

UPPER DELAWARE COUNCIL MEETING MINUTES

August 4, 2011

The Upper Delaware Council held its monthly meeting on Thursday, August 4, 2011 at the Council office in Narrowsburg, NY. Chairperson Larry H. Richardson called the meeting to order at 7:31 p.m. The Pledge of Allegiance and roll call followed.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder, Jr., Town of Cochection-Larry Richardson, Town of Tusten-Tony Ritter, Town of Highland-Debra Conway, Town of Lumberland-Nadia Rajs, Town of Deerpark-Mel Decker, Damascus Township-Jeff Dexter, Berlin Township-Lillian Russell, Lackawaxen Township-John McKay (at 7:40 p.m.), Shohola Township-Scott Rando, State of New York-Bill Rudge, Delaware River Basin Commission-Dr. Tom Fikslin (at 7:55 p.m.). Absent: Westfall Township, Commonwealth of Pennsylvania, National Park Service.

Approval of July 7 Meeting Minutes: Prior to this action item, Richardson informed Council members that Town of Tusten Representative Susan Sullivan was not present after suffering an injury. Alternate Tony Ritter will take on her UDC responsibilities while she is healing for approximately six weeks. Richardson noted that a get well card was being distributed for signatures. A motion by Rajs seconded by Rando to approve the July 7 meeting minutes was carried unanimously.

Public Comment on the Agenda: None

Committee Reports: Committee reports were provided based on the meeting minutes. They were: July 19 Water Use/Resource Management by Ritter; July 26 Operations by Richardson; and July 26 Project Review by Peckham. As a follow-up to the mention of the Town of Lumberland's Zoning Law revision in the Project Review Committee report, Rajs reported that an informational meeting held on July 28 was well-attended. She will investigate why Section 5.15 "River Overlay District" of the draft zoning law was blank on the website. The next public meetings related to this draft document will be on Sept. 1 with the Zoning Rewrite Committee and a Sept. 21 hearing by the Lumberland Town Board.

Status Reports

Delaware River Basin Commission: Fikslin reported that storage in the New York City Delaware River Basin Reservoirs is 15.959 billion gallons above the long-term median and 28.069 BG higher than last year. The reservoirs range between the low 90s to over 100% of capacity. It has been a good year in terms of flows but there has been a lot of turbidity due to rain.

DRBC staff is working with the commissioners to address the 69,000 comments that the agency received in response to its draft regulations on Natural Gas Development. They look to take some further action in the fall. The next meeting of the DRBC will take place on Wednesday, Sept. 21, in West Trenton, NJ. Dec. 8 will be the last meeting of the year, held at a location to be determined.

Fikslin noted that he manages the DRBC's Monitoring, Modeling & Assessment Branch. For the Special Protection Waters that exist above Trenton, the management framework is that there will be no measurable

change allowed to water quality based on data collected prior to 1992. Five years ago, DRBC began monitoring to evaluate current water quality against water quality targets established in 1992, and develop data to apply the Interstate Control Point and Boundary Control Point management framework to the Middle and Upper Delaware River. The National Park Services assists DRBC with the collection of samples and the National Academy of Sciences in Philadelphia does the testing. Fikslin distributed a handout which provides a map of sampling locations for main stem sites, tributary sites, and macroinvertebrate sites in the Upper Delaware.

A second handout described the DRBC's program of "Monitoring for Natural Gas Development". Fikslin said that while 36% of the Delaware Basin is underlain by Marcellus Shale, it remains to be seen how productive any gas wells will be until drilling commences. Statements have been made that the largest natural gas yields are expected toward northern Delaware County, NY, Wayne County, PA, and parts of Sullivan County, NY. To address its concern that the existing water quality in the Special Protection Waters is maintained, the DRBC is monitoring a suite of parameters to establish pre-drilling conditions. The Upper Delaware's water quality is very unique in that it features soft water that is low in dissolved solids. Besides its water quality monitoring program, the DRBC also has a 10-year biomonitoring program to describe the biological community in different parts of the watershed. Macroinvertebrates respond more slowly, and integrate any changes in water quality. There are also benchmarks in the current Special Protection Waters regulations that can be used for comparison to these data.

