



May 27, 2010

Pamela M. Bush
Commission Secretary
Delaware River Basin Commission
25 State Police Drive, P.O. Box 7360
West Trenton, New Jersey 08628

Caswell F. Holloway
Commissioner
cholloway@dep.nyc.gov

Re: New York City Comments on the draft Conceptual Framework for Regulation of Natural Gas Extraction Activities

Paul V. Rush, P.E.
Deputy Commissioner
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Dear Ms. Bush:

New York City Department of Environmental Protection (DEP) is pleased to submit the following comments on the Delaware River Basin Commission (DRBC) draft *Conceptual Framework for Regulation of Natural Gas Extraction Activities* (dated March 12, 2010). We commend DRBC for taking on the daunting task of updating the rules and procedures to address natural gas activities within the Delaware River basin. Clearly this type of industrial activity was not anticipated when the original rules were crafted and we fully support DRBC's strong regulatory presence. DRBC brings a much needed regional perspective and consistency to this issue which stretches across multiple state and federal jurisdictions. In particular, DRBC is in a unique position to address cumulative impacts of multiple water withdrawals and wastewater disposal sites.

As you know, DEP has serious concerns about the impacts of natural gas drilling within our water supply watershed and in the Delaware River Basin. Additional consumptive uses in the Delaware River Basin or water contamination problems could impact DEP's obligations under the terms of the Supreme Court Decree and our ability to meet water supply needs. Additionally, drilling is likely to commence near our aqueducts outside of the watershed boundaries and we support any protections from adverse impacts to water supply quality and flow.

The draft conceptual framework strikes an appropriate balance between deferring to individual states on issues such as well casing specifications and exercising authority in matters impacting water quantity and quality. The administrative structure encourages the use of existing water withdrawals with capacity and adoption of strict protections under the "Approval by Rule" requirements by making these options eligible for streamlined approvals. The recommended prohibition on disposal of non-domestic wastewater from natural gas development projects within the drainage area of Special Protection Waters is a conservative approach that is supported by the water quality impacts that have been observed in the Susquehanna River basin.

One issue not covered by this is the regulation of test or exploratory wells. Currently, based on the May 2009 Determination by the Executive Director, the proposed regulatory framework excludes natural gas wells intended for exploratory purposes. As you know the terms "test well" and "exploratory well" are imprecise and are used in a variety of contexts. In some cases they refer to a vertical well drilled in order to obtain a rock core of the shale for analysis and subsequently plugged and capped. In other cases a test well refers to the first horizontal well drilled at a multi-well pad which entails all the same activities and potential impacts as a production well. Even if a well is initially intended to be for exploratory purposes it can be converted for production later if the area is highly productive. We strongly recommend that DRBC exercise regulatory jurisdiction over all natural gas wells. This recommended change would be consistent with other jurisdictions, such as Pennsylvania Department of Environmental Protection, New York State Department of Environmental Conservation and the Susquehanna River Basin Commission who all regulate production and test wells in the same manner.

Given the potential of this activity to affect water resources and the inherent need for regulatory clarity, we urge you to incorporate our comments and adopt updated natural gas extraction regulations as quickly as possible.

Thank you for your consideration of these comments. If you have any questions or would like to discuss this issue further please do not hesitate to contact me.

Sincerely,



Paul V. Rush, P.E.
Deputy Commissioner

c: Assistant Commissioner James Tierney, NYS DEC
Director Dr. Katherine E. Bunting-Howarth, DE DNREC
Lt. Col. Thomas J. Tickner, USACOE
Deputy Secretary John Hines, PA DEP
Assistant Commissioner John Plonski, NJ DEP