. The geologist generally would.
Q. Would that be documented?
A. Yes.
Q. Other than -- I just want to make sure I'm clear. Other than looking at the mapping data that you identified a few moments ago and doing a comparison between that and what the applicant has provided you, is there anything else done by the Department to verify the accuracy of the size or location of wetlands or water sources that are depicted on the plat?
A. No.
Q. Is there any consideration given in the permit review process for potential cumulative impacts of multiple applications, multiple well projects?
A. No.
Q. Are the applicants -- and I apologize if I asked a question about this. Are the applicants required to disclose within their application packet the amount of acreage of the disturbed area?
A. No.
Q. How does the Department decide whether an E&S permit is needed?
A. If the Department decides, it's generally because the water quality specialist field people have
gone out and have determined that this is at least five acres and that they're going to need a permit, and then that's how we determine, the Department determines it. It's a field person generally. And it's also in regulation that if you're going to be over five acres, that you need to submit it.

Q. Okay. But as the permitting agency, do you have an interest in making sure that the applicants are meeting the requirements of the regulations?

MR. HOLTZMAN: Objection.

MS. GALLOGLY: He's not a designee. He's just testifying as to what he does.

MR. YEAGER: Right. Okay.

Q. As the -- what's your title again?

A. Geologist manager.

Q. As the geologist manager --

A. Professional geologist manager.

Q. Professional geologist manager, do you have an interest in making sure that the Department's regulations are followed?

A. Yes.

Q. And part of the area in your responsibility is E&S permitting, correct?

A. Yes.
Q. And one of the triggers for E&S permitting is the amount of disturbed area on a proposed site, correct?

A. Yes.

Q. Greater than five acres?

A. Yes.

Q. Is it five acres or greater or is it greater than five acres?

A. I think it's five acres and greater.

Q. Okay. Whatever it is I won't hold you to it. So if it's five acres or greater, they need to submit, as you understand the regs, the applicant is required to submit and obtain an E&S -- submit an application and obtain an E&S permit.

A. Yes.

Q. Okay. As part of the Department's review of a well drilling permit, the Department doesn't have -- am I correct that the Department doesn't have a part in that process that includes a determination as to whether an E&S permit will be required?

That process that includes a determination as to whether an E&S permit will be required?

That process that includes a determination as to whether an E&S permit will be required?

MR. HOLTZMAN: Objection again to the extent he's answering as though he's a designee of the Department, that's inappropriate. Actually, continuing objection,
but he's answering as an individual. Go ahead.

THE WITNESS: Can you ask it again?

MR. YEAGER: Can you read that again.

(Question read.)

A. Not on the drilling permit.

Q. On a different permit?

A. Well, if it's an E&S plan, they've submitted it. They've submitted the plan there.

Q. Okay. You mentioned the field -- I forget what -- how you described the field people who go out?

A. Water quality specialists.

Q. Water quality. Thank you. Can you estimate among the permits, the well drilling permits that are reviewed by the Department, what percentage of those review processes involve a site visit by the water quality specialist, by a water quality specialist?

A. During the permitting process?

quality specialist, by a water quality specialist?

A. During the permitting process?

quality specialist, by a water quality specialist?

A. During the permitting process?

Q. Yes. Does that happen at all?

A. At times. I don't know the percentage.

Q. Is it frequent? Infrequent?

A. Probably infrequent.

Q. And in looking at the permit file, we would
be able to see whether that happened?

A.  Beforehand?

Q.  No.

A.  During the permitting process?

Q.  After the permitting process is complete, if you're looking back at the permit file, would there be documentation in the permit file that a water quality specialist conducted a site visit?

A.  Yes, there's inspections forms that are in there.

Q.  Does the permit review process that you oversee and that you participate in vary at all between applications that are in special protection watershed and those that are not?

A.  Yes.

Q.  How so?

A.  Some are in special protection watersheds and some aren't.

Q.  My question is, does the review process for well permits vary?

Q.  My question is, does the review process for well permits vary?

Q.  My question is, does the review process for well permits vary?

A.  Only that if it's not on there, we make sure that it gets put on there, that it's in a special protection -- yeah, special protection watershed. We put it on there if it's not.

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.

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
would handle it exactly.

Q. What's close by mean?

A. I don't have a definition for that. If we see it and it looks like it's a scenic river, it might be an issue. Let's -- let's look at it further.

Q. What scenic rivers are there in the region that you are involved in in permitting for gas wells?

A. I know -- the Allegheny has parts of it is scenic. The Clarion. The Delaware. I'm guessing now.

Q. I don't want you to guess.

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

Q. Okay. Parts of each.

A. Yes.

Q. Okay. And you think the Delaware might be or parts of the Delaware might be?

A. Yes.

Q. Any others that you think might be?

A. I think the Susquehanna has parts.

O. Okav. Do you know whether there's a process

A. I think the Susquehanna has parts.

O. Okav. Do you know whether there's a process

A. I think the Susquehanna has parts.

Q. Okav. Do you know whether there's a process in place within the Department, in the permitting process that you oversee and participate in by which you determine whether the proposed project is close by one of those parts of river that would be designated as scenic?
A. There is. We have an arc map layer for scenic rivers.

Q. And do you know whether the Department has a standard for determining whether a project is close enough to a scenic river that it requires consideration within the Department?

A. No.

Q. I'm sorry, it was based on the way I asked the question. No, you don't know whether it does or no, the Department doesn't have such a standard?

A. I don't know of the standard.

Q. Okay. Do you know whether there is a standard?

A. No.

Q. You were doing these permits as a geologist for 11 years?

A. Um-hum.

Q. Yes?

A. Yes.

Q. Were you aware of a standard at that time?

A. Yes.

Q. Were you aware of a standard at that time?

A. Yes.

Q. Were you aware of a standard at that time?

A. No.

Q. Is there anyone else who serves as the direct supervisor for the geologists who are involved in the permitting process under you?

A. No.
Q. Are there regular performance reviews conducted of those geologists?

A. Yes.

Q. And are those conducted by you?

A. Yes.

Q. Does the Department in making a determination on a well permit consider the impact of a proposed well on publicly owned parks, forests, game lands, wildlife areas?

A. Yes.

Q. Explain how so.

A. Well, we are to consider it. There is a form that's filled out, a coordination form, that the operator needs to fill out to show that they understand that there is some sort of coordination with the public agency that this location is proposed on.

Q. So is it your understanding that that form only needs to be filled out if the proposed well is situated on publicly owned property?

A. Or within 200 feet.

Q. Okay. In making a determination on a well permit application, is there any consideration given to the municipal zoning or municipal comprehensive plans?

A. No.

Q. All right.
(Discussion held off the record.)

Q. We had a set of depositions yesterday, and what we have worked out yesterday is going to carry over today. We're using one set of documents as an exhibit in each of the exhibits, and it's been marked as Appellant's 1, and I'll represent to you that it reflects in full the documents that the Department produced in response to a discovery request in this case.

And you'll see at the bottom of the page, of each page, for example, the bottom of this page, there's a number on it. I may refer to it as a Bates number, okay? It's a pagination system that gets put on documents to help keep track?

A. Bates?

Q. Bates, B-A-T-E-S.

A. Okay.

Q. And this document set is numbered 1 through 38. And what I'd like you to do is, I'm going to ask you some questions about it. I'd like you, if you could, just take a moment to go through that and take a look at it.

A. Okay.

Q. If I ask you specific questions about a page or document, I'll give you time to go through it in more
detail. I just want you to get more familiar with it to start.

(Brief recess at this time.)

Q. Did you have a chance to go through Appellant's 1?

A. Yes.

Q. Okay. Can you remember this particular permit application?

A. No.

Q. Okay. Do you remember ever processing any permitting applications in the Delaware River watershed?

A. I can't specifically remember it.

Q. Okay. Looking at the first page of this permit application, can you identify what on here is your handwriting?

A. Yes, where it says date approved, top and the middle.

Q. 5-11-10?

A. Yes.

Q. Anything else?

A. Yes.

Q. Anything else?

A. Yes.

Q. Anything else?

A. Nothing else.

Q. The handwriting to the right of that date approved where it says watershed name and designation?

A. Yes.

Q. Whose is that?
A. That is probably Joe Lichtinger's.

Q. Okay. And to the left of where the date approved box is, there are, in the same kind of pen, it looks like, 5-3-10, and is that J.L. next to it?

A. Yes, I think it is.

Q. And below that, it says 5-27-10, next to the INV?

A. Um-hum.

Q. Do you know who that is?

A. I don't know who that is.

Q. That's not yours?

A. No, that's no mine.

Q. Do you know what reflects that INV, what goes in there?

A. No, I don't.

Q. At the beginning -- I just want to make sure I understand how a set of answers that you've given already fits in there. At the beginning, I had asked you about what you do as part of your review of these applications, and part of what I understood you to be saying was that you look at the yeses and do some follow-up within the file to look at other documents to relate to the yeses?

A. Yes.

Q. And then I had asked you about the review
given to well sites that are proposed to be in a special
protection high quality or exceptional value watershed.
   A. Yes.
Q. And that's a question on this form at No. 12, correct?
   A. Yes.
Q. And this is an example of an application
where there is a yes in that box, correct?
   A. Yes.
Q. I understand your answer, when I asked you
about whether there's any difference in the review
that's given of these applications when it's in a
special protection watershed that your answer was other
than making sure that the watershed is noted in the
forms, there was nothing -- there's nothing else
different about how these are reviewed, correct?
   A. Yes.
Q. So when you see a yes in Box 12, as you're
doing your review, does that lead to anything else from
you?
doing your review, does that lead to anything else from
you?
doing your review, does that lead to anything else from
you?
   A. Yes.
Q. What does it lead to?
   A. I make sure it's checked up here.
Q. Make sure that it's checked at the top right
of this form where it says watershed name?
A. Yes. That should be Joe's handwriting there.
Q. Okay.
A. And I look at the plat to see if it was
designated on there.
Q. Okay. And so if we turn to, I think it's
15 -- yeah, Bates Page 15, that's the well location
plat, correct?
A. Yes.
Q. There's a stamp there where it says HQ
watershed and a stamp and a line and someone has written
in Hollister Creek.
A. Yes.
Q. So that's the only thing you're looking for.
A. Yes.
Q. Why is that done?
A. It is done to notify the field people, water
quality specialists that they're in an HQ or EV
watershed.
Q. Why?
A. I don't know for sure.
Q. Why?
A. I don't know for sure.
Q. Why?
A. I don't know for sure.
Q. Okay. When you are reviewing the permits,
are you going back and looking at the Department's
mapping information?
A. No.
Q. If you turn to Bates Page 2, you see there's
a map type image?

A. Yes.

Q. In the middle of the page?

A. Yes.

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

A. Yes.

Q. Top right quadrant?

A. Yes.

Q. Do you have any understanding what that represents?

A. I do know what that represents.

Q. Okay. What is it?

A. It is -- I don't know -- I do know that the Delaware River is there.

Q. Okay. So it's piecing together your knowledge of the -- how do you know the Delaware River is there?

A. I've looked at this since the time, so that's how I know. Actually, recently, I was wondering where exactly this thing was, where this is coming from so I how I know. Actually, recently, I was wondering where exactly this thing was, where this is coming from so I how I know. Actually, recently, I was wondering where exactly this thing was, where this is coming from so I looked and I was like, oh, that's where that is.

Q. Okay.

A. So I just happen -- I know that now. I would imagine at the time I did not know that.

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
memorized. E is the most common because we have a lot
of Marcellus wells.

Q. If it's going into a -- just because of the
confusion about the use of the phrase Marcellus, if it's
going through a different shale formation, would it also
be E circled?

A. Possibly. If they were going to have a
horizontal bend, a substantial horizontal bend to the
well in a shale formation, we would also circle E.

Q. Okay. Does the Department have, based on
your oversight and participation of the permitting
process, does the Department have any difference in the
way that it processes applications involving gas wells
versus test wells?

A. I don't know of any difference.

Q. Who makes the determination about whether one
of those special conditions should be circled?

A. The geologist reviewer.

Q. Okay. The geologist reviewer, that's the
person under you?

Q. Okay. The geologist reviewer, that's the
person under you?

Q. Okay. The geologist reviewer, that's the
person under you?

A. Yes.

Q. Do you make a determination as to whether the
special conditions have been appropriately selected or
not?

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.
A. And they mentioned they met the distance restriction because it is a conservational, so I look to see, one, the depth.
Q. Now you're looking back at Page 15?
A. Yes, 15, there's a total vertical depth, and I just look to see if it makes sense. It sounds reasonable to me, and I make sure they're in a formation that is a conservation depth.
Q. Okay.
A. In this case, they are.
Q. All right. What else are you doing in your review? Before you go onto the next one, why is that important?
A. Because if they're at conservation depth, they need to meet distance restrictions according to the conservation law, and we have to make sure that they do that.
Q. And they've told you that they are at that depth?
A. Yes.
Q. So are you doing anything in your review to see whether they meet the distance restrictions?
A. The geologists are, yes.
Q. I'm asking you personally.
A. I look and make sure that looks like they're
far enough away from a property line.

Q. Okay.

A. That's what I look at to see if -- if I don't see a property line running right through it, make sure it makes sense.

Q. Is the scale of these the same in every one you get?

A. No.

Q. So where is the scale noted?

A. Down, bottom right, near the bottom right, right below the surveyor's seal.

Q. Oh, I'm sorry. So do you get out a ruler, instrument of some kind to measure?

A. Infrequently.

Q. You shook your head yes, you were agreeing with me infrequently? I just wanted to make sure I heard you right.

A. Infrequently, yes, I'm sorry.

Q. That's all right. Is there a range in the scales you get?

Q. That's all right. Is there a range in the scales you get?

Q. That's all right. Is there a range in the scales you get?

A. Yes.

Q. Like what is --

A. Is there a qualified scale? We don't have any parameters that you have to meet.

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

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.
Q. You're pointing to the left, kind of the -- roughly the 10:00 on the circle?

A. Yes. And it says ponds there, wetlands, and it's delineated -- it's not delineated. It's marked out on here.

Q. All right.

A. And I can tell by looking at it that it's 400 feet away.

Q. Okay. But that the edge of what's identified here as the pond is 400 feet away from what?

A. The proposed location.

Q. Of --

A. The well.

Q. The bore hole?

A. Yes.

Q. Okay. What else are you looking at?

A. On this one? Probably not much else.

Q. Okay. Do you know, from looking at this what the distance of the well site -- when I use the term well site, what do you understand that term to mean? the distance of the well site -- when I use the term well site, what do you understand that term to mean? the distance of the well site -- when I use the term well site, what do you understand that term to mean?

A. The well site is the disturbed -- that's not the case. The well site is the pad that they're going to be working on.

Q. Okay.

A. That's what I look at as the well site.
Q. Okay. Not the disturbed area?
A. If it's an E&S plan, it's considered the disturbed area for the application for that permit.

Q. What about for a well permit?
A. I don't take -- I guess not necessarily.

Q. Okay. Explain that --
A. I don't look at it that way because they're different permits. One is for disturbing the earth and one is for drilling the well.

Q. Do you have any understanding why the distance is -- if we look at Questions 8 and 9 on the front sheet, it asks about whether, will the well site be within 100 feet measured 8, within 100 feet (measured horizontally) of a stream, spring or body of water identified on the most current seven and a half degree topographic map, correct?
A. Yes.

Q. And 9 says will the well site be within 100 feet of a wetland or in a wetland. Do you have any understanding as to why those distances are identified feet of a wetland or in a wetland. Do you have any understanding as to why those distances are identified feet of a wetland or in a wetland. Do you have any understanding as to why those distances are identified on this form?
A. They are in -- this is in the Oil and Gas Act. I believe they're both in the act and both in our regulations.

Q. And is the definition of well site in the
regulations?

A. No.

MR. HOLTZMAN: Objection, he's not a legal expert.

MR. YEAGER: No, he's not.

A. I don't know.

Q. So do you know whether under the regulations that you're issuing permits under, do you know how a well site is defined?

A. No.

MR. HOLTZMAN: Objection. He doesn't know whether it's defined.

Q. Does the plat on Page 15 identify the extent of the disturbed — proposed disturbed area?

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

Q. So as you look at the plat on Page 15, you don't know whether the proposed disturbed area is within 100 feet measured horizontally of a body of water, correct?

A. As I'm looking at this plat?

Q. Yeah.

A. Correct.

Q. Is Hollister Creek on this plat?

A. I do not see it.

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.

Q. Do you know what that line is?

A. Yes.

Q. Do you 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
the proposed well site is from Hollister Creek?
A. No.
Q. Is there anything that tells you where it is in terms of being upgradient or downgradient of Hollister Creek?
A. Page 0002 can. It has topo lines on it, so I can read the topo lines. It's upstream. I can look at it and see that it's upstream. It's uphill.
Q. Okay. Is there anything in -- is the star -- on 2 is the star where you understand the well site to be?
A. Yes.
Q. Is there anything in this packet that tells you where the proposed well site is in relation to the Delaware River corridor?
A. I don't know.
Q. Okay. Do you know what the -- what's considered to be within the corridor and not within the corridor?
A. I don't know for sure.
Q. Okay. Do you know whether there was within the Department any analysis performed to consider whether there -- to consider what the impacts, if any, might be from this project on Hollister Creek?
A. I don't know of any.
Q. Do you know whether there was any analysis performed to consider what the impact if any of this project might be on the Delaware River?
A. No.

Q. Is there any, from what you see chronologically up to the time of the permit from this file, is there anything that tells you that an erosion and sediment control plan had been prepared prior to the issuance of the permit?
A. No.

Q. Are you aware of in analysis conducted by the Department as part of its permit review application of the potential impacts that the project would have on groundwater resources?
A. No.

Q. Are you aware of any analysis conducted by the Department to assess the impact or the adequacy of any storm water management measures in connection with this project?
A. No. no.

Q. Are you aware whether the Department, as part of the permitting process, communicates or coordinates with local municipalities?
A. We do not.

Q. And I had asked you some questions before,
but now that you've had an opportunity to look at these
documents, is there any information that you're aware of
that the Department considered the proposed project's
impact on any national wild and scenic river?

MS. GALLOGLY: I object because
he's already testified that he
doesn't even remember reviewing
this permit so how would he know
that?

MR. YEAGER: Well, I'm asking him,
now that he's looked at these
documents, whether there's
anything in the documents that
reflects such a consideration.

A. The Department's consideration for?

Q. Potential impacts on a national wild and
scenic river?

A. I don't know any specific to the scenic
rivers.

O. Okay. Are you aware of whether the
rivers.

O. Okay. Are you aware of whether the
rivers.

Q. Okay. Are you aware of whether the
Department, as part of its permit review, has considered
the impact of proposed project on the water resources of
the Delaware River basin?

MR. HOLTZMAN: Objection. Are you
asking him based on his review of
Mr. Yeager: And his oversight and participation in the permit review process.

Mr. Holtzman: Of course, he's already mentioned many times that he doesn't remember this --

Ms. Gallogly: And I would object too, because I think you asked that.

Mr. Yeager: No, I didn't use the word basin. I asked about the river.

A. Ask it one more time.

Mr. Yeager: Could you read it back?

(Question read.)

A. No, I'm not aware of that.

Mr. Yeager: If you bear with me, I'll be done in a moment.

Mr. Yeager: If you bear with me, I'll be done in a moment.

Mr. Yeager: If you bear with me, I'll be done in a moment.

Q. Do you know what H2S is?

A. Hydrogen sulfide.

Q. Are you aware of any differences within the areas of the state that you cover concerning the 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.
A.  So --

Q.  How would you -- I'm sorry.

A.  I think one of these is a special condition of that, but I don't know for sure.

Q.  Okay.  How would you know when you get one of these applications across your desk or application packages across your desk, how would you know whether it's in one of those regions, unless the geologist noted it?

A.  I wouldn't.

Q.  Okay.  So you're not in a position to oversee the geologist on that piece of the geologist's application analysis?

A.  Correct.

Q.  Okay.  Are you getting information back from what's happened with wells that have been drilled to -- and issues that have been identified through the course of those projects to fine tune what you're doing in the permit approval process?

A.  I hear about things.  You have to maybe permit approval process?

A.  I hear about things.  You have to maybe permit approval process?

A.  I hear about things.  You have to maybe explain it a little better.

Q.  Well, I'm asking you, I don't know what's going on, so I'm trying to understand whether you're getting -- whether you're modifying your permit approval process based on the information you're getting back
about what has happened over the course of permits that
have been granted.

A. I think we do, but I cannot specify anything
right now.

Q. Okay. Well, the process that you've utilized
to conduct your review, since you started in this
position in May of last year -- right, you started in
May of 2010, right?

A. Yes.

Q. Has what you do --

A. Me specifically?

Q. -- changed?

A. No.

Q. Okay. And has what the geologists under you
do changed?

A. No.

Q. And do you know whether what Mr. Lobins does
above you in the chain, whether that has changed?

A. I don't know.

Q. Okay. Do you know what the risks are

A. I don't know.

Q. Okay. Do you know what the risks are

associated with H2S?

