SHEPSTONE MANAGEMENT COMPANY, Inc.
100 Fourth Street, Suite 32, Honesdale, PA 18431
(570) 251-9550 FAX 251-9551
Planning and Research Consultants mail@shepstone.net www.shepstone.net

Thomas J. Shepstone

April 14, 2011

Commission Secretary
Delaware River Basin Commission
P.O. Box 7360
25 State Police Drive
West Trenton, NJ 08628

This office represents the following organizations which hereby submit their joint comments on the draft DRBC Natural Gas Development Regulations:

Bethel Landowners Coalition
Broome-Delaware Landowners Coalition
Delaware County Industrial Development Agency
Delaware County Office of Economic Development
Joint Landowners Coalition of New York
Lackawaxen-Honesdale Shippers Association
Lower Wayne Property Owners Association
National Association of Royalty Owners - PA Chapter
Northern Wayne Property Owners Alliance
Sullivan County Farm Bureau
Sullivan-Delaware Property Owners Association
The Starlight Forum (Landowners Group)
Wayne County Chamber of Commerce
Wayne County Economic Development Corporation
Wayne County Oil and Gas Group
Wayne Pike County Farm Bureau

Please contact me if I can provide any other information.

Sincerely,

THOMAS J. SHEPSTONE

PEPC Project ID: 33467, DocumentID: 37829
Correspondence: 7668

Author Information

Keep Private:	No
Name:	Thomas J. Shepstone
Organization:	Shepstone Management Company, Inc.
Organization Type:	I - Unaffiliated Individual
Address:	100 Fourth Street Honesdale, PA 18431 USA
E-mail:	smc@shepstone.net

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Joint Comments on Draft Regulations

Delaware River Basin Commission
Natural Gas Development Regulations
(Article 7 of Part III - Basin Regulations)

Submitted by:

Upper Delaware River Basin
Economic Development and Landowner Groups

Bethel Landowners Coalition
Broome-Delaware Landowners Coalition
Delaware County Industrial Development Agency
Delaware County Office of Economic Development
Joint Landowners Coalition of New York
Lackawaxen-Honesdale Shippers Association
Lower Wayne Property Owners Association
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The Starlight Forum (Landowners Group)

Wayne County Chamber of Commerce
Wayne County Economic Development Corporation
Wayne County Oil and Gas Group
Wayne Pike County Farm Bureau

Submitted to:

Commission Secretary?Delaware River Basin Commission?P.O. Box 7360?25 State Police Drive?West Trenton, NJ 08628

April 14, 2011 Sixteen separate organizations representing owners of over one million acres of land in New York and Pennsylvania, jointly submit these comments on the draft Delaware River Basin Commission Natural Gas Development Regulations (proposed Article 7 of Part III - Basin Regulations). These include both private non-profit and public stakeholder entities, the full list being found on the cover page of this document. This group (referred to hereinafter simply as "The Stakeholders") represents economic development and landowner organizations in the four counties comprising that portion of the upper Delaware River basin with developable Marcellus Shale (Broome, Delaware, Sullivan and Wayne Counties).

Prior to the Commission releasing its draft regulations, the Stakeholders expressed major concerns and needs with respect to the development of natural gas regulations by the Delaware River Basin Commission. Two joint statements were issued by largely the same group of entities and are attached hereto as Appendix A. Unfortunately, most of the suggestions offered in those joint statements have not been addressed in the current draft of the regulations, resulting in a very flawed document demanding substantial revisions to be workable.

Many of the flaws in the current draft are directly attributable to a failure on the part of the Commission staff, after three years, to properly research, field check and test the proposed regulations before putting them forward. Both the regulations and supporting materials include several unsupported statements about the amount of drilling expected to place, based on clearly erroneous assumptions. Several of these are addressed in an overview critique attached hereto as Appendix E, which demonstrates the number of well pads will be less than one-fourth of what the Commission suggests. Had the Commission staff conducted the proper pre-investigations it would have realized Section 7.5 is both impractical and unnecessary. Unfortunately, the proposed regulations are an example of cutting and pasting without regard to the practical implications of the combined product.

Consultation with experienced state agencies, the Susquehanna River Basin Commission and the industry or simple visits to drilling sites would have served to avoid this problem, but it appears little effort has been made in this direction. Instead, these regulations are very long on platitudes and environmental buzzwords that obfuscate the usurping of state authority, the entrance of the Commission into wholly new matters of land use regulation and the creation of an unaccountable agency with unprecedented discretionary powers.

The Stakeholders' review of the draft regulations indicates several major issues along these lines and a host of smaller problems reflecting the lack of experience at the Commission staff level with matters of oil and gas regulation. Stakeholder comments are organized accordingly and supplement individual sets of comments offered by members of the group, which comments are incorporated herein by reference.
Issue 1 - The proposed regulations are redundant, impede on the sovereignty of the states and insert the Commission into wholly new matters of land use that are the proper prerogatives of the states. Section 7.5 should be completely eliminated.

1.1 The proposed regulatory process is exactly backwards. The regulations superimpose standards on the states to be enforced by DRBC staff inexperienced with regulating oil and gas. It should be exactly the opposite, with the states

in charge and the DRBC serving as an interested agency to suggest higher or different standards that should be considered by the states prior to permitting individual wells. This would put experienced regulators in charge, allow a meaningful DRBC role and provide a basis for DRBC appeals of decisions. It would deliver certainty without compromising standards and ensure competent enforcement by knowledgeable staff. It would require only simple Memorandums of Understanding, avoiding all arbitrary one-size-fits-all standards and the redundant separate pre-construction review of well pads provided for in Section 7.5. Section 7.5 should be deleted and the entire process reversed to put the states in charge and the DRBC in the role of an interested party.

1.2 Well pad standards are almost wholly redundant with state regulations and unnecessary. Moreover, such additional standards as are offered are completely unrealistic, particularly the 500 feet setback from water bodies and wetlands. A typical 5-acre well pad would be 467 feet squared in size and a 500 feet buffer around such a pad would require roughly a 40-50 acre site that is free of any water bodies or wetlands. While this might sound reasonable, the definition of water body encompasses seasonal and intermittent depressions, channels, ditches and "similar drainageways," as well as all wetlands. There are virtually no areas in the Upper Delaware region where 40-50contiguousacres of land lacking these features can be found. No existing well sites could meet the standard due to the nearby presence of small ponds, streams, ditches, terraces or wetlands. Accordingly, well pad standards and the remainder of Section 7.5 should be completely deleted.

1.3 The variance procedure should be for exceptions and not the rule. The flawed standards found in Section 7.5 ensure all power is discretionary and in the hands of the Executive Director. Moreover, Section 7.5(b)(9)(iv) gives the Executive Director the power to impose additional conditions in such instances, which will be all instances, without criteria to guide such decisions. Thisis a recipe for bureaucratic abuse. Additionally, the Approval by Rule provisions on page 55, specifically sub-section (6), require the setbacks to be met. Therefore, Approval by Rule will not be available as an option. It is nothing more than a mirage. Section 7.5 is unworkable and should be completely deleted.

