

# Upper Delaware Council

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March 3, 2011

PAMELA BUSH, COMMISSION SECRETARY  
DRBC, PO BOX 7360  
25 STATE POLICE DRIVE  
WEST TRENTON NJ 08628-0360

RE: Draft Natural Gas Development Regulations dated December 9, 2010  
Article 7 of Part III – Basin Regulations

Dear Ms. Bush,

The Upper Delaware Council (UDC) offers the following comments pertaining to Delaware River Basin Commission's (DRBC) Draft Natural Gas Development Regulations, dated December 9, 2010, amending Article 7 of Part III – Basin Regulations. The "Summary" on the DRBC's website states:

The Delaware River Basin Commission (DRBC or Commission) is proposing a new Article 7 of its Water Quality Regulations to protect the water resources of the Delaware River Basin during the construction and operation of natural gas development projects. This Article applies to all natural gas development projects involving siting, construction, or use of production, exploratory, or other wells in the basin regardless of the target geologic formation, and to water withdrawals, well pad and related activities, and wastewater disposal activities comprising part of, associated with, or serving such projects. The provisions of this Article rely on the state oil and gas regulatory programs of Pennsylvania and New York where separate administration by the Commission would result in unnecessary duplication. This Article supersedes the Executive Director Determinations issued on May 19, 2009, June 14, 2010, and July 23, 2010.

This Article implements the statutory authority that Delaware, New Jersey, New York, Pennsylvania, and the federal government granted to the Commission in the Delaware River Basin Compact and supplements the Commission's Comprehensive Plan with respect to natural gas development projects within the basin.

As you know, the UDC is the non-profit organization responsible for the coordinated implementation of the 1986 River Management Plan for the Upper Delaware Scenic and Recreational River, a component of the National Wild and Scenic Rivers System. Our voting members are the two states (NY and PA) and 13 local governments (NY Towns and PA Townships) which border on the Upper Delaware River. The DRBC is a non-voting member of the Council. We operate under a direct contractual relationship with the National Park Service (NPS) for the oversight, coordination, and implementation of many elements of the River Management Plan.

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***Working together to conserve the Upper Delaware Scenic and Recreational River***

*Town of Hancock - Town of Fremont - Town of Delaware - Town of Cochecton - Town of Tusten - Town of Highland  
Town of Lumberland - Town of Deerpark - Damascus Township - Berlin Township - Lackawaxen Township - Shohola Township - Westfall Township  
State of New York - Commonwealth of Pennsylvania - Delaware River Basin Commission - In partnership with the National Park Service*

The UDC comments are as follows:

1. Since the UDC has no regulatory authority, it looks to the Commonwealth of Pennsylvania, State of New York, and the DRBC to administer environmental laws which pertain to natural gas development and related issues and to act consistently with the Upper Delaware Scenic and Recreational River Management Plan to protect and conserve the outstanding natural resources and special qualities for which it was designated by the United States Congress in 1978 as a unit of the National Park System.

On March 23, 1988, the DRBC adopted Docket D-78-51 CP (Revised) stating in Section Ia of the Decision that, *"The Upper Delaware Scenic and Recreational River Area, within the boundaries as determined by the NPS, is hereby included in the Comprehensive Plan."* Section II of the Decision further states, *"DRBC hereby endorses the intent of the Management Plan, including the creation of an Upper Delaware Council as defined in the Management Plan, and will provide staff for DRBC participation as an advisory member of the Council without vote."*

We are thankful for the DRBC's continuing participation on the Upper Delaware Council. We appreciate that DRBC staff members Bill Muszynski and Eric Engle attended a special work session on February 10 to review the proposed regulations with UDC members.

2. The natural, physical and social character of the Upper Delaware River corridor initially shaped the legislation which first recognized the area. Not surprisingly, these characteristics have also shaped the River Management Plan. The complexity of the Upper Delaware, in terms of resources, people's attitudes, issues and jurisdictions, is the basis for a law and a plan which recognizes that the future of this area must be managed by all levels of government and the private sector working together to meet local as well as national goals. Although the plan takes its direction from the federal act, most of the actions proposed to conserve the resources of the Upper Delaware are related to the use of existing local and state land use controls and voluntary private landowner actions, consistent with local land use ordinances.

