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ADMINISTRATIVE DIVISION



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April 12, 2010

Pamela Bush, Esquire  
Commission Secretary and Assistant General Counsel  
Delaware River Basin Commission  
P.O. Box 7360  
25 State Police Drive  
West Trenton, NJ 08628-0360

Re: Public Comment – Stone Energy Dockets

Dear Ms. Bush:

I am writing on behalf of the Marcellus Shale Coalition (“MSC”) to provide comments in connection with the Dockets the Delaware River Basin Commission (“DRBC”) proposes to issue to Stone Energy Corporation for facilities located in the Commonwealth of Pennsylvania. Docket No. D-2009-13-1 authorizes a surface water withdrawal from the West Branch of the Lackawaxen River in Mount Pleasant Township, Wayne County; and Docket No. D-2009-18-1 establishes requirements for the operation of a natural gas well drilling pad site in Clinton Township, Wayne County. The MSC believes that natural gas reserves in the Marcellus Shale formation, which underlies areas within the Delaware River Basin that are within the zone designated as Special Protection Waters, can be explored and extracted in compliance with the requirements administered by DRBC.

The Stone Energy Dockets are the first to be issued by DRBC for activities related to natural gas extraction from the Marcellus Shale and the MSC supports their issuance. As DRBC gains more experience with the industry and learns more about its environmentally protective practices, the conditions developed for future Dockets may be different, especially those Dockets issued after DRBC adopts industry specific regulations. Accordingly, we believe that the conditions of the Stone Energy Dockets should not establish a precedent for DRBC Dockets issued in the future.

These comments provide information regarding (1) the interests of the MSC, (2) the general scope of the regulatory schemes applicable to natural gas extraction that are administered by other regulatory agencies, and (3) DRBC’s role in protecting the water resources of the Delaware River Basin. As set forth in more detail below, the states have in place comprehensive environmental programs to effectively regulate natural gas drilling and development, which provide a firm foundation upon which DRBC can rely as it seeks to establish complimentary and

compatible requirements to address the unique water-related interests DRBC was formed to protect.

A. Interests of the MSC

The Marcellus Shale Coalition is an organization of interested stakeholders committed to the development of the Marcellus Shale geological formation in a legally sound and environmentally responsible manner. Full members of the MSC include nearly 40 drilling companies, all with active interests within the Commonwealth of Pennsylvania. As you may be aware, the Marcellus Shale is the largest known shale deposit in the world with natural gas reserves approaching 500 trillion cubic feet, of which 50 trillion cubic feet may be recoverable. (As a point of reference, Pennsylvania consumed approximately 0.75 trillion cubic feet of natural gas last year.)

Responsible development of the Marcellus Shale represents a significant economic opportunity for the Commonwealth, as well as the surrounding states. According to a study prepared by The Pennsylvania State University, during 2009 in Pennsylvania, the Marcellus industry generated \$3.8 billion in value added, over 48,000 jobs, and \$400 million in state and local tax revenues. By 2020, the industry could generate nearly 175,000 jobs each year and more than \$13 billion in value added. The present value of state and local tax revenues from Marcellus Shale development from 2010 to 2020 is expected to be almost \$12 billion. The economic benefits of development will be spread throughout the economy in the tri-state area benefitting local governments, farmers, construction workers, professionals, and thousands of other workers that have been negatively impacted by the recession.

Development of the Marcellus Shale would allow the Commonwealth to become a net exporter of natural gas and provide lower cost energy to the surrounding states, thereby reducing dependency on foreign imports and exacerbating trade deficits. The Marcellus Shale also represents a significant environmental opportunity for the nation. Natural gas is a clean-burning energy resource and its use has the potential to significantly reduce greenhouse gas and other emissions. Domestically sourced natural gas is expected to serve as a bridge to a more sustainable energy future, which will include a mix of solar, wind, nuclear, biomass and other technologies.

Members of the MSC take responsibility in caring for the environment, and have spent hundreds of millions of dollars on industry-specific environmental management programs to assure their operations meet or exceed applicable requirements. Natural gas can be extracted safely in the Delaware River Basin and the members of the MSC are committed to conduct their activities in a manner that will not compromise the environment.