1.4 Section 7.5 also ignores the needs of upper basin residents. Sub-section (a)(1) articulates the needs of those who live outside the basin but completely excludes any mention of the need, in the Upper Delaware region, to be able to develop the area's natural resources. Instead, the upper basin is viewed as nothing more than a "source watershed" for others, that, for the benefit of downstream and out-of-basin waters users,cannot be disturbed. The "sparsely populated" explanation on the top of page 36 suggests the future of the upper basin doesn't matter because there aren't many who live there. Where is the requisite balance demanded by the compact? Where is the consideration of upper Delaware River basin resident needs? These have not been addressed and this is a critical flaw in the regulations. Section 7.5 lacks a proper foundation in science or law and should, therefore, be totally deleted from these regulations.

1.5 Section 7.5 also asserts, with no evidence, that well pads "may have a substantial impact on the water resources of the basin." How can this be, if the amount of disturbance is limited to a mere 5-6 acres out of 1,280 acres in a unit, and both states already impose extensive (some of the toughest in the nation) stormwater management rules - and, where forested land has grown over the last half-century? There is simply no scientific basis for a statement that well pads could have a substantial impact on water resources of the basin.Attached as Appendix C is a scientific analysis, by Robin Wildermuth, MF, ACF, of the actual likely land disturbance from modern gas drilling that confirms there is no discernible impact on the water resources of the basin associated with well pads. Yet again, this analysis illustrates the poorly researched and unjustified Section 7.5 should be deleted.

1.6 Section 7.5 is redundant and unnecessary. If the states are to implement Section 7.5, as suggested in some parts of the regulations, it is wholly unnecessary given there are very few items that are not already regulated by the states. Moreover, those matters that are not currently regulated all relate to land use questions that have also traditionally been under the purview of the states. The states already regulate floodplain development and do natural diversity searches, for example. There should be no mention of either in these regulations. Because Section 7.5 is

redundant, it should be deleted in its entirety.

1.7 The apparent purpose of Section 7.5 is to insert the camel's nose under the tent with respect to land use, under that the ruse well pads are something that need to be further regulated, when they are already heavily regulated. The emphasis, on page 51, on "constraints analysis" and mapping of leaseholds that are constantly changing is further indication of this, as is the statement on page 7 excepting Section 7.5 provisions from state administration (in contrast to earlier suggestions to the contrary). These regulations would set the Commission up as a super-agency to regulate land use and supersede state environmental regulations. There is no need for still another agency deciding matters of land use in the Upper Delaware region. Section 7.5, therefore, should simply be deleted in its entirety.

1.8 Page 7 includes two paragraphs of exception provisions that imply there will be deference to state regulations, but their are also exceptions to these exceptions that make it all meaningless. The first of these exception to the exceptions exempts Section 7.5, which is the most obtrusive of all sections and the one with the potential to prevent any drilling whatsoever. If there is no deference to the states with respect to Section 7.5, there is meaningful deference whatsoever. Then, on top of this, there is the catchall language stating "Nothing in this Article 7 shall be construed to reduce the authority of the Commission to take action ? it determines necessary to prevent adverse impacts to water resources."

This is so broad an exception to the exception that it renders any implied deference to the states as irrelevant window dressing. Moreover, without knowing precisely what will and will not be addressed by proposed agreements with states, it is impossible to know what standards will actually apply. The language on page 7 needs to be explicit in restricting the DRBC from regulating any activity the states already regulate, without exceptions, loopholes or amorphous language that can be later interpreted to impose multiple layers of redundant regulation. Additionally, Section 7.5 needs to be completely eliminated as it inherently conflicts with such deference.

1.9 The Natural Diversity Index provisions duplicate what states are already doing and involve the DRBC in something where it adds no value and has no business being involved. There should be no separate Natural Diversity Index Assessment (see pages 27, 31, 42 and 55) and no fee for it, as the states already do this and any suggestions to the contrary only confuse matters and raise the possibility of DRBC duplication and interference. These are fee-driven provisions far outside the core mission of the DRBC, yet they comes up again and again in the regulations, as if such searches were not already being performed by the states, demonstrating an ulterior motive of frustrating natural gas development through a modified form of endangered species poison pills.

These provisions demonstrate not only the absurdity of the proposed DRBC regulations, but also the complete lack of deference to the states, despite ambiguous language to the contrary. Section 7.5 is replete with instances of such regulatory undercutting and should be completely removed, along with all related provisions having to do with natural diversity searches.

1.10 Section 7.5 interferes with the sovereignty of the states and their municipalities to regulate land use and the placement of well pads. The setback, clearing, slope and other land use regulations found in Section 7.5 are a direct intrusion on the authority of municipalities to determine where drilling takes place and of the states to determine ho it takes place. They reflect a completely irrational power covetous agenda on the part of the Commission to control every aspect of natural gas drilling, in contrast to its position with respect to every other land use. It is either extraordinarily discriminatory or a dangerous precedent that will lead to the creation of a new superstate land use agency. Neither is acceptable and Section 7.5 must, therefore, be completely eliminated.

1.11 The standards are ambiguous with respect to what is subject to state regulation and what is not. Why are setbacks listed as "defer to host state" on page 49, for example? Simply eliminate them. Otherwise it must be assumed the other standards supersede the state standards. All of Section 7.5 should be deleted for this and other

reasons.

Issue 2 - The proposed regulations completely ignore the economic needs of the upper basin and fail to address the requirements of the Delaware River Basin Compact to balance interests and fairly allocate water use, despite several requests to the Commission to be sure to address them. The regulations must be accompanied by a legal foundation that addresses these deficiencies.

2.1 DRBC regulation of any water use for gas, regardless of amount, is discriminatory and works against the compelling economic interests of the Upper Delaware region. Economic development and water quality are compatible, but one wouldn't know it from these proposed regulations. The amount of water use involved in gas drilling is small compared to other uses (e.g., golf courses, car washes, power generation or big city commercial uses). Reducing the regulatory threshold from the normal 100,000 gpd toanyamount of water is not supported by the data and incorrectly implies that natural gas development threatens water quality under any conditions. The DRBC's assertion that the normal thresholds do not adequately protect water resources and suggestion other uses don't consume water in a like manner are disingenuous. Other users such as power plants, consume far greater quantities of water. Moreover, if water quality and safety are already heavily regulated by the states, and water allocation is not the issue they would have it be, exactly what is the purpose of the DRBC? There is no compelling answer. Therefore, the regulations must be modified to raise the regulatory threshold to a reasonable level.

2.2 The draft regulations incorrectly construe the task of the DRBC as being limited to the narrow goal of protecting water quality, as if this were all there was to its job. The page 3 statement of purpose doesn't even hint at the need to allocate water resources, let alone address the economic side of the DRBC's mission, which is clearly articulated in Part I of the compact. That provision of the compact states "the government, employment, industry and economic development of the entire regionand the health, safety, and generalwelfare of its population are and will continue to be vitally affected by the use, conservation,management, and control of the water and related resources of the Delaware River Basin."