A. Not for sure.

Q. What's your understanding?

A. It can be hazardous. It's a safety measure
more than anything else, it can blow up.
Q. Okay.

A. And so you have to drill either on --
probably on mud so you're not introducing air. I think
it's a safety issue.

Q. Okay.

A. That's my understanding.

Q. And so if you're drilling -- is it your
understanding that if you're going to be approving a
permit in an area where that's a concern, that it would
be done by mud drilling instead of air drilling?

A. I don't know.

Q. Okay.

A. I don't know how they would drill it.

Q. But isn't that one of the conditions that
your department sets as part of the permit?

A. If it's in an H2S area, we have special
conditions for that, and I don't recall what that is.

Q. Okay.

MR. YEAGER: All right. I don't
have any other questions for you.

MR. YEAGER: All right. I don't
have any other questions for you.

MR. YEAGER: All right. I don't
have any other questions for you,
sir. Mr. Zimmerman may and some
of the other counsel may.

MR. ZIMMERMAN: Thank you.
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, okay. I see what you're saying.
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.
Q. At the top, that same symbol with the four little boxes, it says denotes location of well on topomap. And then there are numbers for true latitude north and true latitude west, and the numbers that appear in those two boxes are also on the well permit, Page 17; is that correct?

A. Yes.

Q. Going back to 15, at the very top of the page underneath the heading, it says well is located on topomap, 9,363, I think it is, feet south of latitude, 41 degrees, 37 minutes 30 seconds; is that correct?

A. Yeah, 9393 is what I see.

Q. 9393, pardon me. My eye speed is not up to snuff. Located on the topomap, so the little box that we were looking at or the four boxes that are circled, that's the location on the topomap.

A. Yes.

Q. Can you explain to me how the location on the topomap relates to the numbers in the box to the upper left where it says 41 degrees. 45. 57. et cetera? topomap relates to the numbers in the box to the upper left where it says 41 degrees. 45. 57. et cetera? topomap relates to the numbers in the box to the upper left where it says 41 degrees, 45, 57, et cetera?

A. Yes. Well, they're the same thing. This location on a topographic map, if you put this corner on a topographic map, there's nine corners on a topographic map.

Q. Right.
A. If you put this corner on here, set it there, it will locate it, according to this symbol, on the topographic map.

Q. But that's not where the well is actually bored, correct?

A. Yes, it is.

Q. It is where the well is bored?

A. Yes. And it's the identical location to where you see the symbol above Woodland Management Partners.

Q. But the four little boxes and the bore hole are not in the same place.

A. Correct. This -- it's actually one box with a plus sign in it.

Q. Okay, all right. Fine.

A. The center of that is the location. Actually, you could take that off of here. That refers to nothing on this diagram. This diagram shows you where the location is. This along with these lines -- and what this is, this 9.393 is the distance from this where the location is. This along with these lines -- and what this is, this 9.393 is the distance from this where the location is. This along with these lines -- and what this is, this 9,393 is the distance from this line on the topographic map, and this one here is a line on the topographic map. You can take this off of here and it has nothing to do with this.

Q. When you're talking about this one, you're talking about the top of this page and the second time
you're referring to the right-hand side of the page?

A. Yes.

Q. Thank you.

A. And there's nine of those boxes on the
topographic map and that is that one to 2,000 scale. So
you can take that information. That information is
solely to put it on a topographic map, which will put it
at this same location if the buffer -- if the streams
are on there --

(Discussion held off the record.)

Q. Can you tell me, Mr. Babb, why, if you have
any idea, why somebody circled the box with the plus
sign in it?

A. Yes. They would have checked that the
distances matched from the top of this line to that
center point and from the side line here, to the center
point with the numbers that are indicated and checked on
the side for the topographic map.

Q. Okay. Just a couple of other questions.

When Mr. Yeager was asking you about H2S, you indicated

Q. Okay. Just a couple of other questions.

When Mr. Yeager was asking you about H2S, you indicated

Q. Okay. Just a couple of other questions.

When Mr. Yeager was asking you about H2S, you indicated

that you have a mapping of areas where that might be an
issue. Is that one of the arc map layers?

A. No.

Q. No. But you believe that there are special
conditions if you're going to be drilling in that area?
A. There's a special condition, yes.

Q. You've already testified you don't remember all of the special conditions, A, B, C, D, E, F other than E is Marcellus.

A. Correct.

Q. Okay.

MR. ZIMMERMAN: That's all I have.

CROSS-EXAMINATION

BY MS. GALLOGLY:

Q. I just have one follow-up for you. I believe you were asked about what the Department uses when it's looking to see if there's a wild and scenic river?

A. Yes.

Q. In your permitting process. And you mentioned that there was an arc map layer of federal and state wild and scenic rivers, correct?

A. Yes.

Q. Okay. How long have you had that layer?

A. Yes.

Q. Okay. How long have you had that layer?

A. It has been less than a year.

Q. Okay. When did you or your permitting guys start using it?

A. I'm going to say November. That's a guess.

I don't remember.
Q. Okay. So when this permit that's at issue was being reviewed, it was not a map layer that was being used?

A. Correct. I don't think it was.

MS. GALLOGLY: Okay, that's all I have.

CROSS-EXAMINATION

BY MR. HOLTZMAN:

Q. I have a few questions as well, Mr. Babb. My name is Tony Holtzman, counsel for the permittee in this matter. Hopefully this won't take so long. I'm just going to ask a few questions to clarify a few comments you made during your earlier testimony.

First of all, if I could, do you know whether, in submitting an application to the Department the applicant has a duty to provide accurate information on their application?

A. Yes.

Q. You do know?

A. Do they have a duty?

Q. Right.

A. They're signing it so I think they're attesting to the fact that it's true, as far as they
Q. And when the Department issues a permit, is it your understanding that the permit authorizes the permittee to conduct their activities in accordance with what's in their application?

A. Yes.

Q. And can there be consequences if a permittee fails to do so?

A. Yes.

Q. What types of consequences can there be?

A. They start out with notices of violation, according to the permit, up to penalties and can cease suspension of drilling, revocation of permits.

Q. And how does the Department ensure that a permittee is conducting their operations in accordance with what's in the permit and, therefore, what's in their application?

A. Our field personnel.

Q. Okay. Could you explain that a little bit further?

Q. Okay. Could you explain that a little bit further?

Q. Okay. Could you explain that a little bit further?

A. Our water quality specialists and oil and gas inspectors for those areas go out and -- they're a field representative to make sure that things are being prepared appropriately as planned if they have an E&S plan. They have to have an E&S plan onsite. They look
at the plan. They look at the permit application that
has to be onsite, and they make sure that they are not
going -- not -- they make sure they're following as
permitted and all the legal ramifications regulations
and laws that they know of in the oil and gas program.

Q. And do you know how frequently those types of
inspections occur, generally speaking?

A. In our -- I don't know exactly. Well, I
don't know.

Q. And you said that an E&S plan has to be kept
onsite, correct?

A. Yes.

Q. Are there consequences for a permittee's
failure to comply with their E&S plan, to your
understanding?

A. Yes.

Q. Are those similar to the consequences that
you enumerated just a few minutes ago?

A. Yes.

Q. I'm sorry, bear with me. I just need to look
A. Yes.

Q. I'm sorry, bear with me. I just need to look
A. Yes.

Q. I'm sorry, bear with me. I just need to look
through my notes here. Could you look at the exhibit
that you were given earlier, Page 1, please. And you
see that there's a box towards the upper right-hand
corner, and it's labeled type of well.

A. Um-hum.
Q. And you see that, what's been checked is other, correct?
A. Yes.
Q. And do you see what it says below that?
A. Yes.
Q. Vertical test well, correct?
A. Yes.
Q. Okay. And what is your understanding of a designation of a vertical test well? What's your understanding of what a vertical test well is?
A. My understanding is it is a well that's being drilled that perhaps they will not produce.
Q. And if you look at Page 18, this is what's called a corrected well permit, correct?
A. Yes, that's what it says.
Q. And you see there's a box that says well type?
A. Yes.
Q. And in there it says TE, correct?
A. Yes.
Q. And in there it says TE, correct?
A. Yes.
Q. And in there it says TE, correct?
A. Yes.
Q. What does that mean?
A. I would imagine -- I believe it means test.
Q. Okay. And then that's consistent with what's been marked on the application at the front on Page 1, 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?
A. I said it looked about 400 feet.
Q. Okay. Thank you. And to clarify, this particular application for a well permit labeled 1 through 16 is not one that you recall specifically, correct?
A. Correct.
Q. And, therefore, you don't have any specific knowledge of whether, for example, in the course of reviewing this application someone in the Department considered impacts on Hollister Creek?
A. Correct.
Q. Nor, for that matter, do you have any specific recollection or knowledge of whether someone in the Department considered potential impacts on any natural resources?
A. Yes. The PNDI form.
Q. Okay. Could you explain that, please?
A. This is a form that is submitted by the applicant. They designate a location and has to match the plat, that these four agencies had jurisdiction applicant. They designate a location and has to match the plat, that these four agencies had jurisdiction applicant. They designate a location and has to match the plat, that these four agencies had jurisdiction over, if there's any endangered species or species of concern, things like that to plan around.
Q. Just so I understand, are you deriving that assessment from what you see now in front of you, or are you saying that you recall that the PNDI analysis was
done at the time of the application review?
A. I couldn't remember if -- I don't remember looking at this, if that's what you're asking me.
Q. Right. So you don't recall at the time that this application was first presented to you, whether any particular analysis relating to natural resources had been performed? You don't recall that as you sit here today?
A. I don't remember particularly looking at this, if that's what you're saying.
Q. Thank you.
A. Yes -- or no.
Q. Let me just try to come at it -- I apologize. It's my fault. Let me come at it a little bit differently.
MR. YEAGER: I think he's answered the question. He said he doesn't remember looking at it.
MS. GALLOGLY: He answered it both ways.
MS. GALLOGLY: He answered it both ways.
MS. GALLOGLY: He answered it both ways.
MR. YEAGER: His words, forget about the yes or no; his words explained what his answer is.
MR. HOLTZMAN: I think I'll let the witness make that statement on
Q. You don't recall as you sit here today whether any particular analysis was performed in connection with this application as it relates to natural resources?

A. With this application, it came across my desk, I would have seen this and noted that there is no further review required for these agencies.

Q. Right. But you don't recall this particular application?

A. No, I do not.

Q. Okay, thank you.

MR. HOLTZMAN: I have no further questions.

MR. YEAGER: I don't have any follow-up.

MR. ZIMMERMAN: I have a couple of follow-up, if you wouldn't mind.

RECROSS-EXAMINATION

RECROSS-EXAMINATION

RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. If a permit application package comes to you and doesn't contain a PNDI analysis sheet, does that make it an incomplete application?
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.

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.
Q. Does your answer to his question perhaps they will not produce mean that it would be the operator's decision as to whether to produce and the Department would not be involved in that decision?

A. Yes.

MR. ZIMMERMAN: Okay. Thank you.

REDIRECT EXAMINATION

BY MR. YEAGER:

Q. If I could just ask one question. When Mr. Holtzman was asking you about what the permit, the granted permit authorizes, my recollection that he asked about whether it authorized the applicant to drill the well in accordance with the application. Is it correct that it authorizes the applicant to drill the well in accordance with the permit, not in accordance with the application?

A. Yes.

MR. YEAGER: That's all.

A. Yes.

MR. YEAGER: That's all.

A. Yes.

MR. YEAGER: That's all.

MS. GALLOGLY: Okay. Now I have to follow up.
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 formation?
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.
Q. Okay. Then tell me what it allows them to produce.
A. They can produce -- this is their target formation.
Q. Right.
A. This is one they're planning on drilling to.
Q. And --
A. But they produce --
MR. YEAGER: If you could let him answer, please.
A. And producing.
Q. Right.
A. And they can produce from there up that hole.
Q. Okay.
MS. GALLOGLY: No further questions.
MR. HOLTZMAN: I just have one more.

RECROSS-EXAMINATION

RECROSS-EXAMINATION

RECROSS-EXAMINATION

BY MR. HOLTZMAN:

Q. You were discussing the vertical test well just a moment ago, and you said that, correct me if I'm wrong, it's possible to produce gas from a vertical test
well. Was that your testimony?

A. Yes. I didn't say possible. I said they can produce.

Q. And when you say they can produce it, do you mean it's physically possible to do?

A. Yes.

Q. And you said, I believe, that in this case -- strike that. So by "can," you mean physically possible?

A. Yes.

MR. HOLTZMAN: Okay, that's it.

Thank you.

MR. ZIMMERMAN: Let me ask one, then.

MR. YEAGER: Actually, I don't think he finished his answer.

MR. ZIMMERMAN: I'm sorry. Did you finish your answer?

THE WITNESS: Yes.

FURTHER RE Cross EXAMINATION

FURTHER RE Cross EXAMINATION

FURTHER RE Cross EXAMINATION

BY MR. ZIMMERMAN:

Q. I think what we're struggling with here is from English class when we were in grade school, can versus May. Mr. Holtzman had indicated and your
response was yes, they can produce, but as far as you
understand, your regulations, may they produce without
getting a further approval from the Department --
A. Yes.
Q. -- for a test well? The answer is yes?
A. Yes.

MR. HOLTZMAN: I have nothing
further.

MR. ZIMMERMAN: I don't have
anything further.

MR. YEAGER: Nor do I.

MS. GALLOGLY: Nope.

MR. YEAGER: Thank you, sir.

(Babb deposition concluded at 11:20 a.m.)
REPORTER'S CERTIFICATE

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

Lisa Willow Weiss
Court Reporter and Notary Public

Dated: March 29, 2011
COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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

v. 

EHB Docket No. 2010-102M

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

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

Street, Meadville, Pennsylvania.
Street, Meadville, Pennsylvania.
Street, Meadville, Pennsylvania.

Willow Reporting Service
8400 Franklin Pike
Meadville, Pennsylvania 16335
814-337-6622
For the Appellants, the Delaware Riverkeeper and Delaware Riverkeeper Network:

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

For the Appellants:

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

For the Commonwealth of Pennsylvania, Department of Environmental Protection:

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

For Newfield Appalachia PA, LLC:

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

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

### CRAIG LOBINS

<table>
<thead>
<tr>
<th>Event</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct examination by Mr. Yeager.</td>
<td>4</td>
</tr>
<tr>
<td>Cross-examination by Mr. Zimmerman.</td>
<td>57</td>
</tr>
<tr>
<td>Cross-examination by Mr. Holtzman.</td>
<td>68</td>
</tr>
<tr>
<td>Redirect examination by Mr. Yeager.</td>
<td>78</td>
</tr>
<tr>
<td>Recross-examination by Mr. Zimmerman.</td>
<td>83</td>
</tr>
<tr>
<td>Recross-examination by Mr. Holtzman.</td>
<td>88</td>
</tr>
<tr>
<td>Further Recross-examination by Mr. Zimmerman.</td>
<td>85</td>
</tr>
</tbody>
</table>
MS. CARSON-BRIGHT: Once again, before we get started, I would just renew my objection with regard to Mr. Zimmerman and not being licensed to practice law in Pennsylvania.

MR. HOLTZMAN: I join that objection again. Continuing objection.

MS. CARSON-BRIGHT: Yes, continuing objection.

CRAIG LOBINS, first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YEAGER:

Q. Mr. Lobins, could you spell your last name, please?

A. L-O-B-I-N-S.

Q. How are you currently employed?

A. With the Department of Environmental -- Commonwealth of Pennsylvania Department of Environmental
Protection.

Q. What's your position?
A. Regional manager with the oil and gas program.

Q. How long have you had that position?
A. Seven and a half years.

Q. And what did you do before that?
A. I was the environmental cleanup program manager for the Commonwealth of Pennsylvania Department of Environmental Protection.

Q. How long were you in that position roughly?
A. Five years, since January of '98, I think it was.

Q. When did you join the Department?

Q. Can you just quickly list what other positions you had?
A. Yes. Okay, yes. I started out in the waste management program as a geologist, and then I moved to the environmental cleanup program as a section chief for the management program as a geologist, and then I moved to the environmental cleanup program as a section chief for the management program as a geologist, and then I moved to the environmental cleanup program as a section chief for the remediation section, and then -- which would have been in 1992, and then in 1998 became a program manager for environmental cleanup.

Q. And advanced degrees?
A. Degree in geology. I'm a licensed
professional geologist.

Q. And when did you become a licensed professional geologist?

A. I think it was 1993.

Q. And do you have to maintain certification for that?

A. Yes. You -- and just recently, actually, you have to take 24 professional hours of development and every couple years renew your license.

Q. Is it 24 hours over what period of time?

A. Oh, I'm sorry, two years, in a two-year period.

Q. And what -- can you identify what your major job functions are as regional manager of the oil and gas program?

A. Yes, I manage the permitting activity for the northern half of Pennsylvania, which includes 27 counties, and then for the 12 counties in the northwestern part of Pennsylvania, also include the permitting -- oil and gas permitting -- oil and gas northwestern part of Pennsylvania, also include the permitting -- oil and gas permitting -- oil and gas northwestern part of Pennsylvania, also include the permitting, and then also oversee or manage the operations and compliance part of the oil and gas program.

Q. Now, you've been in that position for seven and a half years?
A. Yes.

Q. Has the responsibilities in the position changed over that period of time or have they been constant?

A. No, they changed because we opened a new office out in Williamsport, so we have an east region. And with the east region, they now provide the oversight of the operations and monitoring compliance.

Q. I'm sorry.

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

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

A. Okay.

Q. -- and give you some instructions. Have you ever sat for a deposition before?

A. Yes.

Q. All right. As you understand, it's a question and answer session?

A. Um-hum.

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

A. Um-hum.

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

A. Um-hum.

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

A. Okay.

Q. And I'll ask that you wait until I finish my question before you start to answer.

A. Okay.

Q. The court reporter can only take words, not
um-hums, huh-huhs, nods and shakes, so we'll both just
try to stick with that as much as we can. If at any
time you want to take a break, just let me know. And if
you don't understand my question or part of my question,
just let me know, all right?
A. Okay, um-hum.
Q. So you were telling me about the change on
the operations and compliance side that that's become,
it sounds like, more regionalized and the Williamsport
office is handling that for the northeastern region?
A. Yes, eastern region.
Q. Okay. But for the permitting activity, you
maintain that for the northern part of the state across
east, west?
A. That's correct.
Q. How many permits a month -- what's the best
way to describe what your role is in managing the
permitting activity?
A. After my staff does a review of the permits,
it comes in and there's an administrative review and
A. After my staff does a review of the permits,
it comes in and there's an administrative review and
A. After my staff does a review of the permits,
it comes in and there's an administrative review and
then there's a technical review. And the permit comes
to me for final authorization, and essentially if it's
an acceptable permit, then I sign the permit, and then
the permit is -- then it's a valid permit. It's a
permit at that point.
Q. And everything you told me so far about the permitting process, was that true back in the April to June time period of 2010?
   A. Yes.
   Q. At that time -- roughly the number of permits that you were handling a month the same then as it is now?
   A. Yes.
   Q. How many are we talking about a month?
   A. Well, we issued -- well, issued 4,600 last year, a little over 4,600, so I guess that would be almost 400 a month.
   Q. 4,600 permits in 2010?
   A. In 2010.
   Q. Is there a time a year where you tend to be busier or less busy with the oil and gas permitting?
   A. It's fairly constant, and I think towards the end of the year, it picks up a little bit, and I think usually probably in the spring, summer months, it's a little bit higher too.
   Q. So in those higher months, how many permits do you think you're doing a month?
   A. 500. 500 would be a high month.
   Q. What percentage of your time is devoted to 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 --
Q. It's about two minutes?
A. It's about -- that's close, yeah, two to three minutes.

Q. Does that vary at all with the type of well that's being drilled?
A. Yes. If there's more detail on it, for example, if it's a lateral well and they're drilling -- one of these horizontal wells, then I'm taking a look at the side view too and the possibility there could be a pilot hole on it. They might have another, a pilot boring, you know, so there's more detail so it takes a little longer to look at them.

Q. Other than if it's a horizontal well, other well types that might take you longer?
A. Excuse me, yeah, if there's -- let's say, more special conditions, the technical person has a few more technical or special conditions on it, then I have a tendency to look at them a little closer.

Q. Okay.
A. Question them why are they putting them on.
Q. Okay.
A. Question them why are they putting them on.
Q. Okay.
A. Question them why are they putting them on.
Q. But if there's an absence of special condition, it doesn't take you longer to figure out why they're not putting them on?
A. No, that's correct.
Q. And what document would you look at to see
whether there's special conditions put on it?

A. On the permit application.

Q. Okay.

A. That's one place, but then within the packet these special conditions would be also contained in there.

Q. On what document?

A. With the application, if it's with the permit application. I receive a packet similar to this, and then on this special conditions noted up on the top right-hand corner and then also within the submittal, the special conditions would be there and quite often they're flagged.

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

A. Um-hum.

Q. Other types of -- other well types or aspects of the application package that gets to you that causes you to conduct a more detailed review?

A. The Marcellus wells, they always raise an you to conduct a more detailed review?

A. The Marcellus wells, they always raise an you to conduct a more detailed review?

A. The Marcellus wells, they always raise an eyebrow, and with that, there's special conditions associated with the Marcellus well.