B. General Overview of Current Regulatory Requirements

Contrary to some reports of “exemptions” and “loopholes,” the oil and gas industry is one of the most highly regulated industries in the United States. The Commonwealth of Pennsylvania and the state of New York, in particular, have some of the most restrictive and environmentally protective laws in the country.

For example, according to the Pennsylvania Department of Environmental Protection’s (the “Department”) Oil and Gas Manual, at least six Pennsylvania environmental laws are applicable to natural gas drilling operations:

- (1) The Oil and Gas Act, 58 P.S. § 601.101 *et seq.*;
- (2) The Coal and Gas Resource Coordination Act, 58 P.S. § 501 *et seq.*;
- (3) The Oil and Gas Conservation Law, 58 P.S. § 401 *et seq.*;
- (4) The Clean Streams Law, 35 P.S. § 691.1 *et seq.*;
- (5) The Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.*; and
- (6) The Administrative Code, 71 P.S. § 51 *et seq.*

In addition, to these six statutes and depending on its specific location, a drilling project may also trigger regulatory requirements under the Pennsylvania Dam Safety and Encroachment Act (32 P.S. § 693.1-.27, and/or the Flood Plain Management Act (32 P.S. § 679.101 *et seq.*) . While the Department has the primary authority for implementing the Commonwealth’s environmental laws, several other federal, state and local agencies have overlapping or concurrent authority for aspects of the activities related to Marcellus Shale under certain circumstances depending on their location, including:

- (1) Pennsylvania Fish and Boat Commission
- (2) Pennsylvania Department of Conservation and Natural Resource
- (3) Pennsylvania Game Commission
- (4) Pennsylvania Department of Transportation
- (5) Pennsylvania Department of Labor and Industry
- (6) County Conservation Districts
- (7) National Park Service
- (8) U.S. Army Corps of Engineers
- (9) U.S. Environmental Protection Agency
- (10) U.S. Fish and Wildlife Service
- (11) Susquehanna River Basin Commission
- (12) Delaware River Basin Commission

The Department has promulgated a wide range of regulations establishing rules, standards and specifications that govern nearly every aspect of the drilling process and related activities. By way of example, prior to the construction of a well site (including access roads, on-site disposal areas, pipelines, etc.), Title 25, Chapter 102 of the Pennsylvania Code requires

the development of a plan for the control of soil erosion and stream sedimentation that may result from the earth disturbance activities. Chapter 102 also regulates stormwater runoff associated with most earth disturbance activities at oil and gas facilities. In the latter half of 2010, the Department is expected to revise parts of Chapter 102 to impose, among other things, long-term obligations on the management of stormwater discharges after the completion of construction activities as well as the creation and maintenance of forested riparian buffers.

By way of further example, prior to the generation of waste at an oil and gas site, Chapters 78.55 and 91.34 require operators to prepare a "Preparedness, Prevention and Contingency" Plan, which identifies all pollutorial substances, the methods for control and disposing of those substances, and the actions necessary to prevent those substances from reaching the waters of the Commonwealth. Other Pennsylvania regulations and policies that prohibit pollution and/or ensure the safe development of the Marcellus Shale include, but are not limited to:

- (1) Well Permits – 25 Pa. Code §§ 78.11-19;
- (2) Casing and Cementing Requirements - 25 Pa. Code §§ 78.8-87;
- (3) Well Plugging - 25 Pa. Code §§ 78.91-98;
- (4) Inactive Status - 25 Pa. Code §§ 78.101-105;
- (5) Well Reporting - 25 Pa. Code §§ 78.121-125;
- (6) Financial Assurance - 25 Pa. Code §§ 78.301-314;
- (7) Restoration of Well Sites 25 Pa. Code § 78.65;
- (8) Waste Storage and Disposal - 25 Pa. Code §§ 78.55-58, 78.60-63, 78.121; 91.34; 287.51-55
- (9) Transportation of Waste - 25 Pa. Code §§ 299.201-.232;
- (10) Wetlands Protection - 32 P.S. § 693.1-.27, 33 U.S.C. § 1344;
- (11) Water Use Registration and Reporting - 25 Pa. Code §§ 110.1-.6;
- (12) Special Protection Watersheds – 25 Pa. Code §§ 93; 102

The State of New York has similar regulatory provisions governing oil and gas activity. The New York Department of Environmental Conservation's Division of Mineral Resources administers the applicable permitting programs, which are intended to protect the environment and landowner from well development through site restoration. In sum, both states continue to review and update existing regulations to ensure that they adequately address the processes and advanced technology used in the development of the Marcellus Shale.