Section 4.2(a) further states the commission has the power to regulate "flows and supplies of surface and groundwaters of the basin, for the protection of public health, stream quality control,economicdevelopment, improvement of fisheries, recreation, dilution and abatement of pollution, theprevention of undue salinity and other purposes." Yet, the regulations totally and inexcusably ignore the economic development side of the equation and maintain the pretense that water quality is all there is. Statements of purpose need to be amended to indicate the primary function of the regulations is allocation of water resources for the development of natural gas resources, as a matter of economic development, while preserving water quality for other uses.

2.3 Pass-by flow requirements reveal the inherent discrimination, these regulations, against natural gas drilling as compared to other water uses. The pass-by flow requirements on page 39 give a lot of attention to what is a minimal water use and do not take into account the much greater distortions of flow rates related to New York City's withdrawals of water from the basin. Natural gas is made the lowest priority, while out-of-basin consumption by the City has a far greater impact. This is inherently unfair and suggests the DRBC needs to put much more pressure on New York City as a means of securing more water for gas. New York City withdrawals are controllable and should be addressed as part of a comprehensive solution to make room for natural gas development.

2.4 Special protection waters designation should not be a club with which to beat down the economic development of the upper basin. The language of sub-section (2)(i), on page 41, seems to require additional planning due to special protection waters designations. However, non-point source pollution control is already done by the states. Additionally, the Upper Delaware region should not be punished for having clean water, which is what this section implies. There is far too much emphasis throughout on pollution, as if it was a given, when it is anything but. Water quality and economic development are compatible. The regulations are also rife with meaningless buzz words such

as "sustainable manner" (see page 4). Sub-section (1) on that page perpetuates the myth that protection of water quality is the only foundation for natural gas standards, the only part to water resource management. Moreover, what is the point of sub-section (2), which suggests water resource management is a matter of linking to the "management of other resources" and recognition of "social and institutional systems"? All such vague language, subject to interpretation by the reader, should be removed, along with Section 7.5.

2.5 The combination of several definitions, literally interpreted, would have the potential to regulate timber harvesting, quarrying and farming out of existence in the upper Delaware River basin, with no supporting evidence that they have caused a water quality problem. The earth disturbance activity definition includes anything that "disturbs the surface of the land." This should be more specific such as break the sod layer or organic layer of the soil so mowing, brushhogging or cutting trees are not held to be disturbance, as no other regulatory definition considers these activities to be earth disturbance.

Similarly, the disturbed area definition is ecological rather than focused on erosion/sedimentation and is much too broad. It also states "disturbed area is devoid of trees greater than 5 meters in height and substantially devoid of native woody vegetation." This definition would include hay fields, lawns, shrub/sedge wetlands, warm season grass plantings, and the like even though they have stable vegetative cover.

The final site restoration definition states the site needs to be returned to its "condition prior to the commencement of gas drilling operations" rather than a stable vegetative cover as provided by the Pennsylvania DEP, for example. This could mean an access road through a forest to a pad would have to be abandoned and reforested over the objections of landowner and contrary to any measurement of risk or violation of the Clean Water Act.

Finally, the forested site definition is "any parcel of land?within a forested landscape, or that is substantially covered by tree canopy as shown on state ortho-photography prior to January 2010, and which will require removal of 3 or more acres of tree canopy, for the project." There is no stated measure of forested landscape and, therefore, this could be interpreted to treat a 65% forested landscape as encompassing all parcels within that landscape that include any small patches of forest.

In combination, these definitions could rule out virtually all of northern Wayne County for gas drilling, again with no documentation of any impact or potential violation of Clean Water Act regulations. Buffers elsewhere should protect surface water and there is no evidence that clearing potentially 1-2% of forest canopy will have any impact on Delaware River, especially when the area is gaining forest cover every year (see Appendix D for excerpts from the Wayne County Land Use Study, which demonstrates this). If the retort is that these definitions do not apply to forestry and farming then why should they apply to gas? Also, the wetlands definition again seems to be an ecological definition with no minimum area and would allow wetlands to be continuously created by anyone wishing to pursue the 500' buffer restriction.

All of these problems emphatically demonstrate why Section 7.5 must be deleted.
2.6 Projected water use for gas drilling is minimal but the industry is treated as if it were a major water user. Water use should be evaluated and compared with other industries, land uses, and baseline flows. There is none of that in these regulations. The DRBC has never objected to downstream economic development or forest clearing for projects such as golf courses that involve far greater chemical and water use. Yet, it proposes to heavily regulate what are relatively trivial water uses in the instance of the upper basin, flipping its regulatory philosophy whenever it is convenient and benefits lower basin water users. Any car wash, combination of gas stations or golf course in Bucks County is likely to create more impacts on the water resources of the basin than all the natural gas development that will ever occur in the upper basin, but the DRBC guns are turned not on these activities, which benefit lower basin residents, but, rather, on the speculative impacts of natural gas development desperately needed by upper basin residents.

This has resulted in far too many "significant" or "potential" qualifiers of impact strewn throughout the document to justify complete control over water use by the gas industry. A quick calculation reveals the water falling on the upper third of the Delaware River watershed during a single one inch rain event could provide the water required to drill almost 16,000 wells (the equivalent of 1,000 well pads using current technology), which is a grossly exaggerated figure and far more than will ever be drilled in the upper basin. The entire foundation for these regulations, accordingly, must be revisited to streamline them to the essentials of allocating water use, controlling wastewater disposal and monitoring water quality, eliminating all of Section 7.5, in particular.

Issue 3 - The proposed regulations are administratively unworkable, reflecting the lack of Commission experience with this type of regulation, and also detract from the legitimate mission of the DRBC to allocate water flows, regulate waste disposal and monitor water quality.

3.1 The regulations have been sloppily assembled in a cut and paste fashion. In addition to problems identified above with the definition of water body, which is perhaps the single most serious problem with these regulations, the definition uses the arcane term "embayment" which has no applicability to the area in question. Also, sub-section (I)(1)(iii), on page 26, suggests well pad approvals can be deferred to the states, which would be appropriate and cost-effective, but this is directly counter to the language of Section 7.5 and on page 7. The regulations need to be heavily streamlined to remove the clutter (including all of Section 7.5) and concentrate on legitimate functions of the DRBC, so that they add value to state regulation, rather than detract from it.