Since drilling is expected to occur in the upper portions of the tributaries outside the DRBC/NPS's usual sampling areas, they have initiated a couple activities. One is to rank constituents in flowback water by mean water concentration. Flowback from hydraulic fracturing of wells is dramatically different than wastewater treatment plant effluent or non-point runoff. The DRBC's draft regulations would require sampling of water for these constituents after a well has been stimulated. Referring to a constituents' chart of 24 parameters, Richardson asked Fikslin whether different companies use different chemicals in various mixes or concentrations. Fikslin said that the gas companies are required to post which additives and their chemical constituents they propose to use in their hydrofracking on a Chemical Disclosure Registry reporting website (see fracfocus.org). Peckham added that the mixture is tweaked depending on the type and condition of the shale, among other site-specific factors. Richardson said that this information is available as a baseline, but how does the DRBC know what to test for with different companies? Fikslin said that the companies will be required to report both what chemicals they propose to use and then which ones they actually do use. DRBC will keep this business information confidential if the company requests it. It will not be released to the public, but can be used by DRBC staff. Asked by Richardson whether there are Environmental Protection Agency levels available for each of the chemicals in the chart, Fikslin replied for many of them, no.

The DRBC targeted 103 watersheds of similar sizes in Pennsylvania and New York State to gather existing baseline data for biomonitoring. Thirty-five sites were sampled in PA in April. By the end of August, there will be NY data for 68 sites. The stations were selected to complement the locations of other state and federal quantitative monitoring sites sampled since about 2000. Richardson commented that these are probably tremendously expensive tests. Who pays for them? Fikslin said that the DRBC normally has a biomonitoring program. This year, it is focused on the Marcellus Shale area. Gas companies will be required to do biomonitoring at the pad site in accordance with a protocol to be supplied by the DRBC.

One area of great concern is conductivity, according to Fikslin. The DRBC makes use of devices called HOBO meters that measure temperature and conductivity for months. The Commission's regulations will require drillers to have these meters installed upstream and downstream of their well pad sites.

There is also a re-analysis of archived samples going on. The Academy of Natural Sciences has 284 samples from the Upper Delaware River that were collected in 2009 and 2010 at interstate and boundary control points which they will now analyze for selected parameters identified in flowback samples. This archive-based information will be available early next year. Reports will be produced for distribution.

Docket holders for natural gas permits would be required to comply with various monitoring obligations. Each company must do surface and groundwater monitoring at intervals including pre-site alteration, following each hydraulic fracturing, and annually during production periods. Representative groundwater wells must be within 2000 feet of the well pad. At least one upstream and downstream surface water monitoring site must be installed. Sampling frequency, parameters, analytical methods and detection limits will be specified by the DRBC executive director. There are also requirements for temperature and specific conductivity, water chemistry parameters, and benthic macroinvertebrates.

Fikslin said that the DRBC is designing a new portal to allow electronic applications of well drilling and water withdrawal permits. Natural gas exploration is the impetus for that action. This will be a big step since the DRBC was previously doing paper submittals.

After the baseline thresholds are determined, Conway asked what will happen if they are exceeded. Fikslin said that the DRBC will use median values to calculate their variability and track any changes. The upstream and downstream monitors will help identify the source of any chemicals found in the water. The DRBC would have to make sure they could distinguish the effects from natural gas versus other potential factors. Richardson asked if he understood correctly that the companies themselves will be collecting and analyzing this data. Fikslin confirmed that is the long-standing policy under the Clean Water Act. Conway asked how they can trust that they're getting honest data. Fikslin replied that the DRBC intends to do a lot of independent monitoring. Their goal is to be sure that the river is protected. The states also do unannounced compliance inspections on occasion. Rajsasz asked whether companies do the analyses in-house. Fikslin said the job is probably contracted out. The DRBC does have a concern over using uncertified laboratories. Rajsasz commented that lab certification should be a requirement.

Richardson asked Fikslin to describe what would happen if one of the monitoring stations indicated an elevated level of a chemical. Fikslin said the most likely scenario is that the HOB0 monitor would pick it up first because the conductivity is so low. Those devices are monitored monthly. The quicker response comes from real-time monitors. NPS Upper Delaware Scenic and Recreational River recently was awarded funding to install more of the self-reporting water quality monitors in conjunction with flow gage locations. Richardson asked how regulators would find the source of the chemical. Fikslin said that unless it's an intentional or accidental release, we shouldn't be seeing any impacts on these tributaries. While individual chemicals are typically monitored, sometimes it's the mixture of them that causes toxicity. Funds have been identified to work with the Stroud Research Center to utilize test organisms in these soft waters of the Upper Delaware. Once a violation is identified, there would be reclamation, restoration and enforcement actions taken. Richardson asked whether the DRBC has authority to shut down a gas well immediately. Fikslin said he believes that would be correct.

