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Savage River Watershed Association

**Marcellus Shale Follow-up # 15
February 5, 2013**

Watershed News:

Curious about the findings of SRWA's dedicated DNR Marcellus Shale Stream Monitoring Coalition (MMC) volunteers? Then follow this link to the baseline data summary reports provided by Michael Kashiwagi, MD Department of Natural Resources on SRWA's 13 stream stations.

http://www.savageriverwatershed.org/communications/pressreleases/SRWA_StationReports.pdf

Regional News:

Small Town in Frederick County MD Sued by Energy Company

Article written by Paul Roberts for *AppIndie* web newspaper February 4, 2013

A prominent Eastern U.S. energy corporation on Friday sued a small town in Frederick County and state regulators that declined to consider a permit application on grounds that the company lacked proper zoning for its natural gas compressor station. Dominion Transmission, Inc., part of a sprawling electricity and gas distribution company with operations across half the country, filed suit in a Baltimore federal court. It asserts that local "ordinances, rules, and regulations are preempted by federal law in their entirety, and are thus null and void as applied" to the facility Dominion wants to build on its pipeline near Myersville, Md.

The Federal Energy Regulatory Commission in December issued Dominion its permit to construct and operate the station. Myersville Town Council last month asked FERC to reconsider its approval but indicated it had no intention of amending its land-use master plan to allow such industrial activity. The suit, sure to burden the town of 1,600 with major litigation costs, represents yet another facet in the evolving Marcellus shale dynamic — even before Maryland decides whether to allow drilling. A judge's ruling in the case could not only affect future energy development state-wide, but the lawsuit's filing has some in the General Assembly claiming it shows how vulnerable Maryland is to energy sector dictates.

Dominion's pipeline tracks the southern border of Pennsylvania, where thousands of new gas wells have been drilled. It will become an important artery to export markets, once the company completes construction later this decade of its shipping facility on Chesapeake Bay, at Cove Point, Md. Dominion timed its filing with a separate suit in a federal appeals court in Washington, D.C. It asks the court to review a recent ruling by the Maryland Department of Environment, which is charged to enforce federal air quality laws but decided it could not consider Dominion's application because the corporation failed to secure municipal zoning before seeking the FERC permit.

MDE Secretary Robert Summers disclosed the agency's decision in a letter to Myersville Citizens for a Rural Community on Jan. 17. And that "refusal to act on Dominion's application," Dominion claims, "is inconsistent with federal law and will prevent construction of Dominion's compressor station...." In his letter, Summers cites state law prohibiting MDE from processing the application. "In the event of a dispute over zoning or land use approval," he states, "the permit applicant and the local jurisdiction are responsible for resolving the dispute" before the air quality permit is sought.

The Baltimore-Washington metro-plex has some of the nation's dirtiest air, and Maryland has spent millions of dollars on initiatives to reduce its carbon and greenhouse gas emissions in the region. Methane is a potent greenhouse gas, and those challenging shale gas development point to the toxic impact of methane emissions from well sites and compressor stations — in addition to the extra carbon wastes that the stations' engines spew into the atmosphere.

A spokesperson for Myersville Citizens said a formal response to DTI's filing was forthcoming. The group has previously said it did not believe the station would be able to comply with the federal emission standards that

MDE enforces — regardless of the zoning issues. The citizen's group turned out 400 people to FERC hearings and collected more than 650 petition signatures on grounds that, in addition to lacking zoning board approval, the 16,000-horsepower compressors would create excessive noise and air pollution in the town. The group has fought DTI with legal briefs and public protests since the company filed its federal application last February. Earlier this year, Myersville Citizen's filed a petition with FERC noting that MDE enforces air quality and emissions standards created by the Environmental Protection Agency, "which means that they are backed by federal law and are not subject to pre-emption...."