Q. And how did you determine whether it's a Marcellus well?

A. On the plat, it identifies a target
formation, and then also on the application, there's a section for notes and it's designated in the notes section.

Q. Any other applications or packets that require a more detailed review from you -- let me strike that -- that lead to a more detailed review?

A. Applications that are submitted in areas that there may be an investigation taking place, that there's some type of a groundwater impact, possibly some compliance issue an operator would have. You give those applications a little more thought.

Q. I didn't follow you.

A. If you're dealing in an area that has a stray gas occurrence, there's a discharge to the groundwater.

Q. From an existing project?

A. From an existing project or -- from an existing project or it may be just naturally occurring, and then you just -- I guess it probably gets a little more attention because I know that there's a little more of a concern in that area. more attention because I know that there's a little more of a concern in that area. more attention because I know that there's a little more of a concern in that area.

Q. How do you know, when you look at that set of documents that lands on your desk, if that is in an area where there has been a groundwater impact?

A. Institutional knowledge mainly.

Q. Okay. Meaning your institutional knowledge?
A. Yes, yes.
Q. Okay. Any other categories of applications that lead to a more detailed review by you?
  A. I don't think, no.
Q. You said there were two steps to the review process, as I understood it, prior to getting to you, the administrative review and the technical review, correct?
  A. Yes.
Q. Is the administrative review what some people call the review for administrative completeness?
  A. Yes.
Q. Making sure that the documents that are required to be submitted with the application have been submitted in the form that's required?
  A. Yes, that's correct.
Q. Okay. Do you know what goes into the technical review prior to it getting to you?
  A. Just a general understanding.
Q. Okay. What is your general understanding
  A. Just a general understanding.
Q. Okay. What is your general understanding
  A. Just a general understanding.
Q. Okay. What is your general understanding
what goes into the technical review?
  A. Is it okay for me to look at one of these when you're asking me this or you just rather not me look at the --
Q. Well, right now -- you'll have an opportunity
to do that, as much time as you need to do that.

A. Okay.

Q. But right now I just want to get your best recollection.

A. Okay. Yeah, the geologist would take a look at the application, and he's looking at all the check boxes that go down along through it and looking, for one, if it's a conservation well or not a conservation well. And then there's some different criteria, to satisfy some different criteria for those designations.

And then along with the plat, he's looking at the plat where the well is located is correct. Looks at the location of the well and makes sure that the latitude and longitude, the coordinates are correct, offsets are correct, water supplies within 1,000 feet, making sure that any water supply within 1,000 feet has been identified and that water supply owner has been notified, looking at the target formation, distance restrictions from buildings, streams, wetlands, how deep the well is being drilled, if it's going to be a restrictions from buildings, streams, wetlands, how deep the well is being drilled, if it's going to be a restrictions from buildings, streams, wetlands, how deep the well is being drilled, if it's going to be a deviated hole, essentially a horizontal or lateral type of drilling, then makes -- sees where that -- takes a look at the side view, sees where that boring is going to -- where it's going, and making sure special condition gets on there for like a deviation survey, if
it's a deviated hole, that a deviation survey, special
condition gets on the permit. I think generally those
types of things.

Q. And that's what you've just described is
done, that's the technical review that's done by the
geologist?

A. Yes.

Q. How many geologists work under you to perform
those technical reviews for the roughly 4,600 wells that
you were permitting in 2010?

A. Six. And they are not my direct report. And
you said how many -- I don't know if you said directly
for me. They don't work -- they're in my chain of
command.

Q. I didn't mean that they report directly to
you, but they're under you --

A. Yes.

Q. -- in completing this technical review that
you were describing.

A. Yeah, six.

you were describing.

A. Yeah, six.

you were describing.

A. Yeah, six.

Q. Okay. And do they all report to the same
person?

A. Yes.

Q. Is that Brian Babb?

A. Yes.
Q. What's your understanding of what role, if any, he has in the technical review?

A. He's -- checks their work, and so it's just a little more, a little bit -- it's more quality control, and he's looking -- he's taking a look at the plat, making sure there's things that are not missed by his staff, special conditions, and making sure all the fields are filled out properly, data entries. So he's providing some quality control on it also.

Q. And do you know what portion of his time -- you had said roughly two hours a day of your time is committed to the final authorization of these permits. Do you know what portion of Mr. Babb's time is devoted to that?

A. No.

Q. Is there anyone else supervising him besides you?

A. No.

Q. What other responsibilities does he have on his plate?

Q. What other responsibilities does he have on his plate?

Q. What other responsibilities does he have on his plate?

A. He has three engineers that he supervises and one -- right now, one biologist. There's a vacancy. He had two of them, but he has one biologist right now, so he has a total of 11 people.

Q. Thinking about kind of task categories, so
one task category is to oversee technical review that
the geologists are performing; is that a fair
characterization?

A. Yes, yes.

Q. And looking at that as kind of the level of
specificity of a task that he has, can you identify what
his other tasks are?

A. Yes, it would be with the 102 program which
is our storm water. Chapter 102 is our storm water
program which would deal with storm water permits, and
then also Chapter 105, which is encroachment, and it
would be for permits for -- encroachments for crossing
streams, wetlands.

Q. All within oil and gas?

A. Yes. And then another area would be water
management plans and biologist review on water
management plans and oil and gas.

Q. Okay. All in oil and gas?

A. All in oil and gas.

Q. Okay. So we have four categories of his area
A. All in oil and gas.

Q. Okay. So we have four categories of his area
A. All in oil and gas.

Q. Okay. So we have four categories of his area
of responsibility?

A. Yes.

Q. Why don't we go to this document for a
second. We've had marked in a prior deposition this set
of documents as Appellant's Exhibit 1. They've been
provided to counsel. These are the documents we
received from the Department on Monday, and you'll see
they've got a pagination on them.

Q. I may refer to that as a Bates number?
A. Okay.

Q. One of the things that you referred to was
making sure that you do, at least at times, as part of
your quality control, is that you make sure that the
longitude and the latitude are correct?
A. Correct.

Q. Show me on the document what you look at to
do that.
A. It would be on the plat.
Q. Okay.
A. I think I found it. The page 15, Bates No.
15.
Q. Right.
A. And then up on the top left-hand corner, it
has true latitude north, true longitude west.
A. And then up on the top left-hand corner, it
has true latitude north, true longitude west.
A. And then up on the top left-hand corner, it
has true latitude north, true longitude west.
Q. Right.
A. So I'm looking at these numbers, and I'm
missing, less the permit page.
Q. The permit is later. I think you'll find it
at 17 and 18.
A. Okay. And then I'm looking at, on the permit page, on Page 17, looking at -- checking the latitude and longitude are the same values that are on the plat, same numbers. Then I also look at the --

Q. So you're just comparing that the numbers that are on the plat are the same numbers that are on the permit?

A. Yes, that's one of the checks, that's correct.

Q. Okay. Why is that something you look at?

A. It's just important to know where these wells -- it's important to have the correct location on our maps and our database where this well is actually going to be drilled.

Q. Okay. Was there anything else about the longitude and latitude that you wanted to tell me?

A. Just -- just making sure that they're using the right data, the datum on it, this NAD 83 that's down here, too.

Q. Of the things that you identified -- well, here, too.

Q. Of the things that you identified -- well, here, too.

Q. Of the things that you identified -- well, let me go back. What documents do you look at to do the final authorization that you give of a permit?

A. It would be the application that was submitted with -- the application that's submitted, and then also the permit page and the well record completion
report, well site restoration that is submitted to the applicant once the permit is issued. It comes in as a complete set.

When we send — when we return this copy, after we have an approved permit, when we send it back out to the applicant, it will contain a permit and then some other supplements with it, which is well record, completion report, well site restoration, things, information that we expect to get back after the operator drills the well.

Q. Okay. Anything else that you're looking at when you're giving it your final authorization?

A. No.

Q. Any documents generated by the Department?

Well -- I'm sorry. Let me strike that, because it wasn't a good question.

A. Okay.

Q. Other than the permit itself that's been prepared by the Department and those forms that you're expecting to get back, are there documents from the prepared by the Department and those forms that you're expecting to get back, are there documents from the prepared by the Department and those forms that you're expecting to get back, are there documents from the Department's review of the application that you're looking at?

A. Yes, yes, and that's part of the application, the package, application page. And in that, the application is more than just the cover page or the
application page. I guess, your number one. It includes the PNDI search would be part of it, and then any other -- well, has the water supply notifications, and then we call them green cards, return certified mail that they got the locations back, and then the reviewer would sometimes have comments on here as far as if there's correspondence with the applicant as far as additional information needed. That would be part of the application package.

Q. What kind of comments do you see from the reviewer?

A. If there's some type of a deficiency, the reviewer would notify the applicant of the deficiency and then there would be correspondence back from the applicant on how that deficiency was addressed.

Q. Are you talking about administrative completeness or are you talking about on the technical side?

A. It could be either.

Q. Okay.

A. It could be either.

Q. Okay.

A. It could be either.

Q. Okay.

A. But I was actually speaking about on the technical side.

Q. Okay. You don't see any reviewer comments for this file, correct? Why don't you take a minute to go through --
Okay. I'll take a minute.

Take a minute to go through the documents, get familiar with what's there, because I'm going to ask you some questions about what's there.

Okay.

Have you had a chance to review that?

Yes.

(Discussion held off the record.)

MR. YEAGER: While we were off the record, I had gotten on my Blackberry a notice from the Environmental Hearing Board that the motion was granted allowing Mr. Zimmerman to appear pro hac vice. I'm assuming with that, that resolves the objections that counsel had raised.

All right. Going back to this document, you had a chance to review what's there?

Yes.

had a chance to review what's there?

Yes.

had a chance to review what's there?

Yes.

Okay. Would you agree with me that part of what's here are the documents that would predate the issuance of the permit and part of what's here are documents that would postdate the issuance of the permit?
Q. Limiting yourself to the documents that predate the issuance of the permit, do you see any reviewer comments in this file?
A. No.
Q. Based on the number of permits that you have reviewed just over the last year, is it fair to assume that you don't remember this particular permit?
A. Yes, I do not remember this particular permit.
Q. Have you reviewed any documents in preparation for today's deposition?
A. Just your appeal, the appeal notice.
Q. Okay.
A. And then also I took a look at the permit and application and plat.
Q. Are you aware, based on anything that you've reviewed of any documents related to this document other than any attorney/client communication that exists other than what's in this packet that's been marked as than any attorney/client communication that exists other than what's in this packet that's been marked as than any attorney/client communication that exists other than what's in this packet that's been marked as Appellant's 1?
A. No, I'm not aware of anything else.
Q. When you're reviewing a permit application to give it its final authorization, do you ever see e-mails in the file, communication, either within the Department
or from the Department externally?

A. I'm sure I have.

Q. What types of substance do you find in those e-mails?

MS. CARSON-BRIGHT: That's a pretty speculative question there.

Q. Do you understand the question?

A. Well, I can't think of any -- why don't you ask the question again. That would probably be --

Q. Well, you said that you have seen e-mails -- as I understood your question before and if I mischaracterized it --

A. I say I probably have.

Q. Can you picture what would have been in any of those e-mails that you think you've seen?

A. No, I actually cannot.

Q. Okay. Looking at the first page of Appellant's 1, the permit application, is there any of the writing on this first page that's yours?

A. No.

Q. Having looked through these documents, and I know you didn't spend a long length of time going through it, but did you notice your handwriting anywhere?

A. On the permit page.
Q. Okay.
A. There's a well permit and then also a corrected well permit.
Q. Bates Pages 17 and 18?
A. Yes.
Q. Now, that signature there, did you put pen to paper?
A. Yes.
Q. Do you utilize an electronic signature at all?
A. No, not on permits.
Q. Okay.
A. On cover letters, on a cover letter, it would go out for this permit, electronic signature.
Q. Okay. You see that 17 is a well permit and 18 is a corrected permit?
A. Yes.
Q. Is there any way to figure out the date that the corrected permit would have been issued?
A. No.
Q. Is there any way to figure out who prepared the corrected permit?
A. No. For a particular individual?
Q. Yes.
A. No.
Q. Any way to figure out why or how that came about?

A. Well, I figured out how or -- I guess yes, yes.

Q. Okay.

A. Why and how.

Q. Okay.

A. Why was on the application this well was designated as a test well. When we issued the original permit, we had the well type as a gas well, and then it was brought to our attention that this was not a gas well, it was a test well and that was the purpose, the reason why we sent out a corrected well permit.

Q. How did you know it was brought to your attention?

A. Because there's a corrected well permit, and then for me to sign it, they would have brought in the original permit and corrected that we've made a mistake on this and we need to send out a corrected permit.

O. Okay. Does the Department have any on this and we need to send out a corrected permit.

Q. Okay. Does the Department have any on this and we need to send out a corrected permit.

O. Okay. Does the Department have any regulations or guidelines or standards that differentiate between a gas well and a test well?

A. You're talking about written guidelines?

Q. If there are unwritten guidelines that you want to tell me about.
MR. HOLTZMAN: Objection. He's not a legal expert.

MR. YEAGER: Right.

MR. HOLTZMAN: But answer if you can.

A. Well, this well, when the application came in, it was designated as -- maybe I should back up. Test well, gas well. The purpose of a test well is to describe and analyze what is present in the bore hole. The purpose of a gas well is for their production of gas out of that bore hole.

Q. Is there anything in writing within the Department that distinguishes what's required for a well permit when it's a test well versus a well permit when it's a gas well?

A. I'm not aware of anything in writing.

Q. Are you aware of a practice, any different standards being applied for approval of test well permits versus gas well permits?

A. Yes. And, for example, Marcellus wells, if permits versus gas well permits?

A. Yes. And, for example, Marcellus wells, if it's a gas well, Marcellus gas well, a water management plan is required, and for a test well, a water management plan is not required.

Q. Well, what about for a non-Marcellus well? Is a water management plan required?
A. No.
Q. So --
A. Let me clarify that.
Q. Okay.
A. Shale wells, we kind of categorize shale wells as Marcellus wells.
Q. Okay. Well, I want to make sure I understand --
A. Okay.
Q. -- when I look at these forms and I see the words Marcellus, does that mean Marcellus or does that mean shale?
A. It -- well -- it definitely means Marcellus.
Q. It includes Marcellus?
A. Thank you. It includes Marcellus. Staff was putting Marcellus, a note up on the top for Marcellus, but I think they've gone away from that and indicates just shale now, but I'm not sure. But that's one of my checks on this. I see what target formation that they're drilling, and if it's a shale well, then it checks on this. I see what target formation that they're drilling, and if it's a shale well, then it checks on this. I see what target formation that they're drilling, and if it's a shale well, then it needs to have this quote Marcellus conditions on it, which would include a water management plan.
Q. How do you make a determination whether it's a shale well from looking at this?
A. On the plat, it identifies a target
formation. I'm on Page Bates No. 15, target formation.
On this one, it says Onondaga. So in that block, they
would indicate if it's Marcellus, utica, burkett,
Heidelberg. Those are the shales that come to mind.

Q. Is this a shale well?
A. No.

Q. And your conclusion that it's not a shale
well is based on what the applicant has identified as
the target formation?
A. That's correct. Target formation, along
with -- it's a test well.

Q. A water management plan relates to the source
of water that's used in the drilling process? Is that
accurate?
A. For the fracking process, yes.

Q. Okay.
A. Source of water for the fracking process.

Q. Well, then that doesn't apply to vertical
wells, or does it?
A. No, it can, because if they're going to frack
wells, or does it?
A. No, it can, because if they're going to frack
wells, or does it?
A. No, it can, because if they're going to frack
or stimulate the Marcellus, if it's a vertical well, and
they're still going to have intentions of producing the
Marcellus, they still need to frack that so it would
apply to a vertical well also.

Q. So other than the presence or absence of a
water management plan, is there any difference in
practice within the Department for how a test well is
handled versus how a gas well is handled?

A. No.

Q. When you've got -- if you don't -- one of the
instructions I should have given you at the beginning is
if you don't know, tell me you don't know.

A. Um-hum.

Q. Look at the first page of the application.
And I see a question like No. 8. Will the well site be
within 100 feet (measured horizontally) of a stream,
spring or body of water identified on the most current
seven and a half inch topomap?

A. Um-hum.

Q. And the applicant, where there's a check in
the box no, that's a check -- that's an answer provided
by the applicant, correct?

A. That's correct.

Q. Does the Department do anything in its permit
review to determine whether that answer provided by the

Q. Does the Department do anything in its permit
review to determine whether that answer provided by the

Q. Does the Department do anything in its permit
review to determine whether that answer provided by the
applicant is correct?

A. Yes.

Q. What's done?

A. They took -- they take a look and my
geologist and permit chief can give you a better answer
Q. Okay.
A. But they're going to take a look at the 7 and a half inch topographic map and see if the well location is within 100 feet, but I think they even go out to maybe 150 feet to give them some -- some buffer to making sure that they are satisfying this distance restriction. So they're comparing the well location to the stream that's on the map and what that distance is.
Q. Based on the topomaps that the Department has.
A. Um-hum.
Q. Yes?
A. Yes. I'm sorry, yes.
Q. That's okay. And how does the Department -- and if this is a question for somebody else, let me know, but how does the Department overlay what they get from the applicant versus what the Department has on its maps?
A. You'd have to ask one of the technical maps?
A. You'd have to ask one of the technical maps?
A. You'd have to ask one of the technical reviewers.
Q. So looking at No. 9 again on that first page, will the well site be within 100 feet of a wetland or in a wetland? Does the Department do anything to determine whether the answer that the applicant gives there is
correct?

A. You'll have to ask my technical reviewer how they check that.

Q. Okay. If they check that.

A. Or if they check that.

Q. And the same would be true with regard to No. 10, will the well be drilled within 200 feet horizontally from any existing building or existing water supply?

A. They get that information off the plat. There's other checks that they do also, but when they look at the plat, which on the Bates code --

Q. Page 15?

A. 15, and they would measure the distance of water supplies to the proposed well location.

Q. Is this to scale?

A. It should be. It says scale 1 inch to 400 down under the seal there.

Q. Do you know whether anything is done to make sure that the designation on the plat is accurate?

Q. Do you know whether anything is done to make sure that the designation on the plat is accurate?

Q. Do you know whether anything is done to make sure that the designation on the plat is accurate?

A. You would have to ask our geologist technical reviewers.

Q. Is there -- you see Question No. 10, is the well site in a special protection high quality or exceptional value watershed? Do you see that question
on the first page?

A. What number?

Q. I'm sorry, 12. Yeah, I'm sorry.

A. Yes, I see that question.

Q. And here it's checked yes? Do you see that?

A. Yes.

Q. Does that lead to any different treatment by the Department for how the Department conducts its review versus when the well site is not in a special protection high quality or exceptional value watershed?

A. I don't think so, not for the drilling permit, but, again, my technical reviewers would answer that a little bit better.

Q. Not that you know of?

A. Not that I know of, that's correct, for the drilling permit.

Q. When is an E&S plan permit required for land disturbance in connection with a gas well or a test well?

A. When the project is over five acres, then a well?

A. When the project is over five acres, then a well?

A. When the project is over five acres, then a permit is required.

Q. When I was asking you about the review that the Department conducts in connection with a well site and the special protection -- in a special protection high quality or exceptional value watershed, your answer
was, as I understood it, not with regard to the well
permit.

A. That's correct.

Q. Are there other parts of the Department's
review that are impacted by the answer to this question?

A. This question would be tied into the E&S plan
or to the storm water permit. There are additional
requirements.

Q. When is a storm water permit required?

A. When the project is greater than five acres.

Q. So when a project is less than five acres,
other than what I might hear from the other people
involved in the technical review, Mr. Babb and the
geologist, is there any aspect of the Department's
review that's different when the well sites in a special
protection high quality or special exception watersheds?

A. Not that I'm aware of.

Q. Has there been any discussion within the
Department about how the Department handles approval of
well sites in special protection high quality or
Department about how the Department handles approval of
well sites in special protection high quality or
Department about how the Department handles approval of
well sites in special protection high quality or
exception value watersheds when the project is not over
five acres?

A. No. And you're talking about the drilling --
you're still talking about the drilling permit.

Q. Well, I asked you whether there were any
other permits that were impacted?

A. Okay.

Q. Any other parts of the Department's review that were impacted by the fact that a site would be within the special protection high quality or exceptional value watershed?

A. Okay.

Q. And as I understood your answer, but please correct me if I'm wrong, that the answer was yes, only if it's a project over five acres.

A. Yes, what we do, for projects under five acres, we require an erosion and sedimentation plan, so the extra requirements would be an E&S plan, erosion and sedimentation plan. It's not a permit but a plan.

Q. And that requirement is part of the approval process for the well permit?

A. No.

Q. So under what permitting regime is it required?

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

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

A. It's required under Chapter 102, which is -- it's the storm water regulation, E&S regulations.

Q. But you don't grant a permit?

A. No.

Q. So where in the process of the approval of a 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
earth disturbance?

A. That's correct.

Q. And after earth disturbance, there's no process by which the Department reviews the sufficiency, the technical sufficiency of the E&S plan, correct?