Niflot said he heard in a television report that seven or eight upstate counties are using frac fluid to melt ice on highways. Fikslin commented that he's never witnessed an activity before where we get most of our information from the media. He has not seen those reports but highway departments essentially use brine now. The frac water is a salt mixture. Richardson recalled how road salt had caused problems for the Town of Tusten with its drinking water wells.

Fikslin concluded by saying that the DRBC proposed regulations calls for the tracking of water used in the natural gas extraction process from its source to flowback to treatment. The volumes should match up. That's why the DRBC is starting an automated data system for reporting and why tracking is so important. Richardson thanked Fikslin for a very informative report.

NYS Dept. of Environmental Conservation: Rudge commented on the handout of an article that had appeared in the Binghamton Press & Sun-Bulletin on Aug. 1 headlined, "Hydrofracking comment period to start in 'late summer', DEC says: State agency studying consultant's recommendations." Rudge confirmed that is where New York State's draft Supplemental Generic Environmental Impact Statement stands. Socioeconomic impact studies will become part of the dsGEIS document. That will trigger the beginning of the public comment period, probably in September as opposed to the original expectation of August. The

period is currently set for 60 days. The DEC hasn't decided whether to hold another round of public meetings. The article states that the initial release of the draft received 13,000 comments and packed auditoriums at public hearings in 2009.

Secondly, Rudge reported that Eagle Creek Renewable Energy has applied to the Federal Energy Regulatory Commission to undertake work on the Mongaup Falls Dam this fall. The geotechnical work will require a drawdown of the reservoir to approximately three feet below crest level. It will take approximately 2-3 weeks to complete. This may impose a bit of a hardship on recreational users. The DEC will provide the UDC and other groups with progress reports. The work could begin as early as Sept. 6, although the DEC has not yet approved the start date.

Four NYS DEC news releases were included in the handouts at Rudge's request. They were: "Gerstman Joins DEC as Executive Deputy Commissioner; McTiernan to Serve as Deputy Counsel", Aug. 4; "Emerald Ash Borer Found in Orange County: State to Expand Quarantine", July 21; "DEC Announces New York's Forests Photo Contest", July 25; and "DEC Announces \$1,000,000 in Urban Forestry Grants: Funding Will Help Support Tree Plantings and Other Projects across the State". Regarding the Emerald Ash Borer (EAB) discovery on the West Point campus in Orange County, Rudge noted that the invasive bug was found in a trap as opposed to on a tree, but given that the purple boxes are not particularly good at trapping, that's a good indicator of an EAB population there. The quarantine pertains to the movement of untreated firewood inside or outside the county. That can only be done with a special permit. Peckham said good luck with that. Rudge agreed that it presents an educational challenge. Richardson asked what a person should do if he identifies an invasive bug. Rudge suggested taking digital photos from multiple angles and sending it to him to pass along to the appropriate staff members. There are some very close look-alikes to invasive bug species. Richardson asked if the DEC will come out to eradicate Giant Hogweed when that invasive plant is found. Rudge said yes, and the statewide coordinator for that program happens to work out of his office. He would be happy to provide contact information. Richardson said that the UDC should post information on what to do about invasive species on its website. Roeder said he understood that there was an EAB infestation on ash trees in Stone Ridge. Rudge confirmed that it's been found as far west as the Ashokan Reservoir and it's hard to predict how far it will go. We're well beyond any pretense that we can eradicate this insect, he said. The best strategy is to slow the infestation so that the environment takes care of it. The prediction for ash trees in both NY and PA is not good right now. The DEC is suggesting, however, that people use caution. Don't jump to the conclusion of preemptively cutting down all the ash trees on a property. Some trees' genetics are more resistant. Richardson noted that the New York State Association of Towns had advised towns to inventory their ash trees and be prepared to budget for their replacement if necessary. The Town of Cohecton has done that. Rudge said that is good advice.

PA Dept. of Conservation & Natural Resources: No report in the absence of Representative Dennis DeMara.

National Park Service-Upper Delaware: No report in the absence of Superintendent Sean McGuinness, who was responding to a river-related emergency.

UDC Executive Director's Report: Bill Douglass reported that the Upper Delaware Council's 23rd Annual Raft Trip will take place on Sunday, Aug. 7. This year's river section is Barryville to Pond Eddy. The reservation deadline was Aug. 1. Douglass has placed a call to the Westfall Township Board of Supervisors Secretary inquiring about their status of filling their UDC representative and alternate vacancies. He plans to attend a township meeting. The UDC is doing well with its budget for Fiscal Year 2011, which will end on Sept. 30. Using projections of expenses for August and September, as well as figuring in Technical Assistance Grants payouts and auditing services that will come due, the end-of-fiscal year budget should amount to approximately \$297,325. It will not exceed the \$300,000 of operational funding provided by the National Park Service.