These are the Planning Goals (page 13) of the River Management Plan:

1. Protect and maintain the unique scenic, cultural, and natural qualities of the Upper Delaware River corridor, including its rare and endangered plant and animal species and rare natural habitats
2. Maintain and enhance the corridor's social and economic vitality and its diversity, consistent with efforts to protect the recognized values of the river corridor
3. Conserve the resources of the Upper Delaware primarily through the use of existing local and state land use controls and voluntary private landowner actions consistent with local land use ordinances
4. Protect private property rights, and allow for the use and enjoyment of the river corridor by both year-round and seasonal residents

5. Provide for planned growth, consistent with local ordinances, to ensure optimum use of existing public services, while maintaining and conserving the essential character of the river valley
6. Maintain and improve fisheries and wildlife habitat to ensure the continued public enjoyment of hunting, fishing and trapping, consistent with state laws
7. Foster a public recognition of the Upper Delaware River Valley as a place with its own identity, continuing history, and a destiny to be shaped by its residents
8. Provide for the continued public use and enjoyment of a full range of recreational activities, as is compatible with the other goals
9. Encourage maximum local government official, private landowner, private group and citizen involvement in the management of the Upper Delaware
10. Develop and implement an interim plan for the protection of public health and safety due to the presence of a toxic landfill located adjacent to the river in the Town of Tusten, and advocate the prompt cleanup and removal of its contents

The River Management Plan, Section 4, General Guidelines for Water Use Control Measures, Principle A, Objective 2 (page 124) is to “Maintain and, where necessary, improve present water quality.” The DRBC’s Special Protection Waters designation complements that.

3. The 1986 River Management Plan does have specific references to the words “oil,” “gas,” and “pipeline,” but we do not believe that it ever envisioned horizontal drilling or high-volume, slick-water hydraulic fracturing. Selected references in the River Management Plan to the words “oil,” “gas,” and “pipeline,” include the following:

Page 123 — “**New major oil and gas transmission lines and refining/production facilities** for other than local service will not be located within the river corridor excepting for individual wells, (subject to conditional use review), lines constructed to provide service to or collect from individual customers or wells. This does not prohibit maintenance of existing facilities or the location of new lines within existing rights-of-way.” **Major Oil and Gas Lines** are defined on page 129 as “Any pipe or conduit used for the transmission of natural gas, oil or other fuel which is one thousand (1000) feet or longer and is under pressure of 125 pounds per square inch (p.s.i.) or greater. This does not apply to natural gas, oil, or other fuel distribution lines for residential, industrial and commercial use.”

Page 123 — Principle E, Objective 2 states, “**Sewage treatment plants, municipal sewer interceptor lines and the like** should not be located through or on lands with frontage on the river or any agricultural lands except with respect to existing hamlets or in circumstances where a community is under state or federal orders to do so.”

Page 129 — **Major Surface Mining Operations** - Any new land use operation which extracts minerals from the earth from active operations exceeding two (2) acres in size, including, but not limited to, strip mining, dredging, quarrying, coal or uranium mining.

Page 129 — **Minor Surface Mining Operation** - Any new extraction of minerals by, but not limited to, strip mining, dredging, or quarrying, not exceeding two acres of active face at one time plus an area equal in size to the active face necessary for accessory use.

Page 134 — “**Gas/Oil Fields & Lines** are listed as “Appropriate Special Uses/Conditional Uses. They are, however, specifically subject to the limitation on page 123 as stated above. Gas and Oil Fields are defined as “Any **oil or natural gas exploration activities such as drilling** or seismic testing, or any new operation which extracts petroleum related products such as crude oil or natural gas from the earth.”

