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BASIN COMMISSION

SENATOR THOMAS K. DUANE

29th SENATORIAL DISTRICT • NEW YORK STATE SENATE



STATEMENT BY NEW YORK STATE SENATOR THOMAS K. DUANE REGARDING THE DELAWARE RIVER BASIN COMMISSION'S DRAFT NATURAL GAS DEVELOPMENT REGULATIONS

March 28, 2011

My name is Thomas K. Duane and I represent New York State's 29th Senate District, in which more than 300,000 residents and countless businesses and visitors depend on clean and safe tap water. While I am disappointed that the Delaware River Basin Commission (DRBC) declined to heed the call of a number of advocates to hold hearings on its draft natural gas development regulations in each Basin state and at least one public hearing in each of the two largest population centers that rely on the Delaware River for water supplies, I appreciate this opportunity to submit comments in writing.

As you know, high-volume hydraulic fracturing (fracking) is a process in which millions of gallons of water and a slurry of toxic chemicals, or "frac fluids," are pumped at high-pressure into horizontal and vertical wells to access bubbles of natural gas in dense mineral formations. The DRBC has noted that concerns about this process include heavy water usage, ground water and surface water pollution, and the recovery and disposal of wastewater. Other potential negative impacts include air and noise pollution, stress and damage to local infrastructure, and losses in agriculture and tourism revenues. In fact, numerous government agencies and environmental advocacy organizations have studied catastrophes directly associated with fracking that have occurred across the nation.

While I have many concerns regarding the DRBC's draft regulations, which seek to protect the water resources of the Delaware River Basin from what is arguably the most significant encroachment ever on our natural environment by an arguably rogue industry, I will focus my comments on a few key issues.

First, I fear the limited scope of this public review process will yield inadequate final regulations. In particular, the DRBC's decision not to hold hearings on the draft regulations in areas such as New York City, where the water supply of literally millions of people could be threatened if fracking is not properly regulated, greatly limits public, verbal input, which may have greater impact than written comments. I also believe and have long argued that state regulatory agencies should review the findings of the U.S. Environmental Protection Agency's (EPA) ongoing study on the impacts of fracking on groundwater supplies before determining whether and, in the worst case scenario, how to proceed with permitting fracking. Certainly, then, the DRBC should not draft its regulations until its member states have promulgated their own regulations. As former New York Governor David Paterson wrote in a December 6, 2010 letter to DRBC Executive

Director Carol Collier, it would be premature for this interstate agency to issue regulations that “could well conflict with the technical and regulatory protocols ultimately adopted in New York, causing confusion, duplication, redundant regulatory fee assessments, differing regulations in different locations and possible mismanagement.” It is especially troubling that on many issues of concern, the DRBC defers to state regulations, which in New York do not yet exist for this type of drilling and may not exist in the foreseeable future.

I also share the concern expressed by Riverkeeper and other advocates that the draft regulations do not address the cumulative impact of the thousands of wells that are anticipated to be drilled in the DRBC catchment area. For example, according to section 7.4(d)(1)(vi) of the draft regulations, the DRBC will require that each application for water withdrawals demonstrate that the purchased quantity of water will not adversely affect streamflow. While water withdrawals from a single well may or may not have a negligible effect on streamflow, the same cannot possibly be true of withdrawals from the vast number of wells that highly-concentrated fracking operations will require. Likewise, while the wastewater treatment and discharge regulations articulated in section 7.6 direct individual well pad sponsors to analyze the projected impacts of their wastewater discharges on levels of drinking water contaminants in basin waters, there is no consideration for the cumulative impact of multiple sponsors’ concurrent wastewater discharges. I urge the DRBC to revise its regulations to comprehensively address the threats fracking poses to our natural resources with a more realistic cumulative impact study and appropriate mitigations.

While I appreciate that the draft regulations require project sponsors to record and disclose the volumes of all chemicals used in their frac fluids within 60 days of each fracking event, I am extremely concerned that not only will this obviously be too late to stop or even mitigate damage, but also these regulations do not categorically prohibit the use of certain chemicals known to be particularly dangerous. For example, the use of benzene in fracking has been linked to contamination in air and water in Texas and Wyoming and the EPA has determined that the maximum contaminant level goal—the level of drinking water contamination at which no adverse health effects are likely to occur—for this carcinogenic chemical is zero. The DRBC must not permit the use of any chemicals that the EPA has deemed unquestionably hazardous to our drinking water.

I am also extremely concerned that the draft regulations do not address the treatment and discharge of the specific chemicals used in frac fluids. Shockingly, the draft regulations do not even require that a record of the amounts and types of chemicals used be submitted to the designated wastewater treatment and disposal facilities. Indeed, according to a February 27, 2011 *New York Times* story entitled “Regulation Lax as Gas Wells’ Tainted Water Hits Rivers,” many of these facilities are currently tasked with removing dangerous chemicals without being informed of the wastewater’s chemical constituents. How, then, can we be sure that these facilities have the capacity and capability to effectively process these chemicals? The fact is that it would most likely not be possible. The DRBC’s final regulations must either require that project sponsors develop a comprehensive plan to safely manage wastewater that includes appropriately-equipped treatment and disposal facilities or acknowledge that such safe management is not possible under even the most optimistic scenario.

Given that these regulations could be substantially better informed by additional public input and incorporation of the pending findings of New York State's and the EPA's formal assessments of fracking, I strongly urge the DRBC to delay the issuance of final regulations. I also urge the DRBC to adopt the model of public participation advanced in former Governor Paterson's Executive Order No. 41 and accept public comment on a revised draft of regulations prior to finalizing them. Ultimately, I believe that fracking should not be permitted, particularly in the ecologically sensitive region that the DRBC oversees, until and unless the technology improves to a point at which it no longer poses a threat to our precious natural resources, even if this point is in the very distant future. In the meantime, the DRBC should work together with state regulators to prohibit all fracking in the Delaware River Basin.

Thank you for your consideration of my comments.