3.2 The language is far too vague and sets the stage for endless future regulation. What does it mean on on page 5, for example, when it is is stated the goal is to "push the boundaries of technological possibility while balancing economic constraints" with regard to decisions of the Commission? What does it mean on page 4 to "recognize ? social and institutional systems" - does it mean anything at all? Sub-section (3) on page 5 lays the groundwork for land use management "improving the conditions of water resources." What does this mean? It appears to beg for more back door land use regulation by the DRBC, more regulation by others of land they do not own. Sub-section (4) again extols the importance of protecting "instream living resources," "downstream withdrawers" and "environmentally sensitive landscapes" but nothing about the needs of the people of the Upper Delaware to secure water for their livelihood. All these subsections (1 through 4) are vague and extraneous, Wherever there vagueness there is, effectively, no standard and only the power of the agency, which is intolerable. These sections, therefore, should be deleted, along with all the other meaningless bureaucratic jargon that pervades these regulations, including all of Section 7.5.

3.3 The regulations are stretched to the limit in a search for legitimacy. They also fail to account for advances in technology that are rapidly reducing the impact of natural gas drilling. The justifications made now for regulations are even less likely to be legitimate five years from now. The regulations need to anticipate this and allow for the future reduction in the scope of regulations as advances are made. The industry should not be handicapped in the future with levels of regulation based on today's technology and impacts. Revisions are needed today to ensure the flexibility is there tomorrow to reduce regulations, if the circumstances that led to them no longer apply - which can easily accomplished by substituting threshold water quality standards for the arbitrary development standards found in Section 7.5 and elsewhere.

3.4 The definition of Agricultural Land doesn't allow for the the constantly changing patterns of land use and shouldn't be date specific. The page 8 definition of Best Management Practices should also extend to gas industry best management practices, which may be the best method of addressing several concerns. All regulations in this document need to allow for technological change and the evolution of best management practices, which demands removal of arbitrary standards such as those found in Section 7.5.

3.5 Critical habitat discussions have absolutely no place in this set of regulations. The USFWS and the states already handle this and it falls far outside the scope of what the DRBC should be addressing. It is another open invitation to manipulation of the approval process by those with special interest agendas. Moreover, the "or not" statement on page 9 that critical habitat need not actually be habitat at all reveals the opportunity for such manipulation. It reflects a "whatever we decide mentality" that pervades these regulations. It should be deleted along with all references to critical habitat in the regulations. This is a matter for the states. The definition of earth disturbance is also far too broad, encompassing normal farm practices and even stockpiling of material, which is ludicrous. It is, likewise, already regulated by the states and should be deleted. All such overly broad definitions and arbitrary standards, such as those found in Section 7.5, should be deleted.

3.6 The definition of forested site is poorly worded, includes standards that belong elsewhere and is, once again, locked into a specific point in time, which fails to reflect the continually increasing forestation of the area. The intent of the page 10 language is, obviously, to avoid forested areas, but this is unnecessary given the natural incentive drillers already have to select unwooded sites and the increasing forestation of the area (which is adding more forest annually - an average of 907 acres per year in Wayne County alone over the last 49 years - than gas drilling will ever remove). It is also counter-productive in incentivizing the consumption of agricultural land and failing to recognize forested ridge land is often where it is most possible to avoid wetlands.

Indeed, a detailed analysis of 1,000 acres in Damascus Township, typical of the upper basin, by a competent engineering firm, found no sites anywhere on this tract that will not be excluded by one of Section 7.5 standards, 97.5% being removed by the 500' setback and 20% slope restriction alone (see Appendix B). Worse, such small areas that are potentially suitable but are not large enough for a well pad (under five acres), are located on a forested plateau that is impossible to access and impossible to clear under these regulations without variances. The regulations simultaneously push drilling toward and away from forested areas. The DRBC can't have it both ways and this obsession with preserving already growing forest land is absurd. Also, failure to evaluate regulations prior to release reveals sloppy attention to detail or a deliberate effort to kill natural gas development. Setbacks must be removed and all forest preservation provisions, which have no place in natural gas development regulations, including but not limited to all of Section 7.5, must be deleted.

3.7 Attempts to classify high volume fracturing are completely unjustified by the facts. If fracturing is not limited by these regulations, which do no more than require disclosure that is already occurring, why is there a distinction between low and high volume? The answer is obvious - this is simply an attempt to say fracturing is being regulated, when in fact it is only be made more difficult. Fracturing has never polluted a well, which the DRBC clearly knows, yet is pursuing a policy of classifying fracturing and superseding state regulation of the process, without doing anything meaningful to change it. This is, of course, because it doesn't need changing. These fracturing classifications are meaningless and should be deleted along with all duplication of state regulation of fracturing.

3.8 The definition for a Natural Gas Development Project is far too inclusive, encompassing everything from pipelines and compressor stations (already regulated by public utility commissions) to "support vehicle tire cleaning" and "dust control on access roads." This is totally unacceptable and puts the DRBC in charge of activities that can and should be regulated by municipalities and the states (if at all). Since when does the DRBC mission have anything to do with compressor stations or tire cleaning? This is a totally absurd attempt to become the master of everything having to do with natural gas. It cannot stand. The project definition should be limited to the water withdrawals and discharges and to those of 100,000 gallons per day or more. These regulations move from this common sense threshold to the point where the DRBC is seriously proposing to regulate dust control, which is simply beyond the pale. All such all-encompassing regulations that duplicate what the states, localities and public utility commissions already regulate should be deleted.

3.9 The definition of pollutants, incredibly, lists rock and sand. This exemplifies the "reach too far" that this set of

regulations represents. It is utterly ridiculous and should be corrected. All such micro-management should be deleted from the regulations.

3.10 There are, incredibly, no time limits on DRBC review of applications. There are several references on page 17 to time limits imposed on applicants, but no time limits on action by the DRBC, as are provided under the Pennsylvania Municipalities Planning Code, for example, even .the regulations would address many of the same matters. The inexcusable delay by the Commission in dealing with the Stone Energy application illustrates the need for deadlines as a simple matter of ensuring due process for applicants. There must be built in accountability and deadlines on DRBC action, with deemed approvals for failures to act, along with the deletion of Section 7.5, which produces many of the potential land use conflicts.

3.11 Docket modification procedures and notice requirements are too subjective and far-reaching. Sub-section (h) on page 18 gives the Executive Director too much arbitrary power, which should be carefully limited. Also, the public notice procedure is almost guaranteed to produce controversy as every landowner within 2,000 feet is required to be given notice, which naturally inspires the belief on their part that they have some standing and right to veto an application in their back yard. It is impossible to reliably notify everyone within that distance and the failure to reach some will become a basis for lawsuits alleging improper notice. Moreover, the regulations are inconsistent as to proof of notice. Notice requirements should be limited to directly adjoining landowners and notice in local newspapers, anything more is bureaucratic overkill that will complicate the process for no good reason.