Page 134 lists “**Major Oil & Gas Transmission Lines**” as “Incompatible Uses” anywhere in the River corridor. - **Major Oil and Gas Lines** are defined as “Any pipe or conduit used for the transmission of natural gas, oil or other fuel which is one thousand (1000) feet or longer and is under pressure of 125 pounds per square inch (p.s.i.) or greater. This does not apply to natural gas, oil, or other fuel distribution lines for residential, industrial and commercial use.”

Page 134 of the River Management Plan’s Land and Water Use Guidelines also lists “**Heavy Industrial Uses**” as being incompatible anywhere in the river corridor and defines that use as “The manufacturing, production or refining of raw materials or the large scale assembly of component parts for non-local distribution or consumption, typically involving the generation of waste by-products, extensive buildings and ancillary transportation modes, but not including home occupation or traditional activities such as lumber yards or dairy processing plants.”

4. In the proposed regulations, we are pleased that there will be no “Approval by Rule (ABR)” for well pads located inside management areas of the National Park Service (NPS), including the Upper Delaware Scenic and Recreational River (UPDE) and the Delaware Water Gap National Recreation Area (DEWA) and other areas in which the National Park Service or other federal agencies have a management interest.

Because of the size and scope of today’s natural gas development, we believe that it should be considered as “**Heavy Industrial Uses**” which would be an incompatible anywhere in the river corridor. As such, we request that all surface activities of natural gas development be prohibited in the river corridor. Horizontal drilling under the river corridor should be considered only if it can be done safely. We request that any well pads be sited as far away as possible from the river corridor boundary to still be able to horizontally drill beneath the river corridor.

5. We applaud the DRBC proposal for a “Natural gas development plan (NGDP)” which will detail a project sponsor’s overall plan for siting and accessing natural gas development projects in its leasehold areas. However, if multiple natural gas

drilling companies become active in the basin, it could still result in a piece meal approach.

We are particularly concerned about the potential cumulative impacts of all development and activities associated with natural gas extraction, and the potential industrialization of the watershed, as thousands of natural gas wells could be proposed in the future. There does not appear to be any master plan for all the necessary infrastructure, which could have a profound effect on the environment. We believe that it is not a question of if, but when, detectable changes will occur to the Special Protection Waters.

The Delaware River system already has extraordinary demands imposed on its water resources, with out-of-basin transfers that approximate half the flow volume of the river, at times. As noted in the proposed regulations, *“Over 15 million people (approximately five percent of the nation's population) rely on the waters of the Delaware River Basin for drinking, agricultural, and industrial use, but the watershed drains only four-tenths of one percent of the total continental U.S. land area. The 15 million figure includes about seven million people in New York City and northern New Jersey who live outside the basin. New York City gets roughly half its water from three large reservoirs located on tributaries to the Delaware.”*

Nevertheless, the Delaware maintains outstanding biodiversity and exceptional water quality. The 36% of the Delaware River Basin (nearly 5,000 square miles of its sensitive headwaters) that is underlain by the Marcellus Shale drains to the longest reach of Special Protection Waters in the United States, the 197 miles of the Delaware River from Hancock, NY, to Trenton, NJ. It is possible that 10,000 or more natural gas wells in the basin could require 40 billion gallons or more of water for hydraulic fracturing. Some estimates of wells and water needs are even higher. This represents a tremendous additional burden on the high quality water resource of the Delaware Basin, both in terms of water withdrawals and assimilation of any waste loads associated with natural gas development activities.

There is a need for an independent, peer-reviewed analysis of the cumulative impacts associated with any additional water withdrawals from the Delaware system, especially with out-of-basin transfers of this water, and also a need for a complete systematic environmental review of the full range of natural gas extraction activities that will affect the basin.

6. As part of the water monitoring program, tracers specific to individual natural gas wells or natural gas drilling companies should be added to the hydraulic fracturing fluid so that the source of any leaks, spills and discharges can be better identified.
7. We are concerned about the potential for seismic activity, both natural and man-made, which could compromise the integrity of the well casings.
8. We are concerned about the DRBC's and basin states' ability to oversee all the drilling-related activities that will occur based on the present staffing and economic climate. The DRBC is particularly vulnerable to budget cuts as it receives funding from the states and the federal government.