A. I believe the inspector, when they're out on site, if they would see deficiencies in it, they would note it while they're doing their inspection.

Q. Well -- I'm sorry.

A. Or if there's a malfunction, if there's sediment in the site, then there's a deficiency, you know, either the plan was deficient or was not built to the plan specifications. I don't know if that answers your question.

Q. So the Department would -- the Department might determine that there was an insufficiency based on the fact that what was done failed and that there was improper erosion and there wasn't proper sedimentation control?

A. Right.

Q. The inspectors in Wayne County, are those outside of your --

A. Yes.

Q. -- oversight?

A. Yes.
Q. Okay.

(RECESS FROM 2:42 P.M. TO 2:45 P.M.)

MR. YEAGER: We took a short
break, and I'm sorry to have to
get into this, but I saw that you
were conferring with counsel.
Was there discussion about the
questions that have been asked and
the topics that have been covered
in the deposition? Because it's
not appropriate to have a
discussion with the witness once a
deposition has started about the
substance of the deposition.

MS. CARSON-BRIGHT: No.

MR. YEAGER: Okay. Thank you.

BY MR. YEAGER:

Q. Are there any other documents that make up
the permit file prior to the issuance of the well
permit? Any other categories of documents that you
the permit file prior to the issuance of the well
permit? Any other categories of documents that you
the permit file prior to the issuance of the well
permit? Any other categories of documents that you
would find in the permit file prior to the issuance of
the well permit other than what we've talked about and
what we see here in Appellant's 1?

A. No.

Q. Are there any considerations given to the
technical aspects of the permit that don't have -- I'm apologizing in advance for this question.

A. Okay.

Q. Are there technical aspects of the permit approval that don't have documentation reflecting their consideration? Does that make sense?

A. No. Why don't you explain it a little bit better.

Q. So, for example, on the first page on the permit application, you got a set of questions, 1 through 13.

A. Um-hum.

Q. And we went through some examples of those of technical considerations for the Department based on, for example, distance from a stream or water body, location in relation to an existing building, water supply, so the documentation provides information that the Department considers as part of its technical review.

A. Yes. review.

A. Yes. review.

A. Yes.

Q. Are there parts of the defendant's technical review, elements to the Department's technical review that aren't reflected in the documentation? Are there things that the Department is considering in weighing and measuring or considering as it is determining
whether to grant the permit or not that wouldn't be
reflected in these documents?

A. I think that that would be better answered by
my permit's chief or the geologist.

Q. Do you know whether the Department has given,
in issuing this permit -- I understand you don't
remember this particular permit, so I guess I have to
ask it in the general.

A. Okay.

Q. Do you know whether the Department considers
whether the location of the permit is consistent with
the uses that are allowed in that location under local
zoning?

A. I'm not sure what the local zoning is for
this location.

Q. And I'm asking it in the question, whether
that's one of the Department's considerations.

A. No, because when we issue this permit,
it's -- the oil and gas act has -- supercedes -- or
supercedes local ordinances on -- we're issuing this
it's -- the oil and gas act has -- supercedes -- or
supercedes local ordinances on -- we're issuing this
it's -- the oil and gas act has -- supercedes -- or
supercedes local ordinances on -- we're issuing this
permit based on environmental impacts and the local
ordinance cannot regulate environmental impacts. That
doesn't say that the applicant can ignore local zoning
ordinances, though. Even on the permit page, it says
they have to follow other applicable laws, rules and
Q. But it's your testimony that that's not one of the considerations of the Department.
A. That's correct.
Q. Okay.
A. That's correct.
Q. Does the Department consider, in making a determination on a well permit, does the Department consider the impact of the proposed wells, proposed well on national or state scenic rivers?
A. I'm sorry, ask the question again.
Q. In making a determination on a well permit --
A. Yes.
Q. -- does the Department consider the impact of the proposed well on national or state scenic rivers?
A. Yes.
Q. How does the Department consider that? What steps does the Department go through to consider that?
A. Well, we have a form, and if the well is located on public lands, national park, scenic rivers,
A. Well, we have a form, and if the well is located on public lands, national park, scenic rivers,
A. Well, we have a form, and if the well is located on public lands, national park, scenic rivers,
A. Well, we have a form, and if the well is located on public lands, national park, scenic rivers,
A. That they have a coordination of public resources, I believe is the name of the form, so that would be part of this packet.
Q. And that's filled out if the well would be located on public land?
A. The well site, the well site.

Q. The well site would be located on public lands?

A. Um-hum.

Q. What about if it's not located on public land?

A. Then there is no coordination of public resources.

Q. Then there is no what?

A. That they're not required to complete the form. It's called coordination of public resources.

Q. Okay. So in making the determination on a well permit, the Department considers the impact on national or scenic state -- national or state scenic rivers only if the proposed well would be located on public land. Is that accurate?

A. Yes, on that public land, yes.

Q. Okay.

A. Yes, I'm going to say well site.

Q. If the well site is located on the public land.

A. Yes, I'm going to say well site.

Q. If the well site is located on the public land.

A. Yes, I'm going to say well site.

Q. If the well site is located on the public land.

A. Right.

Q. Meaning the bore hole and --

A. Disturbance.

Q. -- and the disturbed area?
A. Right, um-hum.

Q. Okay. And is the same true with regard to the consideration of the impact of the proposed well on publicly owned parks, forest, game lands, wildlife areas?

A. That's correct.

Q. It's only considered if the well site is located on public land?

A. That's correct.

Q. Okay. Is the same true with regard to natural landmarks that the Department only considers the impact on those resources if the proposed well site is on public land?

A. I don't know.

Q. Okay. Does the Department consider the impact of proposed wells -- in making a determination about the well permit, does the Department consider what the impact of the proposed well would be on historical and archeological sites listed on federal or state list of historical places?

and archeological sites listed on federal or state list of historical places?

and archeological sites listed on federal or state list of historical places?

A. Yes, we consider those impacts, and that would come up in the PNDI, in the search, yes.

Q. So is there any consideration beyond what comes back in the PNDI search, any consideration of impact on those resources or those sites?
A. That agency would weigh in, whoever -- you know, whoever had jurisdiction over that, whatever artifact is being protected, and then they would have -- they would weigh in as far as what requirements that they would have, that they would like to see on the drilling permit.

Q. Okay. With regard to consideration of impact on habitats of rare and endangered flora and fauna, is that also limited to the PNDI search?

A. That's correct.

Q. Does the Department consider -- in issuing individual well permits, does the Department consider the cumulative impact of the broader development of wells on the surrounding resources?

A. No.

Q. Would you agree with me in looking at Appellant's Exhibit 1, you were mentioning a form that's filled out when a well site is on public land?

A. Yes.

Q. That there is no such form in this

A. Yes.

Q. That there is no such form in this

A. Yes.

Q. That there is no such form in this application package?

A. No, I did not see one.

Q. Was there an E&S plan in this file?

A. In this packet?

Q. Yes.
A. No.

Q. Is there anything in this packet that tells you that prior to issuance of the permit, that there was any consideration to the adequacy of any erosion and sedimentation control plan?

A. No.

Q. Is there anything in these documents that tell you -- that reveal whether there was any consideration given to the proximity of this project to the Delaware River?

A. No.

Q. Is there anything in these documents that reveal whether any consideration was given to the impact of the project as proposed on a special protection high quality watershed?

A. It was identified on the application page as a high quality. Are you asking for more than that?

Q. Yeah, whether there's any reflection that its impact was considered.

A. It's meeting all the distance restrictions impact was considered.

A. It's meeting all the distance restrictions impact was considered.

A. It's meeting all the distance restrictions that are required from those setbacks, making sure that you're meeting 100 feet from the stream or water body. Other than, no. I mean, I think that is a consideration that we're meeting -- that it's meeting all the distance restrictions.
Q. The distance restrictions of the Oil and Gas Act?
A. Of the Oil and Gas Act, that's correct.
Q. Do you know when the last Natural Diversity Index, when the Pennsylvania Natural Diversity Index was last updated for Wayne County?
A. I do not know that.
Q. Do you know what a wild and scenic river corridor is?
A. Not fully.
Q. Well, what's your understanding?
A. It's an area that's designated as -- it's an area that's designated to be scenic along the river -- along the river.
Q. Was there any consideration given for the -- in the approval of this permit for the impact that the proposed project would have on the wild and scenic river corridor?
A. I do not know of any impacts that were considered.
A. I do not know of any impacts that were considered.
A. I do not know of any impacts that were considered.
Q. Okay. Do you know roughly how many permits have been issued by the Department in the Delaware River watershed?
A. No.
Q. Do you know whether this project is located
within the Delaware River watershed?

A. Not for a fact, but I assume that it is, but I -- but I have not seen where the boundary is and where this well location is. I mean --

Q. I'm sorry.

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

Q. Was there any heightened scrutiny given to the permits issued within the Delaware River watershed?

A. No.

Q. When a person within the Department who's involved in the review, either the administrative review or technical view, has a phone call with the applicant, should that be reflected in the file?

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

Q. Is there a log of the time spent by any of the people involved in the review?

A. No.

Q. So other than the individual memories of the

A. No.

Q. So other than the individual memories of the

A. No.

Q. So other than the individual memories of the people who were involved, and other than the documents we have here, is there any other way to identify what went into the Department's review and what was considered?

A. No other documents I'm aware of.
Q. Does the Department have an anti-degradation program?

A. Yes.

Q. Why don't you define what that is.

A. I don't know what -- I really don't know what that is, though. I could not explain it.

Q. Okay. Is there anything from the documents in this file that reflect that this project was considered under the Department's anti-degradation program?

A. No, there's nothing in here that indicates it was -- that was part of the review.

Q. And is there anyplace else we would look to find evidence that it was?

A. No.

Q. From that, is it fair to conclude that this project was not reviewed under the department's anti-degradation program?

A. From my knowledge, maybe my section chief or geologist will tell you something different, but I'm not

A. From my knowledge, maybe my section chief or geologist will tell you something different, but I'm not

A. From my knowledge, maybe my section chief or geologist will tell you something different, but I'm not aware of us doing that type of review.

Q. Are you aware of any well permits that have included review under the department's anti-degradation program?

A. No.
MS. CARSON-BRIGHT: Now, that question that you just asked is just pertaining to oil and gas, correct?

MR. YEAGER: Yes.

MS. CARSON-BRIGHT: Okay.

MR. YEAGER: Yes.

Q. Bear with me for just a minute. Is there any indication from the file that the Department considered any comprehensive plans adopted by any municipal governments?

A. No.

Q. Now, I had asked you earlier about the extent of the Department's review of erosion and sediment control measures. I want to ask you the same question about the Department's review of storm water management measures to the extent that it would be different.

Is there any indication from the file that the Department considered the adequacy of storm water management measures prior to issuance of the permit? the Department considered the adequacy of storm water management measures prior to issuance of the permit? the Department considered the adequacy of storm water management measures prior to issuance of the permit?

A. I believe the technical reviewer, you would see on the plat the disturbance is greater than five acres, that would -- no, let me -- no, let me strike that if I can.

Q. Okay. Sure.
A. No, there's nothing in here that would be for review of storm water management.

Q. Now, other than what you've already told me with regard to the location of the site as reflected on the application, is there any indication from the file that the Department considered the impact, if any, that the project would have on Hollister Creek?

A. Other than meeting the distance restrictions, no.

Q. The distance restrictions of the Oil and Gas Act?

A. Of the Oil and Gas Act, correct.

Q. Is there any indication from the file that the Department analyze the impact of the proposed project on groundwater recharge?

A. No.

Q. Any indication from the file that the Department considered the impact of the project on stream flow?

A. No.

stream flow?

A. No.

stream flow?

A. No.

Q. Is there any indication from the file that the Department has, in approving the project, considered the impact on the water resources of the Delaware River basin?

A. Other than meeting the distance restriction,
Q. Again, you're referring to the distance restriction of the Oil and Gas Act?
A. Oil and Gas Act, that's correct.
Q. If we turn to Bates Page 2 of Appellant's Exhibit 1, do you see that dark section on the map in the middle?
A. Yes.
Q. Do you know what that is?
A. I believe that's the corridor -- I think that's the corridor for the Delaware River.
Q. And the star in that, in roughly the middle of that map --
A. Yes.
Q. -- do you know what that is?
A. The well location.
Q. Going to Page 15, the well location plat, can you identify any of the handwriting on here?
A. Joe Lichtinger's signature initials.
Q. Top right?
A. Joe Lichtinger's signature initials.
Q. Top right?
A. Joe Lichtinger's signature initials.
Q. Top right?
A. Top right, yes. And I believe this is his writing for the Hollister Creek too.
Q. Where it's stamped HQ?
A. HQ water shed, yes, and that's it.
Q. Okay. Do you see where, in the center it
s::_ says proposed well pad and there's a circle around a
square of four squares?

Q. Do you know who did that?
A. I assume Joe did because he's a technical
reviewer, and those are usually the marks that a
technical reviewer would put on the plat.

Q. Okay. On the left, top left, where you had
pointed earlier to the longitude and latitude, do you
see where it says well northing and well easting?
A. Yes.

Q. What's that?
A. I don't know.

Q. And if you look at Page 17 and 18 where the
permit and corrected permit are, do you see where it
says offset in the box?
A. Yes.

Q. It says, offset distances?
A. Um-hum.

Q. Reference in northeast corner of map section?
A. Um-hum.

Q. Reference in northeast corner of map section?
A. Um-hum.

Q. Reference in northeast corner of map section?
A. Yes.

Q. Do you know what those numbers are?
A. Yes.

Q. What is that?
A. Those are numbers, if you go back to Page 15,
the numbers at the very top it says, wells located on
topomap, and then down on the right-hand column, it has
the same thing.
Q. I see. Now, you see in the -- you had
pointed out earlier the difference between the well
permit and the corrected well permit, under well type it
says GS and on the corrected permit it says TE?
A. Yes.
Q. Do you see where it says Department Use Only
top right?
A. Yes.
Q. Watershed name appears on the corrected
permit, and it looks like there was a check that was
then crossed off under water quality but it says HQ. Do
you see quality?
A. Yes.
Q. But the Hollister Creek and HQ do not appear
on the corrected well permit the next page, Page 18?
A. Yes.
Q. Do you know why that is?
A. Yes.
Q. Do you know why that is?
A. Yes.
Q. Do you know why that is?
A. Oversight.
Q. There's no question in your mind that the
well was located in the Hollister Creek watershed which
is a high quality watershed?
A. That's the way my geologist indicated it,
from the plat. It's designated as a high quality
watershed Hollister Creek.

Q. And on the first page of the sheet, it also
designates that?

A. Yes.

Q. Who does Stephen Watson report to or who was
he reporting to back --

A. It would be to the east region and their
program manager is Jennifer Means.

Q. And that would have been true back in the
summer and fall of 2010?

A. Yes.

Q. Do you know what an H2S issue is?

A. Where do you see --

Q. Turn to Page 32. This is an e-mail from
Jennifer Means to a number of different people.

A. Okay.

Q. And if you go down about two-thirds of the
way or three-quarters of the way, the section in bold --

A. Yes.

way or three-quarters of the way, the section in bold --

A. Yes.

way or three-quarters of the way, the section in bold --

A. Yes.

Q. -- she's writing about a bad odor emanating
from the site. She says, however, I do have a concern
because we understand that there are some areas of our
region including the northeast where we could be running
into H2S issues during drilling. This is an extremely
dangerous situation and I think the ER folks need to be aware of this possibility and understand that a complaint of a rotten egg odor or sulphur smell may not just be a malodor complaint. Do you see that?
A. Yes.
Q. Do you know what an H2S issue is?
A. Hydrogen sulfide, but I'm not familiar with this issue, though.
Q. You're not familiar with hydrogen sulfide being an issue in the northeast region?
A. No.
Q. Is it fair to say then that there was -- that that wasn't a matter of consideration when the permit was approved?
A. Not to my knowledge.
Q. Okay. For wells that are developed -- when I say developed, wells that there drilled in the northeast region, in the northeast, in Wayne County --
A. Okay.
Q. -- once the permit has been issued. do you
A. Okay.
Q. -- once the permit has been issued. do you
A. Okay.
Q. -- once the permit has been issued, do you personally have any continuing involvement in the project?
A. No.
MR. YEAGER: I don't have anything 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.

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.
Q. Can you explain to me why that would be considered to be the well location but then the actual well location is in a different place?

A. Yes, and my geologist would be able to explain this much better than me, but they overlay this onto a topomap and the topomap has nine sections on it, and they lay this down there and this gives them the location on the topomap, the seven and a half degree topomap. So this plat identifies two things. It actually marks a spot on this big seven and a half degree topomap, but then also it zooms in on the exact location. So that mark represents a location on the topomap, and then they kind of zoom in and do this plat, which shows the actual drilling location. It represents two different things. That square box is for a mark on the topomap, and then this plat identifies -- basically, you're zooming in, and it identifies the well location with other features at a much smaller scale.

Q. So the actual location of the well bore on this plat is where that well bore --

Q. So the actual location of the well bore on this plat is where that well bore --

Q. So the actual location of the well bore on this plat is where that well bore --

A. Yes.

Q. -- had to go?

A. Yes, where it's identify as woodland, right in the very center there where that little circle is.

Q. And why would it be in a different location
than -- I mean, I think you may have tried to answer, and I just didn't understand your answer.

A. Yeah. On a seven and a half degree topomap, it's probably about 2 feet wide and 3 feet tall. And now, this is just one -- yes, and then actually, if you did three of these boxes -- or nine of them actually, three of these, this square box here, if you did three of them in a row and then went up, had nine of these boxes, that would represent the entire area on a topomap. So you could actually put a pin prick, you lay this on that section, whatever -- Section 7 down here on the box right above total vertical depth, Section 7. So you lay this on Section 7 on the topomap, and you can put a pinprick in the center of that little box, and that's the location that's going to be on that bigger map. And then on this plat, essentially kind of centered that well and showed the nearby features, water supplies. It gives you more detail.

Q. So would a little four square box always be in a different location than the actual well bore or

Q. So would a little four square box always be in a different location than the actual well bore or

Q. So would a little four square box always be in a different location than the actual well bore or

sometimes or do you know?

A. 99.9 percent of the time. It would be remarkable if it would end up laying in the dead center. It's going to be in a different spot. In all 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.
There is a -- what does that represent?

A. I would assume the inside one would be the road and then some type of a buffer on the outside. It looks like a little smaller than the 100 foot buffer that they drew on the other box.

Q. Let me bring your attention to the lower box on the lower right where you were referring to map section 7.

A. Um-hum.

Q. Where it says surface elevation and feet, is that where the topomap small four boxes locates it, or is that the elevation of the actual bore site?

A. It's actually both, because this box with the four squares in it is actually locating this well on that topomap. It's locating that well on a different map. It's locating on the seven and a half degree quadrangle.

Q. Right.

A. So that's what that elevation would correspond to 1,193 feet. and the well that's being

A. So that's what that elevation would correspond to 1,193 feet. and the well that's being

A. So that's what that elevation would correspond to 1,193 feet, and the well that's being drilled is going to be located at that same elevation, 1,193 feet.

Q. So when there's a difference in the location of the actual bore and the four square box, the 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 is down to a scale of one inch 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
A. So, yeah, the elevation is 1,193 feet.

(Discussion off the record.)

A. This thing is representing -- it has a
detailed map, but then it also shows a location on this
much bigger map.

MR. YEAGER: I had asked off the
record whether there were actually
two different scales represented
in this one document, and I
understand the answer to be --

THE WITNESS: Yes.

MR. YEAGER: Okay, that helps me
make sense of it.

THE WITNESS: And the scale being
9,000, you know, from the top down
to the bottom, it's probably
almost 16,000 feet, so it depends
how far you're away from that
latitude line is where the square
box is going to be drawn. the same
latitude line is where the square
box is going to be drawn. the same
latitude line is where the square
box is going to be drawn, the same
for longitude too.

Q. One final question, I think, on the plat.

Above the boxes at the bottom, at the left it says
surveyor, engineer, phone number, drawing number, date,
scale. On the right side it says tract acreage, and
there's no number showing there. Do you know whether it should be there or why there's no number?

A. I do not know.

Q. And when it says tract acreage, would that be the area within the thousand foot circle or the area of the rectangular property line?

A. I do not --

Q. All right. A couple of questions on Page 2 and 3. Page 2 it says PNDI project environmental review receipt. Who gathers the information that's on Pages 2 and 3?

A. The applicant.

Q. And on Page 3, there are -- appear to be responses from the game commission, the DCNR, Fish and Boat Commission, Fish and Wildlife Service. Are those actual communications, e-mails, letters? Does the applicant have to have a letter from each one of these reviewing entities, agencies?

A. No. I believe this as printout they enter their data into the PNDT system, and this is the report.

A. No. I believe this as printout they enter their data into the PNDT system, and this is the report.

A. No. I believe this as printout they enter their data into the PNDI system, and this is the report that it generates so the applicant puts this information in the header here, and then the PNDI generates this report, so this report is generated by --

Q. So it's based on the information that's already in a database of some nature.
A. Yes, yes, that's correct.

Q. So under the US Fish and Wildlife Service, which seems to be the only sort of substantive response other than no impact, that's already in the database?