Old Business: None

New Business:

Draft Letter to Lackawaxen Township: Clarification Request of the Holbert Brothers Bluestone Conditional Use Permit Decision: Richardson noted that the draft letter had been circulated to board members in advance for review. The letter is addressed to the Lackawaxen Township Supervisors. It asks them to provide the UDC with a clarification of Condition #2 included in the July 23, 2011 "Written Decision" for the Conditional Use Permit approval for the Holbert Brothers Bluestone Quarry. Two questions concern: 1) whether the quarry will ever exceed two acres of active face at one time plus an area equal in size to the active face necessary for accessory use; and 2) will the clearing ever exceed a total of four acres at any one time? If so, what is the largest acreage that could be cleared at one time if it was bonded, and not reclaimed? The letter reads, "Our concern is that the provision for bonding, rather than reclamation, could potentially result in a clearing as large as forty acres at one time, with no reclamation for the life of the quarry." A motion by Rando seconded by Rajsz to approve the letter was carried, with one nay by Niflot and one abstention by McKay.

Other: Richardson requested consensus to switch the order of the agenda to take Other New Business and Public Comment prior to an executive session by the board to discuss the qualifications of an applicant for employment and to discuss legal representation for potential litigation. Under "other", Russell said that Jane Prettyman had contacted her. She wants to see a ban imposed on large tanker trucks on the Upper Delaware Scenic Byway. Rajsz, who chairs the Upper Delaware Scenic Byway board, confirmed that the board will be discussing a draft letter or resolution on this topic at their Aug. 22 meeting. If approved, they will bring it to the UDC to seek support.

Public Comment:

- Wayne Holbert identified himself as the owner of the Holbert Brothers Bluestone Quarry in Lackawaxen Township. He has lived and worked in the Upper Delaware Valley all his life. In 2008, he said he had invited property neighbors, the UDC and NPS to come to the quarry. He thought he would be lauded for undertaking good business practices and creating jobs. Nobody came. He withdrew his application for a 40-acre mine expansion in 2008 due to what he characterized as bad legal representation at the time. He urged the UDC not to be shills for big government or extreme "tree huggers" by opposing his right to earn a living. Holbert said he has his detractors but nobody has ever been harmed by his business. He's here to stay and will protect the river. He asked the Council to respect the permit issuance decision of the Lackawaxen Township Supervisors, who think he's a class act and appreciate what he has done for the community. There are regulatory agencies to monitor his quarry activities. He'll do the right thing, he said.
- Ron Parker of Lackawaxen Township said that he lives down from the quarry. He referenced a July 29, 2011 letter from Holbert's attorney, Richard P. Mislitsky of Carlisle, PA, which had been circulated to the board at Mislitsky's request. Parker criticized several points in the letter, including Mislitsky's statement that "federal law specifically denies the NPS authority to participate in matters like this." Parker said that Mislitsky doesn't cite the federal law that he references. He pointed out that the NPS and UDC were both granted party status to these proceedings in 2008, while this time they were "frozen out" on the basis of a claim that they wouldn't be able to evaluate the application objectively. Parker debated Mislitsky's assertion that the quarry is not a "new" use, but rather an expansion of an existing use, which Mislitsky says is not prohibited by the River Management Plan or the township's Zoning Ordinance. Parker asked the board if they had seen an aerial photo showing the extent of the operations at the Holbert Quarry. He said that some people believe they've already exceeded the 10 acres that the PA DEP allowed. Regarding reclamation of the mined property, Parker said that NPS had asked if the company would do that to the highest best management practice standards. Parker reported that there was silence in return. Parker disputed Mislitsky's claim that there will be no drainoff from the quarry because the water is retained onsite. Parker alleged that water does drain to the road and gets into a creek that eventually goes into the Lackawaxen and Delaware Rivers. Furthermore, Parker said, the dynamiting and trucks spread dust. Both dust and runoff can be toxic. The only way to determine the drainage is through consulting topographical maps. Parker said that engineers at the Lackawaxen

meeting showed photos to certify that the quarry can't be seen. Parker said that point is irrelevant. It's peak-to-peak that matters. Parker pointed out that Mislitsky ends his letter with a threat: "If this matter must go to court, I will be forced to challenge the entire corridor in Lackawaxen Township." Parker said he objected to the situation of two supervisors determining whether the UDC could have a say in this hearing. There are only 30 days to appeal to be a party. The clock is ticking. Parker predicted that the UDC's letter to the Lackawaxen Township Supervisors requesting clarification of the conditions attached to their permit approval won't get a timely response. The UDC's job is to protect the river corridor. He hopes that the UDC will vote to become a party to the proceeding.