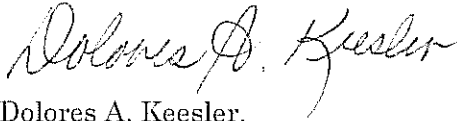
9. We urge that well pads and various deleterious products should not be sited in the Flood Hazard Area (defined as the 100-year floodplain in the Commission's Administrative Manual – Part III Basin Regulations - Flood Plain Regulations) of any waterway in the Delaware River Basin.
10. The proposed regulations state that a well pad will not be sited "On a slope with a pre-alteration grade of 20% or greater." Note that the River Management Plan has references to 15 percent slopes.

Principle A, Objective 1 of the Land and Water Use Guidelines in the River Management Plan is to "**Limit soil erosion and sedimentation from construction on steep slopes, using one or more of the following measures:**  
- A requirement for conditional use/special use review or a Professional Engineers plan for projects involving slopes over 15% in grade, or including a requirement for larger lot sizes on steep slopes); - Requiring slopes of less than 16% in grade for the location of all principal structures with exception for agricultural and forestry uses, gardens and the like; or, Other regulations designed to achieve this objective should ensure no more than 10% of any lot characterized by slopes in excess of 15% in grade is built upon, covered with an impervious surface, regraded or stripped of, at any one time, vegetation with exceptions as noted above."

11. We question if the fees and bonding are adequate to cover costs should any pollution occur.
12. All water wells should be monitored above areas of horizontal fracturing, not just within 2,000 feet of the natural gas well bore. If no water wells exist at the time of the drilling, a sufficient number of sample wells should be drilled.
13. We do not believe that the use and importation of mine drainage, instead of fresh water, is a good idea as it could introduce new pollution into the river basin.
14. Flowback fluid should be recycled or containerized on the well site, or transported as a waste product to an approved disposal facility, in a timely fashion.
15. We are concerned that there will be an inadequate number of treatment plants to meet the demand, and that much of the tracking and reporting will be left up to the natural gas industry. We are also worried about their ability to treat radioactive materials.
16. Local emergency services should be made aware of the materials used in the fracking process, and on the well pad site, so that they can respond appropriately to any incidents.

Thank you for the opportunity to comment on this proposal.

Sincerely,



Dolores A. Keesler,  
Chairperson

cc: Hon. Andrew Cuomo, NY Governor  
Hon. Charles Schumer, US Senator, NY  
Hon. Kirsten Gillibrand, US Senator NY  
Hon. Maurice D. Hinchey, Jr., US Congressman, 22<sup>nd</sup> District NY  
Hon. Nan Hayworth, US Congressman, 19<sup>th</sup> District NY  
Hon. John Bonacic, NY State Senator, 42<sup>nd</sup> District  
Hon. Aileen M. Gunther, NY State Assemblywoman, 98<sup>th</sup> District  
Hon. Clifford W. Crouch, NY State Assemblyman, 107<sup>th</sup> District  
Joe Martens, Acting Commissioner, NYS DEC  
William Janeway, Regional Director, NYS DEC - Region 3  
Gene Kelly, Regional Director, NYS DEC - Region 4  
William Rudge, NYS DEC and UDC Rep.  
Michael Flaherty, NYS DEC and UDC Alternate  
Hon. Tom Corbett, PA Governor  
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Hon. Pat Toomey, US Senator, PA  
Hon. Tom Marino, US Congressman, 10<sup>th</sup> District PA  
Hon. Lisa Baker, PA State Senator, 20<sup>th</sup> District  
Hon. Michael T. Peifer, PA House of Representatives, 139<sup>th</sup> District  
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Michael Krancer, Acting Secretary, PA DEP  
Dennis DeMara, PA DCNR and UDC Rep.  
Caswell F. Holloway, Commissioner, NYC DEP  
Carol Collier, Executive Director, Delaware River Basin Commission  
Sean McGuinness, Superintendent, National Park Service - UDSRR  
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