A. Yes, that's generated by the database, I believe. My geologist would be able to answer that much better.

Q. When it says no impacts to federally listed or proposed species are anticipated, federally is underlined. Do you have any idea why?

A. No.

Q. And when it says no impacts are anticipated, is there a proximity component involved in that? Does that mean on the project itself or would it include a larger area?

A. I believe it includes a larger area but you --

Q. Do you have any idea how big an area?

A. No. I think there's different buffers for different species.

A. No. I think there's different buffers for different species.

A. No. I think there's different buffers for different species.

Q. Okay. Would your geologist --

A. They would have a better idea what those distances are than -- they probably -- they wouldn't know them all because I think there are different buffers. Eagles would be one thing and then muscles
would be another, so it depends on what species you're dealing with.

Q. You mentioned muscles. Is there some particular reason you mentioned muscles?

A. No, just an example.

Q. Are muscles typically something that is an endangered species near these types of projects?

MR. HOLTZMAN: Objection to the form of the question. You can answer it if you know.

A. When you say these types of projects --

MR. HOLTZMAN: Exactly.

Q. All right. Gas well projects. Have you seen gas well projects that have impacts on endangered muscle species?

A. No, and muscles comes up because of MPDS discharges, I guess, is probably why -- if a discharge is going to a stream from an industrial facility then -- doing a comparison of water -- an organism in the water versus a bird.

doing a comparison of water -- an organism in the water versus a bird.

doing a comparison of water -- an organism in the water versus a bird.

Q. Okay. Would the proximity to Hollister Creek be factored into that consideration then?

A. I think it would be part of the PNDI search.

Q. Okay.

MR. ZIMMERMAN: I think that's all
I have. Thank you.

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

CROSS-EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Lobins, my name is Tony Holtzman. I'm counsel for the permittee in this matter. I'm hoping to ask you a couple follow-up questions to clarify some of the points you made earlier during your testimony.

A. Okay.

Q. First, if you could go over for me again because I sort of missed some of the essence of what it is you exactly do when you sign off on a permit. I think you said -- and correct me if I'm wrong -- it comes to you for final authorization, and then if it's acceptable, you sign?

A. That's correct.

Q. Can you please fill in the details of that process for me?

Q. Can you please fill in the details of that process for me?

Q. Can you please fill in the details of that process for me?

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

Q. Okay.

A. And I'm taking a look at -- I have the printed permit and I'm comparing the data that's on the printed permit to the plat, making sure that it's a
correct latitude longitude depth that's being drilled and the right special conditions are on the permit, and, for example, if it's a Marcellus application, we have four or five different special conditions for all Marcellus wells, if it's a horizontal well, making sure that the deviation survey is on there.

And then also if there's -- if the site would have any type of a compliance history, you know, should we be issuing this permit, so that's -- so basically, it's quality control and -- yeah, quality control and then I sign the permit.

Q. Okay. So is it fair to say that you check and make sure that information on one document matches with what's supposed to be on another document?

A. That's fair. That's a fair statement, yes.

Q. Okay. And that conditions and things of that nature that are supposed to be included have been included?

A. That's correct.

Q. Would you describe it as a fairly administrative process?

A. Yes.

Q. And you said it typically takes you approximately two to five minutes to complete each one?

A. Yes.
Q. Is that right?
A. Yes, yes.
Q. Thank you. And correct me if I'm wrong, but I think you said earlier in your testimony that you have a general understanding of what goes into a technical review of a permit application, but because it's not your role, you don't really have a specific understanding of all the elements of the technical --
A. That's correct, I wouldn't know all the nuances and every step that they go to.
Q. You've never performed a technical review, have you?
A. No, I haven't.
Q. If the technical reviewer encounters an issue in the process of performing that technical review, they wouldn't bring it immediately to your attention, would they?
A. No.
Q. And correct me if I'm wrong, but you don't recall the particular permit application that we have.
Q. And correct me if I'm wrong, but you don't recall the particular permit application that we have.
Q. And correct me if I'm wrong, but you don't recall the particular permit application that we have been looking at today, Bates labeled 1 through 16, correct, you don't remember this one in particular?
A. No.
Q. Okay. Could you flip to Page 15, please, Bates label 15. And I think you said that you
recognized potentially some handwriting on this?

A.  Yes.

Q.  And whose handwriting did you say you thought that might have been?

A.  Joe Lichtinger's.

Q.  Okay.  Thank you.  And there's an item circled in the middle of the well plat.

A.  Yes.

Q.  And you said, I think, that you don't know exactly whose handwriting that would be?

A.  That's correct.

Q.  If you could turn to Page 18 of Appellant's Exhibit 1, this is the Corrected Well Permit.  I think you said -- correct me if I'm wrong -- that it was brought to your attention that the well type had been mislabeled GS as opposed to TE.

A.  Yes.

Q.  Do you recall how that came to your attention?

A.  No.

Q.  attention?

A.  No.

Q.  attention?

A.  No.

Q.  Okay.  And it's correct, isn't it, that an applicant for a test well is not required to submit a water management plan?

A.  That's correct.

Q.  Thank you.  Because you aren't familiar with
the intricacies of a technical review when it comes to a
permit application, you wouldn't know for certain, would
you, whether if an applicant checks the high quality
watershed box if that invokes some sort of special
technical review process?

A. That's correct.

Q. And correct me if I'm wrong, but your
testimony was that for the purposes of what you do in
your role, the checking of the high quality box doesn't
affect your particular role?

A. That's correct.

Q. Thanks. I think you said that there are
certain extra requirements that go into an E&S plan if
the proposed well site is going to be within a high
quality watershed; is that correct?

A. That's correct.

Q. What is the nature of those requirements if
you know?

A. I do not know.

Q. Okay. Is it your understanding that when an
A. I do not know.

Q. Okay. Is it your understanding that when an
inspector does a site visit for a well site, that they
would check to see if the E&S plan is being maintained
onsite?

A. Yes.

Q. Thank you.
A. And I should clarify. We have two classes of inspectors. We have a water quality specialist and an oil and gas inspector. A water quality specialist would be the one that would be looking at — we don't call him an inspector but that's what he is. He would be looking at the E&S.

The water quality specialist is responsible for surface activities, things you can see. The oil and gas inspector is responsible for stuff that's subsurface. I call them — they're both inspectors. A lot of times somebody will just say WQS. Well, a WQS is an inspector, but he's not an oil and gas inspector. He's a surface inspector.

Q. Okay. That's helpful. Thank you. And you don't know for certain because you were not involved in the technical review of this application, whether the Department took into account the relationship between the proposed well site and local zoning ordinances, do you?

MR. YEAGER: I just want to object you?

MR. YEAGER: I just want to object you?

MR. YEAGER: I just want to object to the use of leading questions, so I'm going to object to the form. You've been doing it some, and I've let you go.

MR. HOLTZMAN: That's fine.
MR. YEAGER: But it's not appropriate, so I'd ask you to rephrase the question.

Q. You can answer it if you --

A. You should ask it again.

MR. HOLTZMAN: Could you please read the question back.

(Question read.)

MR. YEAGER: Object further then, contrary to the testimony. He was involved in the review. He was in charge of the review.

Q. You can answer the question, Mr. Lobins.

A. I do not know if the technical reviewer took into consideration local zoning ordinances.

Q. Thank you. Do you know for certain whether the technical reviewers that reviewed this permit application took into account the impacts of the proposed well on national or scenic rivers, or state and scenic rivers?

Q. Thank you. I believe you were asked to indicate whether you saw an E&S plan in this particular pack of documents, Bates 1 through 38 and you said no.
Would you expect to see an E&S plan among the documents that are submitted by an applicant for a gas well permit if the proposed well site will affect less than five acres?

A. No, I would not expect to see it.

Q. Do you know for sure whether your technical reviewers took into account the proximity of the proposed project to the Delaware River when they reviewed this application?

A. No. They would be looking at distance restrictions.

Q. So you don't know for certain?

A. I do not know for certain.

Q. Thank you. And correct me if I'm wrong, but you said that there's nothing in this packet of documents to indicate to you that the proposed project --

MR. YEAGER: I object. You got to be able to ask your questions in a non-leading way.

be able to ask your questions in a non-leading way.

be able to ask your questions in a non-leading way.

MR. HOLTZMAN: It's not a leading question, if you'd let me finish asking it.

MR. YEAGER: Because from the first clause it's leading.
MR. HOLTZMAN: I'll rephrase.

Q. Do you see anything in this packet of information labeled 1 through 38 to suggest that the proposal did not meet the distance restrictions of the Oil and Gas Act as far as you understand those restrictions?

A. I do not see anything that would -- and I do not see anything that would indicate that they do not meet the distance restrictions.

Q. Thank you. Is it correct that you don't know whether this project is in the Delaware watershed?

A. That's correct.

Q. Do you know for certain whether your technical reviewers conducted a review of this proposed project under the department's anti-degradation program?

A. I do not know if that's part of the review.

Q. Thank you. Do you know whether for certain technical reviewers, in considering this application took into account any comprehensive plans adopted by a local government or municipal government?

A. I do not know if they took that into consideration.

Q. Thanks. Do you know for certain whether any of your technical reviewers took into account the location -- strike that.
Do you know for certain whether your technical reviewers took into account the proposed project's impact on groundwater recharge?

A. I do not know that for certain.

Q. Thank you. Do you know for certain whether they took into account the proposed project's potential impacts on stream flow?

A. I do not know that for certain.

Q. Could you turn to Page 2, of the documents, please. And I think you stated that the map at the center of the page, the darkened section of the map is the river corridor for the Delaware River; is that right?

A. Yes.

Q. And I think you also testified that the star that's beneath that darkened section is the location of the proposed well site?

A. Yes.

Q. Is the proposed well site located within the Delaware River corridor?

Q. Is the proposed well site located within the Delaware River corridor?

Q. Is the proposed well site located within the Delaware River corridor?

A. No.

Q. Could you turn to Page 32, please. I think you were asked questions about this particular e-mail earlier. Did you receive this particular e-mail, to your knowledge?
A. No.

Q. Thanks. Do you know for certain whether your technical reviewers took into account the potential impacts of the proposed project on public -- potential public resources?

A. No.

Q. What about national landmarks?

A. No.

Q. National parks?

A. No.

Q. Is it fair to say that you don't have any first-hand knowledge of what exactly the nature of your technical reviewer's review was?

A. No first-hand knowledge, no.

MR. HOLTZMAN: Thanks. That's all the questions I have.

MR. YEAGER: Wendy, do you have some? I have some follow-up.

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

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

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

REDIRECT EXAMINATION

BY MR. YEAGER:

Q. I just have a few. You don't know for
Q. Under? A. Yes.  
Q. And you've got time pressures that you act off on permits, on these permits, correct? A. Okay, you're the top level reviewer signing off on permits, on these permits, correct? Q. Okay. You're the top level reviewer signing off on permits, on these permits, correct? A. Yes, I would think it is, but I do not know that for certain. Q. Does it appear to you that the site is within the Delaware River watershed? A. Almost 25 years. Q. -- working from the assumption that this is accurate, is it your -- and you're a geologist, been working for the Department for, how long has it been? A. Yes. Q. As the Delaware River corridor -- A. Yes. Q. -- and the star as the location of the then proposed well site -- A. No. Q. When you look at this map on Page 2 and you see the location of what you've identified the dark area its forms is accurate, do you?
have to act on the permits?

A. 45 days.

Q. The Department has 45 days?

A. Yes, the Department has 45 days.

Q. By the time you get it, are you under time pressures yourself to do what you need to do?

MR. HOLTZMAN: Objection, form of the question.

A. Do I answer?

Q. Yes.

A. Occasionally.

Q. You have less than 45 days because --

A. I have less than 45 days, yes.

Q. You've had somebody do the administrative completeness review.

A. Yes.

Q. It's then passed to Mr. Babb, correct?

A. Right.

Q. He's then passed it to one of the geologists, correct?

Q. He's then passed it to one of the geologists, correct?

Q. He's then passed it to one of the geologists, correct?

A. Yes.

Q. Geologist works on it and then sends it back to Mr. Babb?

A. Yes.

Q. And then Mr. Babb sends it to you?
A. To clerical actually.

Q. Okay.

A. Administration, yeah, clerical.

Q. Permit gets typed up?

A. Um-hum.

Q. By them. And then the whole -- all complete package comes to you?

A. That's correct.

Q. And so by that point, more than half of that 45-day period used up generally?

A. Yes, yes.

Q. Is there a general amount of time that you have left to act by the time it gets to you? A week, less than a week, more than a week?

A. Yeah, a week.

Q. Okay.

A. Typically, yeah, a week would be a good average.

Q. And you're responsible for the work of Mr. Babb and the geologists that work under you and

Q. And you're responsible for the work of Mr. Babb and the geologists that work under you and

Q. And you're responsible for the work of Mr. Babb and the geologists that work under you and

under him?

A. Yes.

Q. And you're independent on them to make sure that the documents that get forwarded to you are a complete representation of what was considered in the
consideration of the permit?

A. Yes.

Q. And so you're expecting to see in the documentation that if there were issues that are identified and if there were considerations that were made, that those would be reflected in the documents?

A. Yes.

Q. And you rely on those documents?

A. Yes. And I'm sorry, to clarify, you said if they had issues?

Q. Right.

A. Yes, yes.

Q. And you rely on getting a complete file in order for you to give final approval that the proposed project meets both the administrative and technical requirements of the law?

A. That's correct.

Q. And you wouldn't sign off on a permit unless you were comfortable that there had been a full consideration and that the permits met the technical and you were comfortable that there had been a full consideration and that the permits met the technical and you were comfortable that there had been a full consideration and that the permits met the technical and administrative requirements of the law, correct?

A. That's correct.

MR. YEAGER: I don't have any other questions.
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
through 29, 25 and 26, the inspector's signatures for
Steve Watson, and for -- actually, he's on Page 25, 26
and 27.

Q. And then 28 and 9 is a report signed by Ray
Klemish. Do you know whether Mr. Watts and Mr. Klemish
are water quality specialists?

A. I know that Steve Watson is an oil and gas
inspector. I do not know Brian Klemish, so I'm not sure
what his title is.

MR. ZIMMERMAN: Thank you. I
don't have anything further.

MR. HOLTZMAN: I have one or two
final questions.

RECROSS-EXAMINATION

BY MR. HOLTZMAN:

Q. Mr. Lobins, I think you said during questions
that I asked you the first time around, if in performing

Q. Mr. Lobins, I think you said during questions
that I asked you the first time around, if in performing

Q. Mr. Lobins, I think you said during questions
that I asked you the first time around, if in performing

Q. Mr. Lobins, I think you said during questions
that I asked you the first time around, if in performing

a technical review, a technical reviewer ran into an
issue, they would tend to take that to their direct
superior in the first instance as opposed to bringing it
to you; is that right?

A. That's correct.
Q. And when you get a package from the inspectors and the others who were involved in the review process at the end of the day, it comes to you for your signature, would you expect to see notations in that packet if things -- of things that were problems along the way?

A. Yes, and typically, when you say problems, I think of technical deficiencies, and then there would be a record of that technical deficiency.

Q. And I'm sorry, that's exactly what I was looking for. But if there were not a technical deficiency, you would not expect to see a notation of that necessarily; is that right?

A. That's correct.

MR. HOLTZMAN: I have no further questions.

FURTHER RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

BY MR. ZIMMERMAN:

BY MR. ZIMMERMAN:

Q. Actually, if I could with one more. I forgot about it, and I apologize. In response to one of Mr. Holtzman's questions, you mentioned the four or five special conditions that you would be looking at when a package arrives on your desk for Marcellus projects.
You also mentioned something about compliance history. Are you looking at compliance history of the applicant for the well or compliance history of the site? I don't understand whether there is a difference.

A. For the applicant, looking for compliance history of the applicant.

Q. And what would knowing the compliance history of the applicant cause you to do?

A. If we have an order issued to that -- for example, if we have an order issued to that applicant and the applicant is not in compliance with his order, then after -- after the appeal period is over, I cannot issue -- if there's a compliance issue with that order, then I cannot issue a permit to that applicant, an oil and gas permit to that applicant.

Q. Does that apply whether the site where you would issue the permit is the one where the compliance history issue arose or it would be for a different site?

A. No, it could be for a different site because it's an administrative order to that applicant, and if

A. No, it could be for a different site because it's an administrative order to that applicant, and if

A. No, it could be for a different site because it's -- I think it's a final administrative action by the Department, if they're not in compliance with that, then I cannot issue that permit.

MR. ZIMMERMAN: Thank you.

MR. HOLTZMAN: Nothing further.
MR. YEAGER: You're free.

THE WITNESS: Okay.

(Deposition concluded at 4:22 p.m.)
REPORTER'S CERTIFICATE

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

[Signature]

Lisa Willow Weiss
Court Reporter and Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Lisa Willow Weiss, Notary Public
City of Meadville, Crawford County
My Commission Expires: July 1, 2012
Member, Pennsylvania Association of Notaries

City of Meadville, Crawford County
My Commission Expires: July 1, 2012
Member, Pennsylvania Association of Notaries

City of Meadville, Crawford County
My Commission Expires: July 1, 2012
Member, Pennsylvania Association of Notaries

Dated: March 29, 2011
COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD  

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

v.  

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

Deposition of JOSEPH F. LICHTINGER, taken before and 
by Lisa Willow Weiss, Notary Public in and for the 
Commonwealth of Pennsylvania, on Thursday, March 24, 
2011, commencing at 11:30 a.m. at the Pennsylvania  
Department of Environmental Protection, 230 Chestnut  
Street, Meadville, Pennsylvania.  

Street, Meadville, Pennsylvania.  

Street, Meadville, Pennsylvania.  

Willow Reporting Service  
8400 Franklin Pike  
Meadville, Pennsylvania 16335  
814-337-6622
APPEARANCES

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

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

For the Appellants:

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

For the Commonwealth of Pennsylvania, Department of Environmental Protection:

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

For Newfield Appalachia PA, LLC:

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

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

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

JOSEPH F. LICHTINGER

Direct examination by Mr. Yeager. . . . . . . . . . . 4
Cross-examination by Mr. Zimmerman. . . . . . . . . . 44
Cross-examination by Mr. Holtzman . . . . . . . . . . 46
J O S E P H  F.  L I C H T I N G E R, first having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YEAGER:

Q. I good morning, sir.
A. Good morning.
Q. Could you state and spell your full name, please?
A. Joseph F. Lichtinger, J-O-S-E-P-H, F.
L-I-C-H-T-I-N-G-E-R.
Q. And how are you currently employed, sir?
A. I'm a licensed professional geologist.
Q. Is that your title?
A. Yes.
Q. How long have you had that position?
A. Two years.
Q. And that's with the DEP, correct?
A. Correct.
Q. And that's with the DEP, correct?
A. Correct.
Q. And that's with the DEP, correct?
A. Correct.
Q. And what were you doing prior to that?
A. I was a geologic specialist with DEP.
Q. What's the difference between the two roles?
A. Well, I was hired as a geologic specialist,
licensure, I then was upgraded, I guess, to the higher
classification.

Q. Okay.
A. But I was hired while I was a geologic
specialist. I had my PG.

Q. Okay. And when did you get hired?
A. September 15th, 2008.

Q. And what were you doing prior to that?
A. I worked for an environmental consulting
firm.

Q. Which?
A. Nutec Design, N-U-T-E-C.

Q. What were you doing there?
A. I was a geologist, a professional geologist.

Q. What kind of projects were you working on?
A. Geotechnical, environmental, land
development, civil.

Q. And how long had you been there?
A. Ten years.

Q. And in school prior to that?
A. Ten years.

Q. And in school prior to that?
A. Ten years.

Q. And in school prior to that?
A. Correct.

Q. How have your duties changed, if at all,
between being a geologic specialist and a licensed
professional geologist?
A. They have not.
Q. Okay. So what are your duties here?
A. Currently, I work on gas migrations.
Q. What's that mean?
A. Gas migrations occur sometimes either from new well drilling, old wells that are in the area, people end up with either gas in their water wells or they end up with gas in their structures.
Q. What does it mean you work on gas migrations?
A. If it's determined that a water supply has been compromised by natural gas or methane, I then come in and help with the investigation on determining what the source of that methane is.
Q. And how long have you been doing that?
A. Six months.
Q. What were you doing prior to that?
A. Reviewing permits.
Q. How long have you been doing that?
A. Since I started here.
Q. Okay.
A. Roughly two years, yeah.
Q. Okay.
A. Roughly two years, yeah.
Q. Okay.
A. Roughly two years, yeah.
Q. And can you identify what you would do generally, go through what your role was in reviewing permits?
A. I would be the first line of technical review for the permit application.
Q. And that entails what?
A. Reviewing the permit application that's sent in by the applicant: The plat, the notifications, checking on setback requirements. It's pretty complicated for me to list everything I looked at.

Q. How long would you spend on each application?
A. Variable.

Q. Ranging from what to what?
A. From a half-hour to maybe a day.

Q. Would you prepare any documents as part of your review?
A. Sometimes.

Q. What kind of documents would you prepare?
A. Sometimes denial letters.

Q. Anything else?
A. Water supply notification letters.

Q. Anything else?
A. Coal determination, not letters, but just -- internal for the application. That's primarily it, I think.