3.12 Financial assurance requirements are unnecessary, redundant with state regulation and likely to discourage drilling. The provisions on page 19 are, once again, an exercise in matters which are properly the purview of the states and have nothing to do with the core mission of the DRBC, which imposes no similar requirements on most other water uses under its jurisdiction. Sub-section (6) on page 20 fails to provide for notice and, therefore, is a violation of due process rights that must be corrected. Moreover, the $125,000 per well financial assurance would, on a 1,280 acre unit pad with 20 wells, require $2.5 million of guarantees. That is clearly arbitrary and excessive. Worse are the vague procedures for bond release and claims, which are so vague as to make it impossible for companies to secure the bonding required. Sub-section (9) on page 21 indicates financial guarantees required by the DRBC will be in addition to state requirements. What possible justification exists for this overkill, especially when the regulations are supposed to defer to the states on most matters? There is none. Indeed, there is a direct conflict between what is stated here and on page 7. Pennsylvania requirements are currently too low but are being revised upward and, therefore there is simply no justification for this. DRBC guarantees should only apply to items not already guaranteed through the states.

3.13 The provisions for reducing financial guarantee amounts based upon performance are very good and are practical but do not justify the regulation itself given what the states already do. Additionally, the provisions on page 24 for "excess financial assurance" are never defined, explained or justified. They are very poorly drafted, not explained, seem excessive and essentially require every company doing business to contribute to a fund of $25 million, when they may only be engaging in minimal activity, while allowing major operators to cap their expenditures at some proportion of the $25 million. The entire financial guarantee section is obtuse, of dubious value and should be deleted.

3.14 The regulations appear fee driven and are one-sided in their application. Sub-section (5) on page 27 relating to alternative fees should work both ways and allow for the same approach when costs are likely to be less than standard fees. Otherwise, this is an invitation to open-ended fees. Also, on page 29, what does the $2,000 fee apply to - each well, each pad or each company's program? Fee language is unclear and should be for more specific.

3.15 The violation reporting system is ripe for abuse, requiring an investigation and mitigation plan in the case of virtually any complaint. There needs to be a method of dismissing frivolous complaints. The language on page 32 is

far too loose. Also, sub-section (ii), on page 46, needs a mechanism for discouraging such complaints. Violation handling should provide for a pre-investigation to ascertain the legitimacy of complaints before proceeding on them and all reports should be subject to a burden of proof.

3.16 The provision proscribing use of any water not approved by the DRBC is not reasonable. A landowner with a pond on their property, for example, ought to be able to supply up to a specified amount of that water without DRBC approval, as is the case now for several other water uses than can easily require more water than gas development. The language on page 35 would not permit this.

3.17 The regulations make misleading and extraneous unsupported statements about the amount of drilling that is expected to place, as if to justify over-the-top regulations, thereby discriminating against natural gas development and the rights of landowners to use their on-site water resources. The statements in sub-section (b)(1), on page 35, to the effect "thousands" of natural gas projects are expected, is not warranted and very inappropriate. Major companies are estimating no more than 300 projects in Northern Wayne County, which is the primary gas region. It could be far less. There is no need for hyperbole in these regulations and all guesses as to the number of projects should be deleted. Likewise, it is not clear compressor stations will have any impact on water resource management and they should be deleted from the list. Finally, owners of farm ponds and water bodies wholly contained on their properties should have the right to use those resources for natural gas development without restriction. All hyperbole and extraneous regulations that unreasonably discriminate against natural gas development and use of on-site water resources should be eliminated along with all of Section 7.5

3.18 The regulations make long-term assumptions that are highly questionable. The water conservation provisions on page 58, for example, raise the question of how water used for gas production is 100% consumptive, as implied earlier, if the water is to be recycled. Is it true, for example, that no portion of the water used for gas projects will be returned to the aquifer or surface water? It may be today, but will that be the case tomorrow as recycling of the water used becomes more common and water treatment processes are improved? The fact the DRBC intends to charge repeatedly for the recycled water on a well pad indicates the fallacy behind the entire "consumptive use" assertion. Water recycled from well to well should not be considered a consumptive use, as anything else is little more than a fee-generating regulation.

3.19 The regulations inappropriately insert the DRBC into private contracts. It is not necessary for the DRBC to interfere to this degree with contracts between private parties, as set forth in sub-section (vii) on page 38 and later on page 40. Any language that would insert the Commission into private contracts should be deleted.

3.20 The regulations include unusual provisions that have only a tangential relationship to gas drilling. The invasive species provisions on page 43 are unnecessary and atypical of what is required with other water uses but, in any case, may well require the use of the very chemicals that many anti-drilling advocates despise. This invasive species provision is overkill and should be deleted, as it is a matter of state regulation.

3.21 Water well monitoring is part of the continuous monitoring that is far preferable to any cumulative impact analysis. The water well monitoring provisions on page 46 should specify a distance of no less than 1,000 feet. All standards included within these regulations should be performance oriented and geared toward continuous monitoring, which is practical, and cumulative impact analysis, which is not.

3.22 The Natural Gas Drilling Plan is written awkwardly and is unworkable in its current format. Language on page 50 assumes a company's land interest will be relatively contiguous, but they may not be at all. Also, some companies may hold positions in both Marcellus and Utica Shales in different areas of the basin. Moreover, these positions are constantly changing. This entire process is unworkable as a result. It is far too complicated and bureaucratic in nature. It can easily become an obstacle to approvals and is still another open door to unwarranted land use

regulation. It is drafted to be a set of umbrella standards and back door cumulative impact analysis, both of which are highly impractical. These provisions are bound to become outdated and outmoded by technology the day they are adopted. All provisions for a Natural Gas Development Plan should be deleted along all of Section 7.5.

3.23 The regulations require too much extraneous data be submitted with applications. There is no reason to identify slopes between 15% and 20% slope or to map critical habitat, as required on page 53. The former aren't strictly regulated and the latter is outside the core DRBC mission. There is, likewise, no need to map forested areas as required on page 54 (forests are anything but threatened, as noted above) or natural heritage areas. More importantly, the relevance of mapping them for constantly changing leased areas is not at all apparent. The obsession with forest cover on page 55 and elsewhere, despite such cover increasing in acreage every year, is not warranted and the preference for sites that are not forested should be deleted, They will be naturally preferred but forested sites have advantages in certain circumstances and there is simply no threat involved when forestland is increasing as it is today. Likewise, the preference for sites under 15% slope is arbitrary and eliminates all potential sites if other setbacks are also to be addressed. Also, why are lease area maps (see page 56) necessary? This is not the business of the DRBC and such maps are constantly changing. Finally, why is the DRBC requiring a circulation plan over which it has zero authority to enforce? This is a inexcusable grabbing of authority from states and localities that reveals a mania for control over every aspect of gas drilling by an empire-building agency with delusions of grandeur. The regulations need wholesale trimming back to the basics of allocating water use, monitoring water quality and managing waste disposal.

3.24 Stormwater management is already heavily regulated by both New York and Pennsylvania and should not be further complicated by the DRBC interjecting itself in this process. The stormwater provisions at the top of page 60 are redundant with state regulations, a fact even the most elementary research would have revealed. The mitigation provisions are redundant with earlier provisions of these regulations. The failure to recognize these redundancies is a textbook illustration of why the DRBC is ill-equipped by virtue of its inexperience to regulate natural gas development on its own. The regulations need to be revised to put the Commission in its proper place as an involved agency but not the ultimate regulatory agency except as to matters of water allocation.