- Bill McLaughlin of Lackawaxen Township commented that people have four senses. You may not be able to see the quarry, but you can smell it and hear it.
- Shirley Masuo of Shohola Township asked Fikslin for more information about the chemical disclosure requirements for natural gas companies. Fikslin said that because there are proprietary additives involved, the list of chemicals will not be available for disclosure but the regulators will have it. The companies are required to report and test. The DRBC will do independent analysis of samples. They test for approximately 130 chemicals now.
- Bernie Handler of Damascus Township asked if out of the 69,000 comments that the DRBC received on its natural gas development regulations, were any substantive enough to cause major changes to be made in the draft. Fikslin replied that a lot of those comments were duplicate letters. The contractor hired by DRBC has divided them up into themes and broken out individual comments. They have seen some good suggestions come out of it. The Commissioners are receiving and discussing the comments received from the public, the states, and the federal government.
- Mav Moorhead of Callicoon, NY asked Fikslin what considerations have been made for migration and underground osmosis of substances used in the hydraulic fracturing process. She also wanted to know what security measures are taken to protect the HOBOS devices from tampering, what police actions are available to shut down wells, and who are the oversight agencies when you rely on the gas industry to supply certain information. Fikslin replied that the proposed regulations address groundwater safeguards by calling for testing of residential wells before and during drilling at the company's expense. There have been some issues with gas migration. Monitoring continues until the wells are capped and sealed. Regarding the security of the HOBOS devices, they are generally submerged, attached to a concrete pad, and camouflaged. The units could be vandalized but the devices are sealed so nobody could tamper with the data. It would be evident when regular maintenance occurs. Regarding police action, the DRBC and the states have regulatory enforcement authority to cease well operations. The DRBC's regulations put financial assurances in place to seek compliance.
- Justine Holbert of Lackawaxen Township stated that she was born and raised in Callicoon on the Delaware and would never allow her husband Wayne's business to harm the river that she loves.
- UDC Town of Tusten Alternate Tony Ritter said that since the board had approved the earlier letter to the Lackawaxen Township Supervisors seeking clarification about the Holbert quarry decision, should we ask the applicant these questions tonight while he's here? Peckham noted that the letter is directed to the Lackawaxen board. Richardson agreed that it needs to go to the supervisors who voted on this so they can interpret their ruling for us. They are the ones to enforce what this gentleman does on his property. Holbert said he would be happy to answer any questions to elicit accurate information. After quickly scanning a copy of the letter, Holbert said that the answer to both questions is yes, the quarry will exceed two acres of active face at one time plus two acres of ancillary use and the clearing will exceed a total of four acres at any one time. He said there is no way to turn around on the property without exceeding that acreage. But he added that he has to bond every acre with the DEP and that is getting very expensive. Will we drive across, store and stack on more than two acres, Holbert asked? Yes, we have to, he said. Roeder asked how large the clearing area would be in excess of four acres. Holbert said that they are already on more than four acres now. As the rock is processed, they can get back some of it. The active yard is about 4-6 acres. The quarry will not have 40 acres open at once. That is the family's hunting land. The application only requested 40 acres so they wouldn't have to keep going back to the township every few years as the business grows. Holbert said they won't have to actively mine for at least five years because there is so much aggregate. The process still requires obtaining a large mining permit however. Holbert reiterated that they're trying to get into the aggregate business. There won't be more truck traffic than the market demands.

- Bill McLaughlin spoke again. He said that he had bought his land from the Holbert family with an assurance that there wouldn't be any mining activity. McLaughlin alleged that the seller had remarked that the neighbors were just spoiled and selfish because it had been quiet for 50 years.

Executive Session: A motion by Rajsz seconded by Rando to enter executive session at 9:55 p.m. was carried. Staff members were asked to sit in. A motion by Rajsz seconded by Russell to exit executive session at 10:25 p.m. was carried. A motion by Rajsz seconded by Rando for the Upper Delaware Council, Inc. to offer employment to a particular person was carried unanimously. A motion by Rajsz seconded by Russell to retain legal representation for potential litigation was carried by a vote of 7 ayes (Richardson, Ritter, Conway, Rajsz, Decker, Russell, Rando), 4 nays (Peckham, Niflot, Roeder, Dexter) and 1 abstention (McKay).

Adjournment: A motion by Rajsz seconded by Roeder to adjourn the meeting at 10:27 p.m. was carried.

Minutes drafted by Laurie Ramie, 8/11/11