



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES

OFFICE OF THE
DIRECTOR

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December 3, 2010

The Honorable Edward N. Cahn
Blank Rome LLP
7535 Windsor Drive, Suite 200
Allentown, PA 18195

Re: Natural Gas Exploratory Well Hearings

Dear Judge Cahn:

This follows my letter to you of August 6, 2010, regarding your appointment as hearing examiner for certain appeals concerning natural gas exploratory wells in the Delaware River Basin. I write in my capacity as an Alternate Commissioner for Delaware's Governor Jack A. Markell, Chair *pro tem* of the Delaware River Basin Commission, to clarify a statement contained in my August 6 letter.

The reference in paragraph two of that letter emphasizing that "the various decisions of state regulatory agencies regarding state permits for natural gas wells are not matters to be reviewed at the hearings" is intended to also include the state oil and gas regulations, and related state programs that the permits implement.

These regulations, like the permits, are reviewable in state proceedings under the laws and procedures established by the state issuing the regulations. The members of the Commission have not given DRBC authority to supplant state law and procedures for reviewing state regulations or permits. We believe challenges within the state system are the appropriate mechanism for any party to assert that a state permit, regulation or program is arbitrary, capricious, or contrary to law. Similarly, the Commission is not obligated to find deficiencies or inadequacies in state regulations before requiring a project sponsor to submit its project to the Commission for review. Rather, the Commission is bound by the standards in the *Compact* (see section 3.8) and in Commission regulations.

This clarification leaves you with considerable discretion to entertain evidence that you deem relevant to the issues in the proceeding. As you know, the environmental groups are challenging the portion of the Executive Director's June 14, 2010, Supplemental Determination ("SEDD") allowing a limited number of "grandfathered" exploratory wells to proceed. In the

Delaware's good nature depends on you!

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SEDD, the Executive Director cited to the existence of state regulations as one safeguard reducing the risk to water resources from allowing installation of the grandfathered exploratory wells. The Executive Director decided that in light of all safeguards, the remaining risk to the Basin was not severe enough to warrant imposing significant economic consequences on the project sponsors who had already obtained state permits for exploratory wells as of the date of the SEDD and who had taken other actions in reliance on the Executive Director's 2009 Determination.

You remain free to evaluate the severity of any risk posed by those grandfathered wells, including any risk that you conclude remains in existence as of the date of the hearings, and to recommend in light of such risk and any other factors you deem relevant whether the Commission should affirm, modify or reverse the decision of the Executive Director. We believe this adjudication can be performed without allowing any party to place the DRBC in the position of a reviewing authority for state programs or of making findings as to how any properly filed challenge to those programs should be resolved.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Bunting-Howarth', with a long horizontal flourish extending to the right.

Katherine E. Bunting-Howarth

cc: DRBC Commissioners
Carol R. Collier, Executive Director
Pamela M. Bush, Secretary & Assistant General Counsel
Kenneth J. Warren, General Counsel
All counsel of record