3.25 The regulations unfortunately contribute to the fallacy that hydraulic fracturing threatens water well supplies. Provisions on page 61 for water well monitoring are good, but for reasons having nothing to do with hydraulic fracturing, as suggested by the title. There is no need to further confuse shallow gas migration, which is the real reason for this monitoring, with hydraulic fracturing, as the Dimock case has already done via the deliberate distortions of anti-drilling advocates. All extraneous editorial material in these regulations simply must deleted.

3.26 There should be an incentive for use of closed loop systems. Such systems should be more easily permitted and this is the type of criteria that should qualify applicants for Approval By Rule approvals, as opposed to the poorly thought out site requirements laid out earlier. The regulations on page 65 and 66 also need to provide for some on-site treatment via the portable treatment units GE is now producing and/or such innovative measures as using wood chips to absorb fluids, which chips are then hauled off-site and burned in units with scrubbers. The regulations need to be revised to include incentives for use of industry best management practices.

3.27 The regulations have been fashioned to serve too many interests at once and are not only redundant with state regulations, but also internally so. They are ambiguous and the procedures overlap to such a degree they are often incomprehensible. They reference internal DRBC documents to which the public has no ready access and which can only be researched legally, hiding much of the real regulation. They are naively drafted in supposing that natural gas development is a static rather than dynamic process. They make little allowance for evolution of technology. They establish arbitrary standards and requirements with no foundation in science or industry best practices. They are fee-driven in many places. They are impractical in others. They do not achieve the proper balance between objective standards and discretionary review authority. They include no duty on the part of the DRBC to act in a reasonable

time frame. They set the stage for endless controversy and conflicts with the states. These regulations need major streamlining that can only be accomplished by rejecting the current structure and using the well-tested SRBC regulations as a base.

Summarizing, this draft set of regulations is seriously flawed. It must be thoroughly streamlined down to the basics. Section 7.5 must be completely deleted along with all other vague standard and statements having little or nothing to do with natural gas development or land use regulation. There are very effective state programs already in effect and the DRBC regulations should be confined to dealing with water allocation, water quality monitoring and waste disposal. Everything else must go, because there is far too much at stake, including the property rights of landowners and the economic needs of the upper basin, which are great, to say nothing of the importance of natural gas to our national energy independence or its value as a clean and economical fuel source for the region's urban populations.

The upper basin has sacrificed much while maintaining the clean water that population enjoys. Its population is stagnant, its school enrollments are declining, its manufacturing is gone and its agriculture has largely disappeared. Incomes are 30-60% lower in the upper basin, than in the lower and mid-basin regions. Natural gas development is essential to the economy and well being of residents, whose quality of life is not improved by living in the pastoral poverty of rural Appalachia. Failure to produce a workable set of regulations for natural gas development will have real world consequences.

PEPC Project ID: 33467, DocumentID: 37829
Correspondence: 8727

Author Information

Keep Private:	No
Name:	Thomas J. Shepstone
Organization:	Shepstone Management Compnay Official Rep.
Organization Type:	O - Civic Groups
Address:	100 Fourth Street Suite 32 Honesdale, PA 18431 USA
E-mail:	mail@shepstone.net

Correspondence Information

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Correspondence Text

April 14, 2011
Commission Secretary
Delaware River Basin Commission P.O. Box 7360
25 State Police Drive
West Trenton, NJ 08628
This office represents the following organizations which hereby submit their joint comments on the draft DRBC Natural Gas Development Regulations:
Bethel Landowners Coalition Broome-Delaware Landowners Coalition
Delaware County Industrial Development Agency
Delaware County Office of Economic Development
Joint Landowners Coalition of New York
Lackawaxen-Honesdale Shippers Association
Lower Wayne Property Owners Association
National Association of Royalty Owners - PA Chapter
Northern Wayne Property Owners Alliance
Sullivan County Farm Bureau
Sullivan-Delaware Property Owners Association
The Starlight Forum (Landowners Group)
Wayne County Chamber of Commerce
Wayne County Economic Development Corporation
Wayne County Oil and Gas Group Wayne Pike County Farm Bureau
Please contact me if I can provide any other information.
Sincerely,

THOMAS J. SHEPSTONE

Issue 1- The proposed regulations are redundant, impede on the sovereignty of the states and insert the Commission into wholly new matters of land use that are the proper prerogatives of the states. Section 7.5 should be completely eliminated.

1.1 The proposed regulatory process is exactly backwards. The regulations superimpose standards on the states to be enforced by DRBC staff inexperienced with regulating oil and gas. It should be exactly the opposite, with the states in charge and the DRBC serving as an interested agency to suggest higher or different standards that should be considered by the states prior to permitting individual wells. This would put experienced regulators in charge, allow a meaningful DRBC role and provide a basis for DRBC appeals of decisions. It would deliver certainty without compromising standards and ensure competent
enforcement by knowledgeable staff. It would require only simple Memorandums of Understanding, avoiding all arbitrary one-size-fits-all standards and the redundant separate pre-construction review of well pads provided for in Section 7.5. Section 7.5 should be deleted and the entire process reversed to put the states in charge and the DRBC in the role of an interested party.

1.2 Well pad standards are almost wholly redundant with state regulations and unnecessary. Moreover, such additional standards as are offered are completely unrealistic, particularly the 500 feet setback from water bodies and wetlands. A typical 5-acre well pad would be 467 feet squared in size and a 500 feet buffer around such a pad would require
roughly a 40-50 acre site that is free of any water bodies or wetlands. While this might sound reasonable, the definition of water body encompasses seasonal and intermittent depressions, channels, ditches and "similar drainageways," as well as all wetlands. There are virtually no areas in the Upper Delaware region where 40-50 contiguous acres of land lacking these features can be found. No existing well sites could meet the standard due to the nearby presence of small ponds, streams, ditches, terraces or wetlands. Accordingly, well pad standards and the remainder of Section 7.5 should be completely deleted.

1.3 The variance procedure should be for exceptions and not the rule. The flawed
standards found in Section 7.5 ensure all power is discretionary and in the hands of the Executive Director. Moreover, Section 7.5(b)(9)(iv) gives the Executive Director the power
to impose additional conditions in such instances, which will be all instances, without criteria to guide such decisions. This is a recipe for bureaucratic abuse. Additionally, the Approval by Rule provisions on page 55, specifically sub-section (6), require the setbacks
to be met. Therefore, Approval by Rule will not be available as an option. It is nothing more than a mirage. Section 7.5 is unworkable and should be completely deleted.

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1.4 Section 7.5 also ignores the needs of upper basin residents. Sub-section (a)(1)
articulates the needs of those who live outside the basin but completely excludes any mention of the need, in the Upper Delaware region, to be able to develop the area's natural resources. Instead, the upper basin is viewed as nothing more than a "source watershed" for others, that, for the benefit of downstream and out-of-basin waters users, cannot be disturbed. The "sparsely populated" explanation on the top of page 36 suggests the future of the upper basin doesn't matter because there aren't many who live there. Where is the requisite balance demanded by the compact? Where is the consideration of upper Delaware River basin resident needs? These have not been addressed and this is a critical
flaw in the regulations. Section 7.5 lacks a proper foundation in science or law and should, therefore, be totally deleted from these regulations.