The members of the MSC are committed to the environmentally responsible development of the Marcellus Shale. Consistent with that goal, the MSC supports DRBC's efforts to develop common sense regulations based on sound science and policy. Specifically, the MSC supports regulations that are (1) consistent with and, as appropriate, deferential to existing state requirements; (2) provide for the timely review of applications; and (3) focused on the unique water related interests that the DRBC was established to protect.



C. Authority of DRBC

Initially, it was unclear just how DRBC would exercise its authority to regulate the Marcellus Shale activities given the limited scope of DRBC's authorities. The answer to that question came on May 19, 2009, when Carol Collier, Executive Director, DRBC, issued the *Determination of the Executive Director Concerning Natural Gas Extraction Activities in Shale Formations within the Drainage Area of Special Protection Water* ("Determination"). Citing Section 3.8 of the Delaware River Compact ("Compact") and 2.3.5 of the Commission's Rules of Practice and Procedure, the Determination identified those activities requiring approval by the Commission when undertaken within the area designated as Special Protection Waters. The Determination describes projects for which Commission approval is needed as encompassing:

a drilling pad upon which a well intended for eventual production is located, all pertinent facilities and activities related thereto and all locations of water withdrawals used or to be used to supply water to the project.

(Wells intended solely for exploration purposes were expressly excluded.) Further, and equally important to DRBC's development of Docket conditions and future regulations, the Determination expressly acknowledges that natural gas extraction activities are subject to state requirements and, in some instances, federal requirements, and confirms the Commission's intention to:

...coordinate with and where feasible to utilize the review process and approvals of the applicable state or federal agency to minimize duplication of effort and redundant requirements imposed on project sponsors.

The language of the Determination is instructive as it relates to the terms and conditions of the Stone Energy Dockets, other Dockets that may be issued by DRBC in the future, and regulations that may be developed to implement the DRBC authorities that are not otherwise addressed in the regulatory requirements of other agencies. DRBC's commitment to coordinate with the other environmental agencies, utilize pre-established review processes and procedures, and minimize duplication of effort and redundant requirements is commendable and is supported by the MSC.

As noted above, the oil and gas industry is already subject to a complex array of local, state and federal regulations, which are implemented and enforced by agencies with overlapping jurisdictions. The members of the MSC commend DRBC's efforts to avoid duplication of effort. To do otherwise would unnecessarily burden the agency, significantly increase the costs of drilling and potentially delay projects without any material benefit. The MSC welcomes the opportunity to work collaboratively with the DRBC, concerned citizens, and other stakeholders to develop a program, consistent with the Determination, that deals directly with the focused concerns of the DRBC that are not otherwise covered by existing state or federal programs. The

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members of the MSC strongly believe that the Marcellus Shale can be developed cost-effectively while ensuring the protection of the special environmental resources of the Delaware River Basin.

D. Conclusion

While we understand that action on the Stone Energy Dockets is being deferred at this time to allow DRBC to evaluate the comments received from the public, the MSC encourages DRBC to issue these Dockets at the July meeting of the Commissioners, with the understanding that the conditions of such Dockets do not establish a precedent for future Dockets or for regulations that DRBC has yet to propose. In the meantime, the MSC would welcome the opportunity to provide information relative to the Marcellus Shale activities that may enable DRBC to better understand the issues relating to the industry, and to address any concerns raised by the comments DRBC received on the Stone Energy Dockets.

The MSC also supports DRBC's efforts in establishing a regulatory scheme to implement DRBC's focused legal responsibilities in a manner that is complementary to and not duplicative of the requirements or procedures of state and federal agencies already regulating the industry.

The natural gas industry has developed unique and innovative procedures to assure the protection of the environment while building a reliable platform for moving toward a national program of energy independence. We look to DRBC to join in achieving those objectives.

We appreciate DRBC's continued efforts and consideration. Please contact me if you have any questions about the MSC or its positions with regard to these matters.

Sincerely,



Kathryn Z. Klaber  
President, Marcellus Shale Coalition