

Comment on DRBC Proposed Natural Gas Regulations

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Comments of America's Natural Gas Alliance Delaware River Basin Commission's Draft Natural Gas Development Regulations

America's Natural Gas Alliance (ANGA) appreciates this opportunity to comment on the Delaware River Basin Commission's (DRBC) proposed natural gas development regulations published in December, 2010. ANGA is an educational and advocacy organization dedicated to increasing appreciation for the environmental, economic, and national security benefits of North American natural gas. ANGA's members include many leading, North American independent natural gas exploration and production companies. Their collective natural gas output of approximately nine trillion cubic feet per year comprises approximately 40 percent of the total annual U.S. natural gas supply. The safe and environmentally responsible development of our domestic stores of natural gas has been and, increasingly, will be, an important component of America's energy supply, economic health and national security. Natural gas is a domestically available, clean-burning, efficient, and cost-effective fuel. Developing our natural gas resources offers the potential both for significantly decreasing emissions of air pollutants and promoting America's energy independence. Hydraulic fracturing has been safely and effectively used to help address America's energy needs for 60 years. Improvements in hydraulic fracturing and horizontal drilling methods have opened the possibility of developing billions of cubic feet of natural gas that is stored in shale plays throughout the country. State officials, who have decades of experience regulating hydraulic fracturing, are on record about the safety and reliability of the technology, and about the absence of any connection between hydraulic fracturing and contamination of underground sources of drinking water. Based on its review of the DRBC's draft natural gas development regulations, ANGA offers these preliminary comments.

State Programs • ANGA applauds the DRBC's efforts to "preserve and utilize the functions, powers and duties of existing [state] offices and agencies" and to avoid "unnecessary duplication and effort." A further review and revision of the proposed regulations, guided by that principle, could address certain of the shortcomings identified here. The DRBC should continue to examine both existing regulatory programs and those under development in its member states (and in other states as well), and promulgate regulations only where necessary to address those issues that warrant further attention based on that examination.

Vagueness and Excessive Discretion • Regulations should be based in sound science. Regulations on extraction of natural gas in the Delaware River Basin should inform the regulated community of its obligations and balance regulatory burdens with an eye toward those imposed on those developing competing natural gas resources. The vagueness and lack of specificity found throughout the proposed regulations leave excessive discretion to the DRBC, and, correspondingly create needless uncertainty for businesses seeking to develop natural gas resources and to strengthen the economy within the Delaware River Basin. For example, Section 7.3(h) gives the Executive Director the authority to "modify or suspend an approval . . . if in the Executive Director's judgment such . . . suspension is required to protect the water resources of the Basin." The regulations, however, do not provide any guidance as to what factors are to inform the Executive Director's decision. The DRBC should ensure that any regulations include objective standards and criteria to create the regulatory certainty that is necessary for investment and development of the Basin's natural gas resources, and to insure that development of natural gas resources within the Delaware Basin does not become economically or strategically impractical when compared with costs required to develop natural gas resources in other regions.

Fees and Financial Assurances • The proposed regulations would impose fees, in addition to any in place at the state level, at several stages in the natural gas development cycle, including, for example, filing fees, fees for natural gas development plans, additional well pads, water use, and wastewater disposal, and compliance reviews and monitoring fees. They also would require developers to establish and maintain financial assurance in the amount of \$125,000 per natural gas well, in addition to the financial assurance mechanisms already required or contemplated by the host state. The proposed fees are excessive and incompatible with the need to develop quickly and efficiently this environmentally beneficial, domestic energy resource. The DRBC should confer, in advance, with the appropriate member state agencies to ensure consistency and to ensure that this resource can be developed competitively with natural gas shale resources located elsewhere..

• The proposed regulations all but eliminate the discretion otherwise vested in the DRBC to accept alternative forms of financial assurance, including, ostensibly, authorizing a proponent to proceed upon demonstrating compliance with the host state requirements. The burden to show that such alternatives would be as protective of water resources in the Basin on a case-by-case basis places an unreasonable cost and imposes needless uncertainty on those developing natural resources.

Consumptive Use

Presumption • The draft regulations presume that 100 percent of any water "delivered, withdrawn, or used" at a well pad site is consumptively used. That flawed presumption forms the basis of permit fee calculations, and also a finding that the existing water withdrawal thresholds for review of industrial, commercial, and domestic projects do not apply to water withdrawals in support of natural gas development projects. This presumption creates counterincentives that would punish companies willing to develop or invest in technologies that might effectively treat and recycle water used in the hydraulic fracturing process. The DRBC should retain existing review thresholds and should revise its proposal so that any resulting regulations encourage the development of environmentally beneficial technologies in a way that complements analogous programs in member states.

Mandatory Self-Reporting • The proposed regulations would require project sponsors to self-report "any" violation of DRBC regulations or the permit or approval, including "any circumstances that may reasonably lead to a finding of violation, within 48-hours of the occurrence or upon the project sponsor becoming aware of the violation." Failure to do so would subject the project sponsor to penalties. This reporting requirement would impose unreasonable costs and burdens on those developing natural gas resources within the DRBC's jurisdiction that would not exist elsewhere in the United States, and is unnecessary in light of reporting obligations imposed and overseen by state authorities. The DRBC should develop an enforcement and penalty policy that encourages voluntary audits and disclosure, and any accompanying disclosure requirement should take into consideration the significance of the acts in question.

Setback Requirements • The proposed regulations establish minimum setback requirements that may differ from similar state requirements for certain waters. The DRBC should assure consistency with the programs of member states and defer to state minimum setback requirements for proximity of well pad sites to water bodies, wetlands, surface water supply intake points, and water supply reservoirs. ANGA is prepared to expand on or further explain these comments, should the DRBC so desire.