1.5 Section 7.5 also asserts, with no evidence, that well pads "may have a substantial impact on the water resources of the basin." How can this be, if the amount of disturbance is limited to a mere 5-6 acres out of 1,280 acres in a

unit, and both states
already impose extensive (some of the toughest in the nation) stormwater management rules - and, where forested land has grown over the last half-century? There is simply no
scientific basis for a statement that well pads could have a substantial impact on water resources of the basin. Attached as Appendix C is a scientific analysis, by Robin Wildermuth, MF, ACF, of the actual likely land disturbance from modern gas drilling that confirms there is no discernible impact on the water resources of the basin associated with
well pads. Yet again, this analysis illustrates the poorly researched and unjustified Section 7.5 should be deleted.
1.6 Section 7.5 is redundant and unnecessary. If the states are to implement Section 7.5, as suggested in some parts of the regulations, it is wholly unnecessary given there are very few items that are not already regulated by the states. Moreover, those matters that are not currently regulated all relate to land use questions that have also traditionally been under the purview of the states. The states already regulate floodplain development and do natural diversity searches, for example. There should be no mention of either in these regulations. Because Section 7.5 is redundant, it should be deleted in its entirety.
1.7 The apparent purpose of Section 7.5 is to insert the camel's nose under the tent with respect to land use, under that the ruse well pads are something that need to be further regulated, when they are already heavily regulated. The emphasis, on page 51, on "constraints analysis" and mapping of leaseholds that are constantly changing is further indication of this, as is the statement on page 7 excepting Section 7.5 provisions from state administration (in contrast to earlier suggestions to the contrary). These regulations would set the Commission up as a super-agency to regulate land use and supersede state

environmental regulations. There is no need for still another agency deciding matters of land use in the Upper Delaware region. Section 7.5, therefore, should simply be deleted in its entirety.
1.8 Page 7 includes two paragraphs of exception provisions that imply there will be deference to state regulations, but their are also exceptions to these exceptions that make it all meaningless. The first of these exception to the exceptions exempts Section 7.5, which is the most obtrusive of all sections and the one with the potential to prevent any drilling whatsoever. If there is no deference to the states with respect to Section 7.5, there is meaningful deference whatsoever. Then, on top of this, there is the catchall language
stating "Nothing in this Article 7 shall be construed to reduce the authority of the Commission to take action ... it determines necessary to prevent adverse impacts to water resources."
This is so broad an exception to the exception that it renders any implied deference to the states as irrelevant window dressing. Moreover, without knowing precisely what will and will not be addressed by proposed agreements with states, it is impossible to know what standards will actually apply. The language on page 7 needs to be explicit in restricting the DRBC from regulating any activity the states already regulate, without exceptions, loopholes or amorphous language that can be later interpreted to impose multiple layers of redundant regulation. Additionally, Section 7.5 needs to be completely eliminated as it inherently conflicts with such deference.
1.9 The Natural Diversity Index provisions duplicate what states are already doing and
involve the DRBC in something where it adds no value and has no business being involved. There should be no separate Natural Diversity Index Assessment (see pages 27,
31, 42 and 55) and no fee for it, as the states already do this and any suggestions to the contrary only confuse matters and raise the possibility of DRBC duplication and interference. These are fee-driven provisions far outside the core mission of the DRBC, yet
they comes up again and again in the regulations, as if such searches were not already being performed by the states, demonstrating an ulterior motive of frustrating natural gas development through a modified form of endangered species poison pills.
These provisions demonstrate not only the absurdity of the proposed DRBC regulations, but also the complete lack of deference to the states, despite ambiguous language to the contrary. Section 7.5 is replete with instances of such

regulatory undercutting and should be completely removed, along with all related provisions having to do with natural diversity searches.

1.10 Section 7.5 interferes with the sovereignty of the states and their municipalities to regulate land use and the placement of well pads. The setback, clearing, slope and other land use regulations found in Section 7.5 are a direct intrusion on the authority of municipalities to determine where drilling takes place and of the states to determine ho it takes place. They reflect a completely irrational power covetous agenda on the part of the Commission to control every aspect of natural gas drilling, in contrast to its position with respect to every other land use. It is either extraordinarily discriminatory or a dangerous
precedent that will lead to the creation of a new superstate land use agency. Neither is acceptable and Section 7.5 must, therefore, be completely eliminated.

1.11 The standards are ambiguous with respect to what is subject to state regulation and
what is not. Why are setbacks listed as "defer to host state" on page 49, for example? Simply eliminate them. Otherwise it must be assumed the other standards supersede the state standards. All of Section 7.5 should be deleted for this and other reasons.

Issue 2 - The proposed regulations completely ignore the economic needs of the upper basin and fail to address the requirements of the Delaware River Basin Compact to balance interests and fairly allocate water use. despite several requests to the Commission to be sure to address them. The regulations must be accompanied by a legal foundation that addresses these deficiencies.

2.1 DRBC regulation of any water use for gas, regardless of amount, is discriminatory and works against the compelling economic interests of the Upper Delaware region. Economic development and water quality are compatible, but one wouldn't know it from
these proposed regulations. The amount of water use involved in gas drilling is small compared to other uses (e.g., golf courses, car washes, power generation or big city commercial uses). Reducing the regulatory threshold from the normal 100,000 gpd
to any amount of water is not supported by the data and incorrectly implies that natural gas development threatens water quality under any conditions. The DRBC's assertion that the
normal thresholds do not adequately protect water resources and suggestion other uses don't consume water in a like manner are disingenuous. Other users such as power plants, consume far greater quantities of water. Moreover, if water quality and safety are already heavily regulated by the states, and water allocation is not the issue they would have it be, exactly what is the purpose of the DRBC? There is no compelling answer. Therefore, the regulations must be modified to raise the regulatory threshold to a reasonable level.

2.2 The draft regulations incorrectly construe the task of the DRBC as being limited to

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the narrow goal of protecting water quality, as if this were all there was to its job. The page 3 statement of purpose doesn't even hint at the need to allocate water resources, let alone address the economic side of the DRBC's mission, which is clearly articulated in Part
I of the compact. That provision of the compact states "the government, employment, industry and economic development of the entire region and the health, safety, and general welfare of its population are and will continue to be vitally affected by the use, conservation, management, and control of the water and related resources of the Delaware River Basin."