Dominion, according to its website, is "one of the nation's largest producers and transporters of energy, with a portfolio of approximately 27,400 megawatts of generation, 11,000 miles of natural gas transmission, gathering and storage pipeline, and 6,300 miles of electric transmission lines." It owns retail electricity companies in large cities and transmits wholesale power and natural gas from Texas to Florida to Massachusetts. Corporate roots in Richmond, Va., can be traced to the 1790s. Buying up struggling utility companies over the last two decades while expanding its pipeline infrastructure to serve the burgeoning shale gas business, Dominion is one of a new breed of energy behemoths with interests in multiple sectors.

Its operations are regulated by a bewildering patchwork of federal, state, and local laws developed over decades. The 1938 Natural Gas Act, designed to bring energy to remote sections of an industrializing nation, allows transmission giants astonishing authority in the modern era; Dominion can, for instance, still confiscate private property at "fair market value" to build pipelines. The sector also benefits from more recent federal acts, such as a national energy initiative crafted largely in secret in 2005 by a former oil executive, Vice President Dick Cheney. It created numerous loopholes and carve-outs in U.S. environmental and tax law, including exemptions to landmark public protections such as the Clean Water Act of 1972.

So, Dominion can certainly claim extensive authority under federal law. Its lawsuit sets the stage for what could be a protracted legal battle — with Maryland Attorney General Douglas Gansler representing the state while campaigning for the Spring 2014 gubernatorial nomination — that might end with an important judicial decision: in an era of rampant energy development — mostly beyond state lines so far — can Maryland towns in these energy corridors control what industrial activity occurs within their borders?

The issue is also bubbling up in the 2013 legislative session. Sen. Bobby Zirkin, a Baltimore County Democrat, is sponsoring bills intended to curb the power of energy and pipeline companies. Zirkin got involved after learning that Columbia Gas, which owns a pipeline running through the Baltimore metro area, was working on right-of-way not far from his home. He told me last month that he had no idea "they could use eminent domain for private gain, but they can and they do." That authority also comes from the 1938 gas act. Zirkin also recently signed on as co-lead Senate sponsor of a bill to impose a moratorium on shale gas development in Maryland. The bill championed by Del. Heather Mizeur would prevent drilling until a suite of scientific studies is funded and completed. Mizeur wants MDE's drilling regulations — last revised in 1993 — overhauled and a formal decision from the legislature about whether to allow the controversial technology called "fracking." Otherwise, she says, it should not happen.

Regulators in other states say fracking has contaminated ground-water. And scores of lawsuits settled on behalf of plaintiffs allege such contamination, though virtually all have ended with industry-imposed stipulations sealing the terms from public scrutiny. A governor's order in Maryland, in place since mid-2011, has so far prevented drilling. But supporters of Mizeur and Zirkin's legislation worry that a lawsuit — comparable to the one Dominion is pursuing against Myersville — could open the door to a court ruling that over-rides the governor's action. "We need a law, something put in place by the legislature," says Mizeur. "The industry's game plan has been to wait it out, prevent the safety studies, and push to drill, despite the consequences. "We have to hit the pause button. There is too much at stake not to take the long view on this issue — to study it properly, and make an informed decision about the future of fracking in Maryland."

In a different arena — though certainly related — is another FERC ruling related to Dominion (www.ferc.gov/whats-new/comm-meet/2012/122012/C-3.pdf) Issued Nov. 30, 2012, the ruling deals with Dominion's original core business — gas transmission and storage — at a company facility called the Sabinsville Pool in north-central Pennsylvania. The pool is a vast storage cavern, roughly 4,500 feet underground, and approximately 1.75 miles wide by 9 miles long. Most of America's natural gas is stored in such caverns, with pipelines that connect to producing wells and end-users. Western Maryland has one such underground storage cave, owned by Spectra Energy in rural countryside outside Accident, in Garrett County. Compressor

stations are needed every few miles along the pipeline to condition the gas to flow more efficiently. Spectra also maintains a large compressor facility above its Accident storage field. These underground storage fields, because they are connected to the national pipeline system, are also regulated by FERC — hence these remarkable disclosures. Near Dominion's Sabinsville Pool, a company fracking wells requested a setback of as little as 500 feet from the storage pool boundary. But the commission instead set the protective buffer zone at 2,000 feet, because it "believes that there is a real possibility that drilling and completion activities in the vicinity of the Sabinsville Pool could have a detrimental affect on its integrity."