Q. Okay. And during the two-year period that you were doing -- that you were reviewing the permits, did you have other duties?
A. Very limited. I worked on a case where I had to look at a mining operation to determine if they were
going to dewater a wetland.

Q. And let's limit my question to the time frame, the spring and early summer of 2010. Did you have other duties besides permit review then?

A. I don't remember.

Q. Okay.

A. I don't think so.

Q. Okay. What kinds of permits were you reviewing during that time frame?

A. Any type of permit from a shale well to a Marcellus well.

Q. Were you reviewing permits besides well permits?

A. No.

Q. Were you reviewing E&S permits?

A. No.

Q. During the time that you were doing those permit reviews, were you aware of any distinction the Department drew between gas wells and something called a test well?

Department drew between gas wells and something called a test well?

Department drew between gas wells and something called a test well?

A. No.

Q. The issues that you were looking at, and the review that you would conduct be the same regardless of whether it was classified by the applicant as a gas well or a test well?
A. Or oil well or any of the other, yeah.

Q. Okay.

A. Excuse me, except for injection. Injection well is another approved by EPA.

Q. Okay. Would the review that you would conduct be any different if the project was five acres or greater versus a project that was less than five acres?

A. No, no bearing.

Q. Would the review that you would conduct be different in any way if the proposed project was within a special protection watershed high quality or exceptional value?

A. No.

Q. As part of your review, would you consider what, if any, impact the proposed project might have on a high quality or exceptional value watershed?

A. Only if that was within the 100 foot setback that we had. It would be the same whether high quality or not, so no, I guess, would be the answer.

Q. Okay. During the course of your review of permits, did you consider what, if any, impact the project, proposed project might have on any national or state scenic rivers?

A. This one in particular? Could you restate
the question?

Q. Yes. 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.

O. Okay.

A. I did not.

O. Okay.

A. I did not.

Q. Okay.

A. Because I was not aware of any other.

Q. And I take it even within those that you were aware of, that -- well, within those that you were aware of, what was the -- how did you go about that consideration?
A. I don't believe I ever had any in it.

Q. Okay.

A. So we have on our -- part of our process delineates those scenic rivers.

Q. Okay.

A. If you had one that was in a range you needed to check on, you did, but I never had one that fell in what I think would be the corridor.

Q. But you said the corridor wasn't defined.

A. Not that I knew of.

Q. So how did you determine whether something was in the corridor?

A. I didn't have one in the corridor.

Q. How did you know?

A. Because I didn't have -- well, no, I didn't.

Q. How did you know whether it was within the corridor or not?

A. Because the corridor is likely not more than 5,000 feet away.

Q. Okay.

A. 5,000 feet away.

Q. Okay.

A. 5,000 feet away.

Q. Okay.

A. I would assume something not within a mile is not within a corridor.

Q. Okay. Would you assume that something within a mile is within a corridor?

A. No.
Q. You wouldn't know.
A. I had no reason to assume anything.
Q. Okay. I take it you never had a project that was within a mile of those scenic corridors that you understood involving the Clarion and the Allegheny?
A. That would be a guess.
Q. Is that your best estimate?
A. Probably, yeah.
Q. Now, I got the sense that there was some document that you looked at that gave you some information to assist in this process?
A. Correct.
Q. What's that document?
A. Part of our mapping system.
Q. What's that called?
A. A USGS topomap, and then we have a mylar overlay.
Q. What's the source of the data on the mylar overlay?
A. Well, from inking in the wells, locating the overlay?
A. Well, from inking in the wells, locating the overlay?
A. Well, from inking in the wells, locating the wells on the mylar from the permit application.
Q. That's something you do?
A. I did. Something I did. I don't anymore.
Q. When you were doing that permit review.
Other than the data supplied by the USGS, was there
other data that you were relying on?

A. Yes.

Q. What were the sources of that other data?

A. The federal wetlands inventory mapping. We would rely on the USDA soil survey, geologic mapping.

Q. From what source is my question.

A. Well, it would be watershed information from the GIS of -- Pennsylvania provides GIS. I don't know. I don't know. Yeah, I don't know.

Q. Okay.

A. But they are delineated watersheds.

Q. Okay. And I apologize, I didn't give you a set of instructions at the beginning. First of all, have you ever sat for a deposition?

A. No, this is my first one, thank you.

Q. You're welcome. It's a question and answer session.

A. Yeah.

Q. Not a memory test. If you don't remember, tell me you don't remember.

Q. Not a memory test. If you don't remember, tell me you don't remember.

Q. Not a memory test. If you don't remember, tell me you don't remember.

A. Okay.

Q. If you're not sure, tell me you're not sure.

A. Okay.

Q. It might be -- you know, give me your best 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 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
how current they were?

A. No.

Q. Okay. Is it your understanding that the data provided by those agencies are general data that don't reflect site specific conditions?

A. Yes.

Q. And that the only -- is it accurate then in order to determine, for example, wetlands you to have a site specific wetlands delineation?

A. Yes.

Q. Now, when you got information from an applicant on the application, did you do any investigation to determine whether the information that they were providing was accurate?

A. Define information.

Q. Whatever they provided you in their forms.

A. Well, that's what I was verifying that certain things were present or not present.

Q. Okay. And as I understood what you were talking about earlier, the extent of your effort to verify was to compare what they provided on their plat versus what you had from these data sources; is that correct?

A. For -- yes, yes.

Q. Okay. As a general rule, is it accurate that
you didn't do -- that you didn't go on site?

A. I did not go on site.

Q. And that you didn't have a representative of
the Department go on site to verify?

A. Certain times you would.

Q. Okay.

A. Yeah.

Q. When you did that, would that be documented
in the file?

A. Yes.

Q. Okay. Now, did you make any effort, as you
were working on a determination for approval or not of a
well permit, was there any consideration given to the
impact of the proposed well on publicly owned parks,
forests, game lands, wildlife areas?

A. A public resource form should be included if
it's within 200 feet of a public serviced owned property
municipal whether it's local, federal or state.

Q. Okay.

A. Or within that, within the property.

Q. Okay.

A. Or within that, within the property.

Q. Okay.

A. Or within that, within the property.

Q. Okay.

A. So there's a 200 foot buffer.

Q. If it's outside that 200 foot buffer, it
wasn't a consideration?

A. No.
Q. You're agreeing with me?

A. Yes, I think so.

Q. You're agreeing with me it was not a consideration if it was outside that 200 foot buffer.

A. Yes.

Q. Okay. As part of your review of the permit applications, did you assess the adequacy of any erosion and sediment control plans?

A. No.

Q. Did you assess the adequacy of any storm water management plans?

A. No.

Q. Did you make any effort as part of your review of well permits to determine the amount of acreage that was taken up by the well site?

A. No.

Q. Did you make any effort to determine the distance from the well site to any wetlands?

A. Yes.

Q. What effort?

A. Yes.

Q. What effort?

A. Yes.

Q. What effort?

A. Part of the review was to check the well location, to anything that would show up on their plat and/or check the topo, the USGS quad to see if there was a stream or body of water, and to check the wetlands in inventory mapping.
Q. You used the term well location. Are you talking about the bore hole?

A. The bore hole, but if the bore hole was within a certain distance of any of those streams, spring, body of water, wetlands, if it was 140 feet, just throwing an arbitrary number -- if it's close enough to think that the well pad would impact that 100 foot distance, then I would call the surveyor, the individual preparer, to see if the pad would be within that and, say, hey, you know what, you better take a look at this because you're awfully close.

Q. Okay.

A. I don't want you to have a problem after the fact.

Q. Did you have -- in your own review, did you have a distance in your mind that you -- that raised that question for you?

A. Yes.

Q. What distance did you utilize?

A. About 140, 150 for a shallow well and then

Q. What distance did you utilize?

A. About 140, 150 for a shallow well and then

Q. What distance did you utilize?

A. About 140, 150 for a shallow well and then possibly 200 feet for a Marcellus well or a deeper well. Eventually Brian Babb came out with an e-mail that stated that. He wanted us to look at any -- call on any well location that was within that distance.

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, well 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?
Q. Does that term mean anything to you in your position?

A. Facilities?

Q. Yes.

A. No.

Q. What about the equipment that's used?

A. Sure.

Q. So is where that equipment is located, is that part of the well pad?

A. Yes, I would -- yeah.

Q. Okay. The well plat -- the plats that you reviewed as part of your permit review process, did those delineate the well pad, where the well pad was located and the extent of the well pad?

A. Sometimes.

Q. As part of your review, did you ever consider the cumulative impact of a project in connection with other projects in the area?

A. No.

Q. Do you know, the information that's reflected in the PNDI search, do you know how current that information is kept?

A. I do not.

Q. All right. We've had this marked previously as Appellant's 1. It's a set of documents that were
provided to us as part of discovery in this matter
provided by the Department. And they have a numbering
system at the bottom. Do you see down here?
   A. Sure.
   Q. Those are called Bates numbering, so
sometimes I might refer to the Bates page and that's
what I'm referring to, okay?
   A. Yes.
   Q. If you could take a moment to look through
it. I'm going to ask you some questions, and if I ask
you a question about a specific document, I'm going to
give you an opportunity to look at that. I just want
you to get generally familiar with what this packet is,
okay?
   A. Okay.
   Q. Do you recall working on this permit
application review?
   A. No.
   Q. In looking at the documents that are Page 1
through 16 --
   Q. In looking at the documents that are Page 1
through 16 --
   Q. In looking at the documents that are Page 1
through 16 --
   A. Okay.
   Q. Looking at the documents that come after 16,17 on, are those the types of documents that get
generated after your -- and, again, I'm just limiting my
questions to the time that you were doing permit review.
Are those the types of documents that were generated after your part of the process was complete?

A. Yes.

Q. And the documents then that are 1 through 16, are those the materials that you would be looking at as part of your permit review?

A. Yes.

Q. Are there any other documents that you would expect to see in a permit file other than what's here?

A. Yes.

Q. What else would you expect to see?

A. Well, it would depend on the area that they're drilling.

Q. Okay.

A. Again, I may expect to see a public resource form.

Q. Okay.

A. I may expect to see a coal determination letter. I may see a gas storage letter. That's about it.

Q. Okay. And if you had correspondence with the applicant, would that be contained in the file?

A. If it was written correspondence.

Q. Is there other type of correspondence?

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.

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
review.

A. No.

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

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

Q. What happened to those?

A. Deleted.

Q. Who deleted them?

A. Me, if I even had any.

Q. Well, you were telling me a minute ago about the types of people you would be e-mailing with.

A. Sure.

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

A. At some point, yes.

Q. Did you have a schedule that you followed for deleting things?

A. No.

Q. Did you delete things every day?

A. I had no schedule.

Q. Did you delete things when you were leaving...

A. I had no schedule.

Q. Did you delete things when you were leaving that role?

A. Likely.

Q. Well, do you recall deleting things when you were leaving that role?

A. Oh, you mean by role, the position I was in?
Q. The position that you were in. You changed roles to doing permit reviews to doing --
A. No, I would say I deleted as I determined the correspondence was not relevant anymore.
Q. How did you make that determination that it wasn't relevant anymore?
A. If they satisfied what I found to be delinquent in their permit application.
Q. Okay. Were there e-mails that you had in connection with a permit review other than documenting with the applicant or one of its consultants a delinquency?
A. Not that I'm aware of.
Q. Did you ever have e-mails with Brian Babb about review of a particular application?
A. Not that I'm aware of.
Q. If there was a deficiency in a file and we wanted to -- that had been cleared up to your mind and we wanted to go back and figure out whether at one point there had been a deficiency, would we be able to do that?
A. I don't know. If there was a deficiency and I had to take the -- I don't know how familiar you are with the process, but take the permit off the clock, in eFACTS, it would show I took the permit off the clock
and it would have a little blurb that explained why, like within 100 feet of wetlands.

Q. Okay.
A. So it would be recorded in eFACTS.

Q. Okay. If you had a question about something on the application that you didn't determine that it was a deficiency but you had a question or a concern, did that ever happen?
A. Yes.
Q. What would you do when that would happen?
A. Call --
Q. Okay.
A. -- the preparer.
Q. And would there be any way to look back at any records within the Department and figure out that that had happened?
A. No.
Q. The first page of this application has some handwriting on it. Can you identify what of that handwriting is yours?
Q. Can you identify what of that handwriting is yours?
A. You want me to point to it or --
Q. Just if you can identify it, you can identify what it is by the box that it's in perhaps.
A. There's a box with a C.
Q. Right.
A. Then there's a G. That's my writing with a date, 5-3-10 and then my initials.

Q. And that's in the top box under permit application, DEP use only, correct?

A. Right. In the same box, there's an objection date, do not issue before. There's a 5-3-10, that's my writing.

Q. Okay.

A. And then same upper box, there's a watershed name. I have Hollister Creek, and then I have circled the designation high quality.

Q. Okay. Do you see where it stays INV in that same set of box to the left and then it says 5-27-10?

A. Yes.

Q. Do you know whose that is?

A. I do not.

Q. Do you know what that category represents?

A. No.

Q. All right. How did it come about that you would have -- and I understand you don't have a specific recollection of this permit.

A. Sure.

Q. But generally, was that part of your role was to write in the name of the watershed?

A. Yes.
Q. And to identify its designation?

A. Yes.

Q. How did you go about doing that?

A. With the GIS layers that delineated the watershed.

Q. Okay.

A. And it let you know if it was high quality, EV.

Q. Once you made that determination, did that change the nature of your review at all?

A. No.

Q. Did you make, when you identified a high quality watershed or an EV watershed, did you make any effort to determine what impact, if any, the project, as proposed, would have on that watershed?

A. No.

Q. All right. Now having this document in front of you, can you explain in any further detail what you did to -- when you would get a set of documents like this, what your next steps would be?

A. I could do it in great detail.

Q. Okay.

A. Or I can do it in little detail.

Q. Well --

A. I would first take a look at the plat, which
Q. 15?
A. Yes, it's 15. Typically, I would check to make sure that the plat is to scale, okay?
Q. And simply that it shows there's a scale identified?
A. Well, that's one thing and then to make sure the document is actually to that scale.
Q. Okay.
A. And not to a scale that's not within that range.
Q. How would you know?
A. We have a scale and you measure a distance. There's this line that says it's 1,061 feet.
Q. Okay.
A. I use an engineer's scale on -- and this one in particular, it would be 1 to 400. You use the 40 scale and make sure it measured that distance.
Q. But you wouldn't know whether that's an accurate reflection of what was going on on the ground.
Q. But you wouldn't know whether that's an accurate reflection of what was going on on the ground.
A. No, I'm only checking to make sure this document is to scale.
Q. All right. Go ahead, I didn't mean to interrupt. Actually, I meant --
A. And you must remember, I haven't done these
for six months.

Q. Okay.

A. I would then -- part of the process would be to check, to make sure that the well location --

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

A. Well bore hole.

Q. Okay.

A. Had two points, was located from two permanent points, property corners, roads. I would verify that the distance they provided was accurate.

Q. Again, based on the scale they provided?

A. Yes.

Q. Not based on any site review.

A. No.

Q. Okay.

A. I would verify that it is not within 100 feet of a spring, stream, or body of water.

Q. And again, that's not based on any site specific information that you had?

A. It's based on the plat and the USGS. specific information that you had?

A. It's based on the plat and the USGS. specific information that you had?

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

Q. Okay.

A. And/or the federal wetlands inventory.

Q. Yes.

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

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.
A. And, again, you make a phone call and say, hey, is that there or not and they say, no, that's been demolished.

Q. Okay.

A. So USGS does show structures. I would then verify that, back to Page 1 because Page 1 has information that correlates back to the plat or No. 15 here. I would make sure that the well applicant, well operator matched, address, try to make sure all the information in these grids matched with the front page, check the target formation, because that has some bearing on whether it's a conservation or a non-conservation well and that then in turn kicks in setbacks. I would verify the elevation based on the USGS elevation, verify that the USGS quad matched. That's all I can remember at this time.

Q. Okay. You had said you could give me a detailed or a not detailed version. Well, which did you give me?

A. It's my detailed.

Q. Okay. This page -- I'm sorry, go ahead.

A. Would you like me to keep going?

Q. Oh, sure, I thought you said you were done.

Absolutely.

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
to?
A. No.
Q. All right. Thank you.
A. Yes. I would then verify the -- in this case
this is their coal determination.
Q. You're looking at Page 4?
A. I'm sorry, Page 4.
Q. That's all right.
A. In Wayne County, which is the county of
interest, does not show any coal in this quad. The next
step would be to make sure that the surface land owner
and water supplies were notified via page, what we call
Page 2, but Page 5 and 6.
Q. Okay.
A. And 7 and 11, and 12.
Q. And so what you're looking at is whether the
applicant has provided you the documentation of the
mailing of the notice?
A. Either written consent or the US Post Office
green card sign notification and verifying that it
A. Either written consent or the US Post Office
green card sign notification and verifying that it
A. Either written consent or the US Post Office
green card sign notification and verifying that it
matches the plat.
Q. Okay.
A. Water supplies.
Q. So do you do anything to determine whether
the people identified are the right people or whether
there are additional people that need to be identified and notified?

A. By "right," do you mean --

Q. Do you make a determination as to whether -- I guess I'm more interested in whether there are people who aren't listed here who should be listed here.

A. No, I don't.

Q. Okay.

A. And this is -- I'm sorry, but I do check to make sure that the PNDI was signed.

Q. Okay.

A. This would be Page 13. I did no review of Page 16.

Q. Okay.

A. Of course, if I noticed it was EV or HQ, I would stamp it on the plat.

Q. Okay.

A. And then I would also on Page 1, write it down and circle it.

Q. Let me ask you a question about that. Why down and circle it.

O. Let me ask you a question about that. Why down and circle it.

Q. Let me ask you a question about that. Why would you do that?

A. Because I was told that's what was required, yeah.

Q. Okay.

A. Okay, then I would check 1 through 12, 13,
just to take a look to make sure that the appropriate boxes were checked.

Q. What do you mean by "appropriate"?

A. Well, in this case, this well is an Onondaga well, which means it's a conservation well, and Pennsylvania has setback requirements for conservation wells, so that needs to be checked yes and yes.

The coal question, I want to make sure that they have that correct. And if any of these other questions, for example, if they had yes or will it penetrate or be within 2,000 feet of an active gas reservoir or boundary, if it said yes and they didn't have notification, I'd need to have notification for that. That's just an example of why I'm checking.

Q. On the coal, you're looking at the map that they provided --

A. Um-hum.

Q. -- to see whether, in fact, it appears to be in a region where there's a coal seam or not?

A. Yes.

in a region where there's a coal seam or not?

A. Yes.

in a region where there's a coal seam or not?

A. Yes.

Q. That was the Page 4?

A. Yes.

Q. Okay.

A. I want to make sure the signatures are there for the preparer. And then I verify that the dates of
notification, that the individuals who were notified
have 15 days to respond, so I wanted to make sure that
the date they received notification and/or signed was at
least 15 days in the date box.

Q. Okay.

A. So if it was greater than 15 days, I just put
the date that I reviewed it.

Q. Okay.

A. I would look at PNDI, the various boxes.

That's primarily it.

Q. Okay. Anything else you can think of?

A. No.

Q. Do you from looking at these documents from
the permit application and review, can you determine
what the distance of the project is from Hollister
Creek?

A. No.

Q. Can you determine what its distance is from
the Delaware River?

A. No.

the Delaware River?

A. No.

the Delaware River?

A. No.

Q. Did you consider municipal comprehensive
plans or municipal zoning at all?

A. No.

Q. Can you tell from this whether there would
have been any analysis of the distance of the project
from any wild and scenic river corridor?

A. Can you say that again?

Q. Can you tell from the review of these documents whether any consideration would have been given to the distance of the project from any wild and scenic river corridor?

A. No.

Q. Can you tell from the documents here and what you would have reviewed as part of the permit review where the project is, in terms of being up gradient or down gradient from Hollister Creek?

A. Could you ask that again?

Q. Yes. From the documents that you would have from the application package and from the other materials that you would have consulted as part of your review, would you have made a determination about whether the project was up gradient or down gradient of Hollister Creek?

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

O. Was that something you looked at?

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

O. Was that something you looked at?

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

Q. Was that something you looked at?

A. Part of our review processes an NHD portion of eFACTS where -- and I'm going to struggle with this because I haven't done it for six months, but there's a point that shows the well location, and then you have to look at the stream -- it's kind of an odd system, look
at the stream and determine whether, if you're standing at the head waters, whether it's coming from the right side or the left side of the stream. So I did have to take look at the contours, but for nothing other than that NHD part of the process.

Q. With what goal? Why were you looking at it?
A. I have no idea.

Q. Were you considering whether its location would have an impact on those water resources or watershed?
A. No.

Q. Were you considering which way runoff would flow?
A. No.

Q. Did you consider whether there were alternative sighting or design options?
A. No.

Q. Do you have -- well, at the time that you were conducting permit reviews, did you have any understanding of what it means to be an HQ watershed?
A. Only that it means high quality.