Perhaps most interesting in the document is the extensive discussion among the energy companies about the lack of research into underground fractures that occur during well completion. Dominion engineers argued to the commission that they knew of no "proven model or technology that can be rigorously applied to predict accurately the location and extent of encroachment" of fractures caused by horizontal drilling in the Marcellus shale. The FERC order reads like a case study in how American regulatory agencies, lacking "rigorous" scientific findings to suggest acceptable limits, continue to permit drilling that uses explosive charges — set off over and over, hundreds of times per well, at more than 5,000 wells in Pennsylvania alone. Some are no more than a mile from the next well, in an area with a record of natural seismic activity. This technology is also used at waste storage wells, in which chemicals and liquids from fracking are injected deep underground. Scientists and regulators in multiple states have blamed those wells for causing earthquakes.

In this case, the commission accepted Dominion's request for the 2,000-foot setback because that distance was the "appropriate boundary" provided under Pennsylvania law and also, based on the record reproduced in the filing, because Dominion had presented evidence at other hearings showing "the length of the fracture from the well bore to the fracture tip can extend hundreds to thousands of feet, with one example of almost 2,000 feet."

Those concerned about the incomplete scientific knowledge of myriad issues surrounding shale gas development often focus on concerns that fractures in rock could inadvertently connect. This could allow gas from improperly cemented well bores — the rate of casing failures in Pennsylvania, according to state regulators, is 7 percent in the first year alone — to escape and migrate through these fractures to water-bearing strata above. In fact, Pennsylvania regulators documented this exact occurrence near wells drilled in the county adjoining the Sabinsville Pool. The state levied a \$900,000 fine against Chesapeake Energy, and the company later settled lawsuits that forced three families from their homes, including Jared McMicken's. <http://protectingourwaters.wordpress.com/2012/06/25/impacted-families-settle-with-gas-giant-for-1-6m-without-gag-order/>

In Maryland, 1,000 feet is generally the setback required from the well bore to an adjoining property line. This was thought to be sufficient 20 years ago. Last year, the General Assembly passed a law presuming industry liability for damages within 2,500 feet of the well bore; however, no regulations have been adopted establishing a new setback distance for well construction. If a drilling permit was issued tomorrow, 1,000 feet remains our protective buffer zone.

Correction

The author called Dominion's storage pool in question a "cave" or "cavern." Although a lot of natural gas is stored in underground salt formations and some other types of hollow formations, the Sabinsville Pool is a generally solid rock formation, as is the storage field owned by Spectra Energy in Accident, Md.

Paul Roberts, a business owner in Garrett County, is a member of a special Governor's commission studying whether to allow shale gas development in Maryland. He also serves on the commission's legislative subcommittee. In the last two Maryland legislative sessions, he has championed measures to require industry to pay for scientific studies related to gas drilling and to reform leasing regulations.

Readers are encouraged to provide feedback on this AppIndie article at:
<http://www.appindie.org/index.php/our-blue-earth/89-our-blue-earth/3128-natural-gas-breaking-news>

Possible Action:

Those interested in sending comments or questions to the **MD Marcellus Shale Safe Drilling Initiative Advisory Commission** may do so at: msac@mde.state.md.us

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*SRWA is a group of local landowners and other citizens dedicated to preserving and enhancing the rural nature and natural resources of the Savage River watershed by assisting interested landowners and public land managers with environmental stewardship efforts and educational outreach.*

*Board Members: Kenny Braitman, Annie Bristow, John Fritts,  
Ed Gates, Carol McDaniel, Liz McDowell, Rich Raesly, Tom Wolfe*

*SRWA is a 501c3 non-profit charitable organization. Please consider joining or making a donation.  
For more information visit our web site at [www.savageriverwatershed.org](http://www.savageriverwatershed.org)*