Q. Any understanding what high quality means?
A. No.

Q. Do you have any understanding what EV means?
A. Exceptional value.
Q. And any understanding what exceptional value mean?

A. Other than, I would assume to be high quality watersheds, that's all.

Q. Okay.

A. I don't know how they're determined.

Q. Okay. Do you know what that means in terms of the level of protection that they have under the law?

A. (Witness shakes heads negatively.)

Q. No?

A. No.

Q. Did you, as part of your review of well permits, did you communicate with any local municipalities?

A. No.

Q. Did you consider or analyze what impact, if any, the proposed project might have on stream flow?

A. No.

Q. Did you consider or analyze the impact the proposed project might have on groundwater recharge?

Q. Did you consider or analyze the impact the proposed project might have on groundwater recharge?

A. No.

Q. Now, if you look at Page 1 of the Exhibit, Question No. 11, did you do this -- will the well be located where it may impact a public resource as outlined in the coordination of a well location with
public resources from 5500-PM-060076. Did you make any effort to determine whether that was accurate, the answer -- and they checked no. The applicant checked no.

A. The property is not owned by a public entity. That's how I verified that.

Q. Based on the information the applicant gave you.

A. Yeah.

Q. Other than the ownership of the site where the well would be located?

A. The surface.

Q. Any other effort to verify the information on No. 11?

A. No.

Q. Did you make any effort to analyze whether the project could be developed with a smaller disturbed area?

A. No.

Q. Do you know whether there's a -- whether

A. No.

Q. Do you know whether there's a -- whether

A. No.

Q. Do you know whether there's a -- whether

there are personnel within DEP that are responsible for the special protection programs involving the HQ and EV watersheds?

A. I don't know.

Q. In looking at these documents, can you
identify whether there was any site visit conducted as part of the permit review?

A. I cannot.

Q. Do you see anything that indicates that there was?

A. By whom?

Q. By anyone associated with the permit review.

A. Oh, no, I would say no.

Q. Do you see anything that indicates that there was any communication with anybody as part of the permit review outside of DEP?

A. I don't know.

Q. You don't see anything that indicates such communication?

A. I don't see anything that indicates.

Q. Okay. Do you know what H2S is?

A. Hydrogen sulfide.

Q. Okay. When you're reviewing a permit, is that something you consider, presence of hydrogen sulfide? When you were reviewing permits, was that that something you consider, presence of hydrogen sulfide? When you were reviewing permits, was that that something you consider, presence of hydrogen sulfide? When you were reviewing permits, was that something you considered?

A. No.

Q. What's your understanding of what hydrogen sulfide is?

A. Gas. That's about it.
Q. Is it volatile, dangerous?
A. I don't think it's good for you, no.

Q. Where do you find hydrogen sulfide?
A. I've heard of it in drilling activities.

Q. Okay. Is it localized or is it everywhere?
A. I don't know.

Q. What have you heard about it in drilling activities?
A. Just that you can run into it sometimes.

Q. Okay. Is that a bad thing?
A. I don't know. Based on conversations, I would assume it is.

Q. What have you --
A. I overheard people saying H2S is not good to hit.

Q. Any effort as part of the review process when you were doing permit reviews to avoid hitting H2S?
A. No.

Q. Do you have any understanding what the risk is if you do hit H2S?

Q. Do you have any understanding what the risk is if you do hit H2S?

Q. Do you have any understanding what the risk is if you do hit H2S?
A. No, I do not.

Q. Did you ever hear that there was some mapping available that showed regions where you might find H2S?
A. No. Mapping by whom?

Q. Mapping that was utilized by the Department
and available to the Department.

A. No.

Q. No? You have to answer out loud.

A. No, I'm sorry.

Q. That's okay. Now, as wells were being developed that had gone through the permit process and permits had been approved, was there information coming back to the permitting program, the people who were involved in the permitting to modify how you were going about the permitting to learn from the wells that had been developed?

A. Nothing came back to me.

MR. YEAGER: I don't have any further questions for you, sir.

MR. ZIMMERMAN: I have just one question.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. In response to one of Mr. Yeager's questions about streams, you referred to the NHD portion of eFACTS. Can you tell me what NHD means?

A. No. I don't know what NHD stands for.
Q. What does the NHD portion of eFACTS tell you then?
A. I don't know. It's data collected that's analyzed by somebody else elsewhere.
Q. Well, when you access the NHD portion of eFACTS, what do you see?
A. This would be from recollection because I never looked at it that closely, but it does give information on the watershed, I believe, and the stream that is downstream of the activity.
Q. And you referred to in your answer to one of the questions, whether something was coming from the right or coming from the left, what did you mean by that?
A. Well, as it was explained to me, if you have a topo, if you have a site that shows contours, a USGS, you're familiar with it, it shows contours.
Q. Yes, sir.
A. Of course, water flows downhill, watersheds. If your project was on one side of the watershed and
A. Of course, water flows downhill, watersheds. If your project was on one side of the watershed and
A. Of course, water flows downhill, watersheds. If your project was on one side of the watershed and drained down towards the creek, they wanted you to assume if you were standing at the headwaters of that stream and you looked downstream, was the project on the right or the left. I agree with you, I don't know. That's all the more I can tell you.
MR. ZIMMERMAN: I have no more questions. I don't have anything further.

MR. HOLTZMAN: Can we take a break before we resume?

MR. YEAGER: Sure.

MS. GALLOGLY: Sure.

(Recess from 12:20 p.m. to 12:30 p.m.)

MR. HOLTZMAN: Did you have a question, Stephanie?

MS. GALLOGLY: I don't. I have nothing.

CROSS-EXAMINATION

BY MR. HOLTZMAN:

Q. Joe, my name is Tony Holtzman. I'm counsel for the permittee in this matter, and I'm just going to ask you a few questions to follow up and clarify some points that you made earlier today.

A. Okay.

Q. My first one is, you had mentioned that a variety of features are displayed on the USGS service that you used when you were reviewing permit applications; is that correct?
A. Well, the USGS is a map that's published by
USGS that shows certain features.
Q. Right. And you said that among those
features include buildings, for example?
A. Yes.
Q. What, to your recollection, are the other
features that are displayed?
A. Barns.
Q. Okay.
A. As far as structures?
Q. In general. We'll start with structures.
A. They show structures, residence. They show
barns as an open square. They show streams. They show
swamps. I don't know if I'd call them wetlands. They
show lakes. They show ponds. They show -- sometimes
they show the green -- when they did their aerial
photography for it, they show whether it's wooded or not
wooded, roads, churches. There's other -- not the whole
list but --
Q. Those are what you recall?
list but --
Q. Those are what you recall?
list but --
Q. Those are what you recall?
A. Those are what I recall.
Q. Okay. And did you then consider the proposed
well site relative to those various features?
A. Yes.
Q. Each and every one of the features?
A. Yes, sure.

Q. Are you familiar with E&S plans?

A. Yes. Well, I've heard about them, yes.

Q. Okay. What do you know about that?

A. That they are erosion and sedimentation control plans, that they are developed and designed by engineers to help control erosion and sedimentation throughout some type of construction project.

Q. Okay. Do you know if there are any special features of an E&S plan if a proposed project is going to be located in a high quality watershed?

A. No, I'm not aware of.

Q. If you could look at the documents for just a moment. We'll start with Page 1, and there's a box near the top right-hand side of Page 1 that says type of well.

A. Um-hum.

Q. And you see that the term "other" has an X next to it.

A. Yes.

next to it.

A. Yes.

next to it.

A. Yes.

Q. And it says vertical test well underneath that, correct.

A. Yes.

Q. And what's your understanding of a vertical test well, if you have any?
A. I don't have one.

Q. Okay.

A. It's a vertical well.

Q. Okay. What about Page 18? Do you see that there's a box designated well type.

A. Yes.

Q. And there's the letter TE -- the letters TE, I'm sorry. Correct?

A. Yes.

Q. Okay. Do you know what TE means?

A. No.

Q. Okay. I think you mentioned earlier on that there's some distinctions in the review process for an injection well?

A. Yes.

Q. And did you say that it involved something special relating to the EPA?

A. Yes.

Q. Is there anything you saw in this packet of materials in front of you that would suggest that this

A. No.

Q. Okay. You also said, I believe, and correct me if I'm wrong that the NHD of the eFACTS system is used by somebody else generally.
A. Yes.

Q. Do you know who uses it?

A. I do not.

Q. And you, therefore, I assume, don't know what they do with it?

A. I do not.

Q. Okay. And just to clarify, you don't recall this particular permit application, correct?

A. No, I do not.

MR. HOLTZMAN: I don't have any other questions.

MR. YEAGER: I don't have anything.

MR. ZIMMERMAN: Nothing from me.

MS. GALLOGLY: Nothing.

(Lichtinger deposition concluded at 12:35 p.m.)
REPORTER'S CERTIFICATE

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

Lisa Willow Weiss
Court Reporter

COMMONWEALTH OF PENNSYLVANIA
Notary Public

My Commission Expires July 31, 2012

Dated: March 29, 2011
COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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

v.

EHB Docket No. 2010-102M

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

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

Street, Meadville, Pennsylvania.

Street, Meadville, Pennsylvania.

Willow Reporting Service
8400 Franklin Pike
Meadville, Pennsylvania 16335
814-337-6622
APPEARANCES

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

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

For the Appellants:

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

For the Commonwealth of Pennsylvania, Department of Environmental Protection:

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

For Newfield Appalachia PA, LLC:

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

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

MARY SLYE

Direct examination by Mr. Yeager. . . . . . . . . . . 4

EXHIBITS

Appellant's Exhibit No. 1. . . . . . . . . . . . . . . . 26
MARY SLYE, first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YEAGER:

Q. Could you state your name and spell your last name, please?

A. Mary Slye, S-L-Y-E.

MS. CARSON-BRIGHT: Before we get started, I just want to note an objection for the record regarding Mr. Zimmerman. I understand there's a motion before the board, pro hac vice, but as of right now, you're not permitted to practice law in Pennsylvania, so I would just note that objection for the record.

MR. YEAGER: Are you opposing the record.

MR. YEAGER: Are you opposing the record.

MR. YEAGER: Are you opposing the motion pro hac vice?

MS. CARSON-BRIGHT: I don't know.

MR. YEAGER: Mr. Holtzman?

MR. HOLTZMAN: I'm not.

MR. YEAGER: Could we get that
sorted out today what the
Department's position is going to
be on that so we can make sure.
Obviously, if all sides agree,
it's not going to be an issue.
MS. CARSON-BRIGHT: Right.
MR. YEAGER: And I would expect we
could get the Department's
cooperation on that, so if you
could check, that would be great.
MS. CARSON-BRIGHT: I would need
to consult with co-counsel.
MR. YEAGER: Sure, sure, I
understand.
MR. ZIMMERMAN: And just in
anticipation of that comment, I
won't be asking questions. If I
have questions, I will write them
out and hand them to Mr. Yeager to
ask, if that's all right with you.
out and hand them to Mr. Yeager to
ask, if that's all right with you.
out and hand them to Mr. Yeager to
ask, if that's all right with you.
MS. CARSON-BRIGHT: Well, I guess
that's still participating in the
deposition.
MR. HOLTZMAN: This is
Mr. Holtzman. I agree with the
nature of the objection.

Mr. Zimmerman is not currently admitted to practice in Pennsylvania, and his pro hac motion has not yet been granted by the board and, therefore, technically should not be asking questions or enabling another to ask questions during this deposition in his capacity as an attorney.

MR. YEAGER: To suggest that Mr. Zimmerman can't sit here as if you had a representative of your client could and aid you in conducting a deposition, to suggest that that's somehow improper, really reflective of a problem, and we'll address it in due course if we need to. But why problem, and we'll address it in due course if we need to. But why problem, and we'll address it in due course if we need to, but why don't we move forward.

Q. I think I had asked you to spell your last name, and I don't know whether we got there.

A. Yes, but I can do it again.

Q. That's okay. How are you currently employed,
ma'am?

A. With the DEP.

Q. What's your position?

A. Clerical support.

Q. What do you do as a clerical support person for DEP?

A. For the oil and grass program, basically any of their administrative needs, processing applications.

Q. Have you ever sat for a deposition before?

A. Yes.

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

A. Right.

Q. It's not a memory test. If you don't remember something, tell me you don't remember something, okay?

A. (Witness nods head affirmatively.)

Q. The court reporter is taking down everything we have to say, so shakes of the head and nods don't show up in the transcript.

Q. So I'll ask you to use words. Um-hums and huh-huhs come out an awful lot alike in a transcript as well so, again, I'll just ask you to try to verbalize as much as you can, okay?
A. I understand.
Q. Okay. If at any point you need to take a break, just let me know, okay?
A. Okay.
Q. And if at any point you don't understand a question that I ask or a part of a question I ask, let me know, okay?
A. I understand.
Q. Thank you. How long have you been with DEP?
A. Four years.
Q. And have you been in the same position for the whole time?
A. No.
Q. What positions did you hold prior to that?
A. Clerical support in different programs for the DEP.
Q. Okay. Which programs were you?
A. I started out in oil and gas, but it was different duties. I was there for four months, worked in the water quality program for. I think it was about different duties. I was there for four months, worked in the water quality program for. I think it was about different duties. I was there for four months, worked in the water quality program for, I think it was about three and a half years, and I have been with oil and gas for 16 months now.
Q. So the whole time you've been with DEP, you've been in the clerical support position?
A. Yes.
Q. And what were you doing in the oil and gas program for that initial roughly four months when you started four years ago?

A. It was administrative support as well but different duties. I was doing well records and things of that nature, not actually working on permits.

Q. Okay. So explain for me as best you can what you do.

A. I review the things that are submitted by the companies for administrative completeness, not necessarily the accuracy, but that what is required to be submitted was submitted, and then I pass it on to whichever individual is responsible for reviewing it.

Q. So how do you go about determining whether what's required to be submitted has been submitted? How do you make that determination?

A. We have instructions and checklists for every item that we receive.

Q. So you go down the checklist and compare it with the documents that you have in front of you?

Q. So you go down the checklist and compare it with the documents that you have in front of you?

Q. So you go down the checklist and compare it with the documents that you have in front of you?

A. Yes.

Q. And what happens if you determine that there is something incomplete?

A. Depending on what type of issue it is, I'll either receive a phone call stating this is what we need
corrected or we'll issue an administrative incompleteness letter.

Q. Who makes that determination whether to do it by phone call or issue an administrative incompleteness letter?

A. Mostly it's a judgment call on our side or if we have a question, we'll ask a supervisor how we should handle this.

Q. So when you say judgment call on our side, you're talking about you and the other clerical support personnel?

A. Yes.

Q. Okay. So you have the initial -- am I correct in understanding you have an initial ability to say I think we ought to do this by call or to do a letter, but if you're not certain, you'll go to your supervisor; is that fair?

A. Yes, yes.

Q. And do you have one supervisor who you report to or multiple?

Q. And do you have one supervisor who you report to or multiple?

Q. And do you have one supervisor who you report to or multiple?

A. Mostly just one.

Q. Okay. Who's that?

A. Renee Lee.

Q. Could you spell that?

A. R-E-N-E-E, and it's L-E-E.
Q. L-E?
A. L-E-E.
Q. And what's her position?
A. Clerical supervisor.
Q. You said "mostly". Is there somebody else you report to as well?
A. There's the department head also, but we report to Renee.
Q. And then Renee reports to the department head?
A. Yes.
Q. Who's the department head?
A. Craig Lobins.
Q. And once you make a determination that the file is administratively complete, what happens next?
A. We enter into eFACTS, the computer system that we use, and then give it to -- for a permit, we give it to Brian Babb. He's the permit chief, and he assigns it to a geologist.
Q. And you're doing this administrative assigns it to a geologist.
Q. And you're doing this administrative assigns it to a geologist.
Q. And you're doing this administrative completeness review for things other than permits?
A. For well records, site restoration reports, the other reports that are necessary to submit with a permit.
Q. Meaning through the life of the permit?
A. Yes, sorry.

Q. That's okay. Once a file has been assigned to you to do that initial review for administrative completeness, do you continue to have a role in that same file for the life of the permit?

A. Not necessarily.

Q. So is it random whether a file comes back to you for other parts of the process?

A. Yes. If it's a specific issue, they may ask us to work on it, but as far as when it's actually due to be issued, any of us could get it back.

Q. Okay. So after you make a determination of administrative completeness, is it possible that you might never see that file again?

A. Yes.

Q. And if there are other determinations about, or other recordkeeping roles that are handled by clerical support, that might be handled by one of your colleagues?

A. Yes.

Q. If we wanted to figure out what -- if we had a permit file in front of us, could we determine who the clerical support person was who did the administrative completeness review?

A. Yes.
Q. How do we do that?
A. On the top of the application, there's a square that has a C and a colon, and we put the date and initials of when we did the review on it.
Q. Okay.
A. So you can tell by the initials who did it.
Q. Okay. And then can we tell in the later parts of the process which clerical support person was involved?
A. No.
Q. Okay. When you're conducting your administrative completeness review, are you simply looking at what documents have been submitted or are you also looking at the content of those documents?
A. The document and very little as far as the content. Certain documents we have to check that they were submitted in a certain format, but that's it.
Q. Okay. Can you identify which those are?
A. On the plans that they have to submit, it has to be sealed by a land surveyor or professional engineer, so we have to check that it bears that seal signature and we also have to check that the horizontal reference datum was submitted in Version NAD83 so we have to check for that.
a hitch shows up, we have to show that either there's a signature or that there was a response, if it's necessary, and I guess the -- no, that's it, yeah.

Q. Okay. Now, are all permit applications that come into the oil and gas program, do they have the same checklist that you use for making your administrative completeness review?

A. Yes, yes.

Q. How are E&S permits handled as part of this process?

A. They are not handled as part of this process any longer. You cannot -- the E&S module is no longer accepted, so are you referring to the USGS?

Q. Well, I'm asking you at all, do you play any role in reviewing erosion and sediment control permits?

A. I review them as well.

Q. But do you not consider them part of the oil and gas program?

A. They are, but it's separate from the drilling permits now.

A. They are, but it's separate from the drilling permits now.

A. They are, but it's separate from the drilling permits now.

Q. Do you get those at the same time?

A. If the company submits it like that.

Q. Okay. When you are looking at the drilling permit --

A. Um-hum.
Q. -- is one of the determinations for completeness that you're making about whether there has been an erosion and sediment control permit application submitted as well?
A. No.

Q. To somebody within the Department that you know of, is there some role within the Department of a person who makes that determination about whether you need see an E&S permit application as well?
A. I guess I'm not quite sure I understand the question.

Q. Okay. Well, do you know when an E&S permit needs to be submitted and when it doesn't?
A. Yes.

Q. When?
A. To the best of my knowledge, one has to be submitted with the application if the application area will cover five acres or more.

Q. So is there anyone within DEP who looks at the application for the drilling permit and says, this
Q. So is there anyone within DEP who looks at the application for the drilling permit and says, this
Q. So is there anyone within DEP who looks at the application for the drilling permit and says, this covers five acres or more, you're going to need an E&S permit, I don't see an E&S permit, so, therefore, it's incomplete?
A. I think someone farther down the line does but I don't know for sure.
Q. Okay.

A. I specifically don't.

Q. Okay. What other permit applications -- so if an E&S permit application is submitted, you review that for administrative completeness as well?

A. Yes.

Q. What other permit applications do you review for administrative completeness?

A. GPs, just any of the general permits. Those are the only ones that oil and gas is handling now.

Q. Okay. Now, what about back in the spring and summer of 2010, would those answers have been the same in terms of what your role has been?

A. Yes.

Q. Can you estimate how many well permits you've conducted administrative completeness reviews for?

A. We review 3 to 600 a month.

Q. When you say "we" --

A. The -- all of the clerical. We've been receiving 3 to 600 a month. I've probably been receiving 3 to 600 a month. I've probably been reviewing 40 percent of them. I honestly couldn't say how many total I've done.

Q. How many --

A. Well over 1,000.

Q. You have a time period within which you're
supposed to complete your administrative completeness review?

Q. How long is that?
A. I believe we're -- eFACTS, I think we have seven days to complete it. I think that's really the only guideline we have for it.

Q. Is there a typical amount of time it takes to conduct one administrative completeness review?
A. Once it's assigned to us, we usually complete it within two days.

Q. I guess my question is, from when you -- you got a lot that are being assigned to you --
A. Um-hum.

Q. -- on a daily basis, I'm assuming.
A. Yes.

Q. Once you turn to that file and start your review of that file, are you working on one file at a time?
A. Yes.

A. Yes.

Q: Okay. So how long is there a general seven days to complete it. I think that's really the only guideline we have for it.

Q. Is there a typical amount of time it takes to conduct one administrative completeness review?
A. Once it's assigned to us, we usually complete it within two days.
Q. Okay. Now, you said 300 to 600 a month and that you do 40 percent of them.
A. Yes.
Q. How many clerical support people are there handling oil and gas permits?
A. Right now there is five of us.
Q. I'm not a math whiz, but if there are five of you, why are you handling 40 percent of them?
A. I have the most experience, and one of them, her main aspects with them is issuing. I'm the main entering.
Q. Have you done the issuing as well?
A. Yes.
Q. Who is it that has that responsibility, the main responsibility for issuing?
A. Betsy Miller.
Q. You've mentioned Craig Lobins, I believe.
A. Yes.
Q. And he's the department head. Is that for the oil and gas program?
Q. And he's the department head. Is that for the oil and gas program?
Q. And he's the department head. Is that for the oil and gas program?
A. Oil and gas program manager.
Q. Manager. And what's Brian Babb's title?
A. Permit chief.
Q. And who is Joseph Lichtinger? How do you say it?
A. Lichtinger, I think.

Q. Okay.

A. He's a geologist.

Q. So you said Betsy Miller has her primary focus is on issuing?

A. Yes.

Q. But that you issue as well?

A. Yes.

Q. So you told me -- have you told me the general outline of what you do as part of the administrative completeness review?

A. No.

Q. Okay. What else do you do as part of the administrative completeness review?

A. We -- I guess maybe I misunderstood the question. I think I primarily have -- I receive it, look through it, make sure everything necessary was submitted, enter into eFACTS and pass it to Brian. I guess that's basically it.

Q. Okay. Well, I think you did answer that. guess that's basically it.

Q. Okay. Well, I think you did answer that. guess that's basically it.

Q. Okay. Well, I think you did answer that.

A. Sorry.

Q. That's all right. Is there anything else that you do as part of the administrative completeness review other than what you already told me?

A. No, that's it.
Q. Okay. So when a permit application is assigned to you to issue the permit -- I want to get to the same questions that I've been asking as it related to the administrative completeness review.

First of all, how would we determine, from looking at a file -- can we determine from looking at a file who was the issuing clerical support person?

A. No.

Q. Okay. Is there someplace in the system to identify that?

A. In eFACTS, you can look at who issued it. It would show issued by and that would show who did the paperwork for the issuance.

Q. What are the responsibilities of the clerical support person who is the issuing -- what do we call, the issuing clerk? Is that the appropriate way to identify a person?

A. Yeah, it would fit.

Q. Okay. Is there a way you refer to it?

A. We all refer to ourselves as permit clerks.

Q. Okay. Is there a way you refer to it?

A. We all refer to ourselves as permit clerks.

Q. Okay. Is there a way you refer to it?

A. We all refer to ourselves as permit clerks.

Q. Okay.

A. As far as what they would do, they receive the permit from Brian Babb, and you go into eFACTS, issue it, print off the appropriate document, and give it to Craig for signature.
Q. So is there any -- it sounds very much like, more like a clerical role than the completeness review. Is that --
A. Yes.

Q. -- a fair characterization?
A. Yes.

Q. Besides making sure the information is entered correctly into eFACTS, are there any aspects of that role that would allow you to say there's something incomplete here or this is a permit that shouldn't be issued? Do you have any kind of role like that when you're the issuing permit clerk?
A. No. By the time it's reached issuing, that's all been addressed. It's been done and we've been told it's okay for issue.

Q. Okay. Now, did you bring with you any documents today in response to the deposition notice?
A. No.

MR. YEAGER: Does the Department have any additional documents?

MR. YEAGER: Does the Department have any additional documents?

MR. YEAGER: Does the Department have any additional documents?

MS. CARSON-BRIGHT: We've provided all the documentation to you.

There's nothing more.

Q. Where are permit files maintained?
A. It depends on the county of the permit.
Q. What about for Wayne County?
A. And the Williamsport office.
Q. And what's contained in a permit file?
A. Anything that was submitted for the permit application as well as a copy of their issued permit application and then any of the supporting documents submitted afterwards.
Q. Are there other files that are maintained by the Department that you're aware of in connection with permits?
A. There will be an inspection folder. I believe that's the only other one. I believe the well records and reports of that nature go into the permit folder, and then there's just the inspection folder also.
Q. And what's contained in an inspection folder?
A. The oil and gas inspector and water quality specialist's inspection reports.
Q. So is that then after the permit has been issued?
Q. So is that then after the permit has been issued?
Q. So is that then after the permit has been issued?
A. Yes.
Q. Is there any file maintained that reflects any of the Department's review of permit applications?
A. Just the permit application itself.
Q. You described earlier on that there may be
times when you would check with the supervisor to make a
determination about whether to make a phone call, if
there's an incompleteness.

A. Yes.

Q. To make a phone call or to issue a letter
about the incompleteness?

A. Yes.

Q. Is that communication done orally or by
e-mail or how is that done?

A. Usually, orally.

Q. Are you familiar within the Department
whether there are ever any e-mails that go around among
department personnel about the review of a particular
file or application?

A. There could be, and if there are, we print
them off and attach them to the application.

Q. Okay. So if there were such e-mails, it's
your understanding that they would make it into the
permit file that you described earlier?

A. Yes.

permit file that you described earlier?

A. Yes.

permit file that you described earlier?

A. Yes.

Q. Now, do you know what, if any, paperwork is
prepared by Brian Babb in the permit process?

A. I'm not sure that he produces any paperwork.

Q. Okay.

A. There's blocks on the permit where people
sign off, but I don't believe he does anything, any paperwork on it.

Q. Okay. You mentioned a checklist that you use as part of the administrative completeness review?
A. Yes.

Q. Do you physically check things off on the checklist?
A. I have the sheet beside me and use it to bounce back and forth between them, but it does not get attached to the application. I make -- I guess would make a note to myself that this would be an issue.

Q. And what happens with those notes?
A. I either make the phone call or the letter off of that.

Q. Do those notes get preserved in any way?
A. If I do write it out on a sticky, it will get attached to the application and stay with that application for the life of it --

Q. Okay.
A. -- to include going to the file, but if it's

Q. Okay.
A. -- to include going to the file, but if it's

Q. Okay.
A. -- to include going to the file, but if it's something along the lines of a bad permit fee, we'll just call. There's no need to make a note.

Q. If there's a note made, it's your understanding it --
A. It's in the application.
Q. -- it's gets in the file? Yes?
A. Yes.

Q. Do you know whether there are any other checklists that are used in the permitting process by DEP for gas permits?
A. I'm not sure. I don't know.

Q. Now, you've identified people who are involved in the permit process and positions that are involved in the permit process, the clerical support, personnel, the program manager, the permit chief and a geologist.
A. Yes.

Q. Are there other personnel in the department who are involved in the permit approval process for gas well permits?
A. Not that I'm aware of.

Q. Do you have an understanding of what role the geologist plays in permit review?
A. Vaguely. I know they double-check the plat information, but as far as anything else, I really don't know.

Q. Okay.

(Discussion held off the record.)

MR. YEAGER: Why don't we mark this as Appellant's 1.
MR. YEAGER: I've provided counsel and the witness with a copy of what's been marked Appellant's 1.

Q. What I'd like to do is -- and it's a set of Bates page documents. When I say Bates page, I don't know if you're familiar where Bates numbering.

A. No.

Q. See that numbering at the bottom?

A. Yes.

Q. That's referred to as a Bates stamped number, and it's a way of adding pagination to a set of documents. So from time to time, I may refer to a Bates page or I may ask you to refer to a Bates page. That's what I'm talking about.

A. I understand.

Q. And we received these from the Department by e-mail on Monday, Monday afternoon, I believe. And Ms. Carson-Bright has represented that these are all the e-mail on Monday, Monday afternoon, I believe. And Ms. Carson-Bright has represented that these are all the documents the Department has responsive to our document request. What I'd like to do is give you a moment to go through that. We can go off the record for a few minutes.

A. Okay.
Q. Before you do that -- I'm sorry. Have you looked over any documents in preparation for your deposition today?

A. No.

Q. Okay. So why don't we go off the record a minute. I'll give you time to familiarize yourself with that document set.

A. Okay.

(Brief recess at this time.)

Q. We took a break and I had asked you to review what we had marked as Appellant's Exhibit 1. Have you had a chance to do that?

A. Yes.

Q. In looking at -- well, can you identify what's here, what this represents?

A. Yes.

Q. What is it?

A. The drilling permit application.

Q. Did you look through the whole set of documents?

Q. Did you look through the whole set of documents?

Q. Did you look through the whole set of documents?

A. Yes. I saw the drilling permit application, the issue -- a copy of the issued permit. There's the Well Record and Completion Report, a couple inspection reports, and some accompanying e-mails.

Q. Okay. Are you in a position to say whether
this is the complete file for this project?

A. It would look definitely like it is.

Q. Okay.

A. It has all the necessary papers.

Q. Okay. In looking at this, can you identify what role, if any, you had in DEP's processing of this project?

A. Yes.

Q. What roles did you have?

A. I did the administrative review. I did the initial review of it when we received it and the initial entry into our system, eFACTS.

Q. Okay. And am I correct from my understanding of your prior answers that in looking at this, you can't tell who was the issuing clerk, correct?

A. Correct.

Q. Okay. In reviewing this, can you tell whether -- first of all, do you remember this file?

A. I -- no.

Q. Okay. In reviewing this, can you tell whether you had found that it was administratively complete?

A. There is no notes attached to it, so I would say it was administratively complete.

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?
Q. And then there's a bond number and then there's a C colon. You had referred to that early.
A. Yes, that's my initials and date from when I did my administrative review.
Q. So this has a date stamp of received about two-thirds of the way down, April 12th, 2010, and then it looks like you did the administrative review the next day. Is that --
A. Yes.
Q. And then there's handwriting in a darker pen on that same line, it looks like five, three. Do you see what I'm --
A. Yes, 5, 3, 10, J. L. That's Joe Lichtinger's initials, the geologist.
Q. Okay. So what does that tell us?
A. That that's when he did his review.
Q. And then under that line, it says INV, 5-27-10. Do you know what that represents?
A. I believe that that's when it was approved to 5-27-10. Do you know what that represents?
A. I believe that that's when it was approved to 5-27-10. Do you know what that represents?
A. I believe that that's when it was approved to be issued.
Q. Well, if you look in the next block over to the right, it says date approved. That's the date approved box?
A. Yes.
Q. 5-11-10 and that looks like Babb?
A. That would have been when Brian Babb signed off on it.

Q. Okay. Is that the approval date?
A. That's the date that Brian Babb approved it.

Q. What happens after Brian Babb approves it?
A. After he approves it, it's put into the stack to be issued, and depending on the date stamp of when we received it and how many days it has left out of the 45 days we're allotted to complete the application, whatever is most current is issued first, and it would be put into the stack according to the date.

Q. So Mr. Babb's approval, according to this, was on May 11th, and then the final approval when you got through that paperwork stack to deal with the earlier applications first, then it would have gotten its final approval on 5-27?
A. Yes.

Q. And whose handwriting is that, 5-27-10?
A. I'm not sure.

Q. And whose handwriting is that, 5-27-10?
A. I'm not sure.

Q. And whose handwriting is that, 5-27-10?
A. I'm not sure.

Q. Okay. Who gives it that final approval?
A. I don't know that that's a final approval. The last approval on this is Brian Babb.

Q. Okay. So do you know what that number 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.

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
right. Can you explain what that represents?

A. That's their permit fee. After looking at their depth, it was determined that for the depth, the permit would be $1,250. The surcharge -- there's two surcharges. One will be 200. One would be 250. And that's the breakdown written out.

Q. So is that a determination that you make as part of your administrative completeness review?

A. Yes.

Q. So it sounds like we might have been able to identify another element to your administrative completeness review in that you look at the depth and do some calculations to determine the permit fees to determine that depth?

A. Correct. I used the permit fee calculator.

Q. Okay. Now, still in the DEP Use Only box at the top where it had Mr. Babb's signing and dating the far right-hand column, it says well permit number?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. When does that get put in there?

A. The initial review.

Q. Okay. It gets assigned a number then?

A. Yes.
Q. At the initial review stage?

A. As soon as it's administratively complete, it gets assigned a number.

Q. Special conditions, I'm assuming that's what the cond. stands for?

A. Yes.

Q. What's A B C D E F represent?

A. Different conditions that can be assigned to the permit.

Q. Are those set conditions assigned to those letters?

A. Yes.

Q. So can you tell me what they are?

A. I don't have them memorized.

Q. Okay. Who is responsible for making that determination, do you know?

A. I believe Brian Babb and the geologist assign those.

Q. Okay. Now, underneath special conditions, it says watershed name, Hollister Creek, and then

Q. Okay. Now, underneath special conditions, it says watershed name, Hollister Creek, and then

Q. Okay. Now, underneath special conditions, it says watershed name, Hollister Creek, and then

designation and HQ is circled?

A. Yes.

Q. Do you know whose handwriting that is?

A. I believe that's Joe.

Q. The geologist. Joe the geologist, okay. So
when you get this, when you get an application, are you aware whether it's in a watershed that's designated HQ or EV?

A. No, that's not part of my review.

Q. Do you know who makes that determination?

A. I believe it's the geologist.

Q. So do you know whether the permit applications for drilling or altering a well are handled by the Department any differently if it's in an HQ or EV watershed as opposed to not?

A. I don't know.

Q. Who would be the best person to answer that based on your knowledge of the roles within the Department?

A. The geologist or Brian Babb.

Q. Okay. Is there any additional administrative completeness review that you're required to conduct if the proposed project is in an HQ or EV watershed?

A. No.

Q. Now, do you see at the -- still on this first page, coordination with regulations and other permits?

A. No.

Q. Now, do you see at the -- still on this first page, coordination with regulations and other permits?

A. No.

Q. Now, do you see at the -- still on this first page, coordination with regulations and other permits?

A. Yes.

Q. And then there are checkmarks in some of those boxes. Those checkmarks are entered by the 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 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?
A. We've had discussions about the different parts. And when I've gone to ask questions so that I better understand the permit, they explain it to me and different parts of what they've done.

Q. Do you know what H2S issues are?

A. No.

Q. If you could turn to Bates Page 5. Well, let me ask you just a general question first. In looking at this set of documents, can you tell from looking at them which would have been received by the Department at the time that you had conducted the administrative review?

A. Yes.

Q. How can you tell that?

A. Some of them are date stamped with the same date, and I would recognize which pages are permit application submissions.

Q. As I understood your answer, your answer to one of my questions earlier, because of the volume of permit applications that you've handled, you don't have a specific recollection about this permit, correct?

A. Correct.

Q. So in looking at this file, am I correct that you're not in a position to say this document was in there when I did my administrative review and this document wasn't?
A. No.

Q. But you can look at it and say, these are the types of documents that are generally in the file when I conduct an administrative review?

A. Yes.

Q. Okay. In looking at it, if they are in numerical order, meaning up to Page 16, for example --

A. Yes.

Q. -- are those documents -- can you identify for me by looking at it which are the documents that you would generally find when you do your administrative completeness review?

A. Yes.

Q. Can you please?

A. Sorry. Let me make sure I understand. You want me to look through and tell you which pages I would need?

Q. Yes.


Q. And if you want to just take a minute to go through it, you don't have to go through it out loud. It looks to me like it may be 1 through 16 just based on the Bates stamps?

A. From when I looked at it before, I believe it was Pages 1 through 16. I think 1 through 16 was the
only pages submitted with it.

Q. Okay. Looking at Bates Page 5, it's got that -- and Page 6 have the 127-20017 number at the top. I take it you would have put that on those documents once you had completed your administrative completeness review?

A. Yes.

Q. Now, looking at Page 15, Bates Page 15, is there -- I take it the well location plat is one of the documents that you are looking for when you're conducting your administrative completeness review, correct?

A. Yes.

Q. And I think you indicated earlier that one of the things you do is to look at the content rather than simply looking at whether the document is there, but to make sure that one of the documents is properly sealed. Is that what you were referring to here, the well location plat?

A. Yes.

Q. Is there anything else of substance that you're looking for on the well location plat other than the proper seal for the appropriate professional?

A. The other thing that I check for -- this is where the horizontal reference datum was located also.
In the bottom left-hand corner, the lat long data box
where it says to the right feet, datum, that's one where
it's got to be permitted in the proper format.

Q. Okay. So there's an X there or there's a --
maybe actually just a line. There's some dashes on this
page?

A. Yes.

Q. At the bottom. Are those yours?

A. No.

Q. Do you know whose those are?

A. I believe they're the geologist.

Q. Okay. There's a stamp on this sheet that
says HQ watershed with a line and in handwriting
Hollister Creek. Do you see that?

A. Yes.

Q. Who puts that on?

A. I believe it's the geologist.

Q. Okay. So when you get a document like this
from the applicant, is it accurate that it would not
have that stamp on here?

Q. Now, am I correct that you don't look at the
plat itself to make any judgments about the information
that's provided on the plat?

A. Correct.
Q. If you could turn to Page 17, this is the well permit, correct?

A. Yes.

Q. What's the June 10th date on here tell us? Do you know?

A. I think that's the date that they received this in Williamsport.

Q. Okay.

A. For their files.

Q. Okay. So I see there's a difference in the received stamp that's on the pages from the northwest regional office and this received stamp? Do you see the pages, like the first page of the document has Received, April 12th, 2010, Environmental Protection Northwest Regional Office?

A. Yes.

Q. And then the received stamp on Page 17 says Received, June 10, 2010 Oil and Gas. Is that the stamp that Williamsport uses?

A. Yes.

Q. Do you see where it says Stephen Watson, Oil and Gas Inspector?

A. Yes.

Q. What does that designation mean?

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?
A. Environmental Protection.

Q. Okay. So is she the equivalent of -- who is she the equivalent of in this office?

A. I believe Craig Lobins.

Q. Okay. Do you know why permits for Wayne County are being issued out of Meadville instead of out of Williamsport?

A. They don't do permitting. We do permitting for the entire northern half of the state.

Q. Okay. Now, for administrative completeness, there are, I think you said -- how many different clerks are handling administrative completeness reviews?

A. Five.

Q. To varying degrees.

A. Yes.

Q. How many people are there in Brian Babb's position handling the part of the permit process that he handles?

A. Just himself, one.

Q. How many geologists are there that are handling the permit review process as Mr. -- as Joe, the geologist, was in this case?

A. I'm trying to count real quick.

Q. Sure.

A. Six, I think. It might be seven, but I think
it's six.

Q. Okay. And are they spread out throughout the state?

A. No, they're all in our office as well.

Q. And how many people -- as you can tell, I'm trying to identify in the permit process how many different people are handling these things. So you told me about the clerks and their role in the permit process, and you told me about Mr. Babb. What about for Craig Lobins, is he the only program manager who's handling permitting?

A. Yes.

Q. So when we were talking about the 300 to 600 a month that the clerical support staff is handling, would those be the same numbers that Mr. Babb and Mr. Lobins are handling?

A. Yes.

Q. You had told me earlier that it was your understanding that an E&S permit needed to be submitted with an application if the application area will cover understanding that an E&S permit needed to be submitted with an application if the application area will cover understanding that an E&S permit needed to be submitted with an application if the application area will cover five acres or more?

A. It doesn't have to be submitted with the application.

Q. Okay. Will it need to be submitted and 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

MR. YEAGER: Why don't we take a brief break and then we'll wrap

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?
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?
A. From what they mark as far as type of well on Page 1.

Q. Okay. Do you see on here on Page 1, where it says there's a permit type, right?

A. Yes.

Q. And then it says well type to the right.

A. Correct.

Q. There is no block for test well. Do you agree with me?

A. Yes.

Q. Do you know what a test well is?

A. I have an idea of it.

Q. Okay.

A. It's my understanding that it's just a well that they're going to drill to test what's in the area.

Q. Okay. Is the review that's conducted any different when it's a test well than when it's a gas well?

A. Not administratively. It's the same.

Q. Now, the text on the permits. who types that

A. Not administratively. It's the same.

Q. Now, the text on the permits. who types that

A. Not administratively. It's the same.

Q. Now, the text on the permits, who types that up? And I'm not talking in the blocks. I'm talking the prose that's written there.

A. The text above is the standard text printed with every permit.

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

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 how 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?
Q. And same level of review whether it's Marcellus or non-Marcellus?
A. I believe once they get into the Marcellus, it starts getting more review, but not from the administrative side.

Q. Okay. Do you know the difference in depth? Is there a connection between how deep the well is and whether it's Marcellus or not?
A. I believe so, but that's specific to certain areas. The permit fee calculator is the only thing that would show me that -- or that's not even accurate. What they check, as far as if it's Marcellus or not, then the geologist would check to see if that's accurate.

Q. Okay. If it's accurate at that depth in that location they're either in or not in the Marcellus?
A. Yes.

Q. Do you know who was responsible for making the change from well type in the well permit that's at 17 and the corrected well permit that's at 18?

A. No.

Q. And I think I asked you this earlier. I apologize. There's no way to tell when the corrected one was issued, correct?
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 Iasor (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.
MS. CARSON-BRIGHT: Okay.

MR. ZIMMERMAN: Thank you very much.

MR. HOLTZMAN: No questions for counsel for the permittee.

MS. CARSON-BRIGHT: No questions from counsel for the Department.

MR. YEAGER: Okay, you're free to go.

(Slye deposition concluded at 1:30 p.m.)
REPORTER'S CERTIFICATE

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

Lisa Willow Weiss
Court Reporter and Notary Public

COMMONWEALTH OF PENNSYLVANIA

Dated: March 29, 2011