Section 4.2(a) further states the commission has the power to regulate 'flows and supplies
of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and
abatement of pollution, the prevention of undue salinity and other purposes." Yet, the regulations totally and

inexcusably ignore the economic development side of the equation and maintain the pretense that water quality is all there is. Statements of purpose need to be amended to indicate the primary function of the regulations is allocation of water
resources for the development of natural gas resources, as a matter of economic development, while preserving water quality for other uses.
2.3 Pass-by flow requirements reveal the inherent discrimination, these regulations, against natural gas drilling as compared to other water uses. The pass-by flow requirements on page 39 give a lot of attention to what is a minimal water use and do not
take into account the much greater distortions of flow rates related to New York City's withdrawals of water from the basin. Natural gas is made the lowest priority, while out-ofbasin consumption by the City has a far greater impact. This is inherently unfair and suggests the DRBC needs to put much more pressure on New York City as a means of securing more water for gas. New York City withdrawals are controllable and should be addressed as part of a comprehensive solution to make room for natural gas development.
2.4 Special protection waters designation should not be a club with which to beat down the economic development of the upper basin. The language of sub-section (2)(i), on page 41, seems to require additional planning due to special protection waters designations. However, non-point source pollution control is already done by the states. Additionally, the Upper Delaware region should not be punished for having clean water, which is what this section implies. There is far too much emphasis throughout on pollution, as if it was a given, when it is anything but. Water quality and economic development are compatible. The regulations are also rife with meaningless buzz words such as "sustainable
manner" (see page 4). Sub-section (1) on that page perpetuates the myth that protection of

water quality is the only foundation for natural gas standards, the only part to water resource management. Moreover, what is the point of sub-section (2), which suggests water resource management is a matter of linking to the "management of other resources" and recognition of "social and institutional systems"? All such vague language, subject to interpretation by the reader, should be removed, along with Section 7.5.
2.5 The combination of several definitions, literally interpreted, would have the potential to regulate timber harvesting, quarrying and farming out of existence in the upper
Delaware River basin, with no supporting evidence that they have caused a water quality problem. The earth disturbance activity definition includes anything that "disturbs the surface of the land." This should be more specific such as break the sod layer or organic layer of the soil so mowing, brushhogging or cutting trees are not held to be disturbance, as no other regulatory definition considers these activities to be earth disturbance.
Similarly, the disturbed area definition is ecological rather than focused on erosion/ sedimentation and is much too broad. It also states "disturbed area is devoid of trees greater than 5 meters in height and substantially devoid of native woody vegetation." This
definition would include hay fields, lawns, shrub/sedge wetlands, warm season grass plantings, and the like even though they have stable vegetative cover.
The final site restoration definition states the site needs to be returned to its "condition prior to the commencement of gas drilling operations" rather than a stable vegetative cover as provided by the Pennsylvania DEP, for example. This could mean an access road through a forest to a pad would have to be abandoned and reforested over the objections of landowner and contrary to any measurement of risk or violation of the Clean Water Act.
Finally, the forested site definition is "any parcel of land...within a forested landscape, or that is substantially covered by tree canopy as shown on state ortho-photography prior to January 2010, and which will require removal of 3 or more acres of tree canopy, for the project." There is no stated measure of forested landscape and, therefore, this could be interpreted to treat a 65% forested landscape as encompassing all parcels within that landscape that include any small patches of forest.
In combination, these definitions could rule out virtually all of northern Wayne County for

gas drilling, again with no documentation of any impact or potential violation of Clean Water Act regulations. Buffers elsewhere should protect surface water and there is no evidence that clearing potentially 1-2% of forest canopy will have any impact on Delaware
River, especially when the area is gaining forest cover every year (see Appendix D for excerpts from the Wayne County Land Use Study, which demonstrates this). If the retort is

that these definitions do not apply to forestry and farming then why should they apply to
gas? Also, the wetlands definition again seems to be an ecological definition with no minimum area and would allow wetlands to be continuously created by anyone wishing to pursue the 500' buffer restriction.
All of these problems emphatically demonstrate why Section 7.5 must be deleted.
2.6 Projected water use for gas drilling is minimal but the industry is treated as if it were a major water user. Water use should be evaluated and compared with other industries, land uses, and baseline flows. There is none of that in these regulations. The DRBC has never objected to downstream economic development or forest clearing for projects such as
golf courses that involve far greater chemical and water use. Yet, it proposes to heavily regulate what are relatively trivial water uses in the instance of the upper basin, flipping its regulatory philosophy whenever it is convenient and benefits lower basin water users. Any car wash, combination of gas stations or golf course in Bucks County is likely to create more impacts on the water resources of the basin than all the natural gas development that will ever occur in the upper basin, but the DRBC guns are turned not on these activities, which benefit lower basin residents, but, rather, on the speculative impacts of natural gas development desperately needed by upper basin residents.
This has resulted in far too many "significant" or "potential" qualifiers of impact strewn throughout the document to justify complete control over water use by the gas industry. A quick calculation reveals the water falling on the upper third of the Delaware River
watershed during a single one inch rain event could provide the water required to drill almost 16,000 wells (the equivalent of 1,000 well pads using current technology), which is a grossly exaggerated figure and far more than will ever be drilled in the upper basin. The entire foundation for these regulations, accordingly, must be revisited to streamline
them to the essentials of allocating water use, controlling wastewater disposal and monitoring water quality, eliminating all of Section 7.5, in particular.
Issue 3 - The proposed regulations are administratively unworkable, reflecting the lack of Commission experience with this type of regulation, and also detract from the legitimate mission of the DRBC to allocate water flows., regulate waste disposal and monitor water quality.
3.1 The regulations have been sloppily assembled in a cut and paste fashion. In addition to problems identified above with the definition of water body, which is perhaps the single most serious problem with these regulations, the definition uses the arcane term "embayment" which has no applicability to the area in question. Also, sub-section (1)(1)

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(iii), on page 26, suggests well pad approvals can be deferred to the states, which would be appropriate and cost-effective, but this is directly counter to the language of Section 7.5 and on page 7. The regulations need to be heavily streamlined to remove the clutter (including all of Section 7.5) and concentrate on legitimate functions of the DRBC, so that they add value to state regulation, rather than detract from it.
3.2 The language is far too vague and sets the stage for endless future regulation. What does it mean on on page 5, for example, when it is is stated the goal is to "push the boundaries of technological possibility while balancing economic constraints" with regard to decisions of the Commission? What does it mean on page 4 to "recognize ... social and institutional systems" - does it mean anything at all? Sub-section (3) on page 5 lays the

groundwork for land use management "improving the conditions of water resources." What does this mean? It appears to beg for more back door land use regulation by the DRBC, more regulation by others of land they do not own. Sub-section (4) again extols the
importance of protecting "instream living resources," "downstream withdrawers" and "environmentally sensitive landscapes" but nothing about the needs of the people of the Upper Delaware to secure water for their livelihood. All these subsections (1 through 4) are vague and extraneous, Wherever there vagueness there is, effectively, no standard and only the power of the agency, which is intolerable. These sections, therefore, should be deleted, along with all the other meaningless bureaucratic jargon that pervades these regulations, including all of Section 7.5.
3.3 The regulations are stretched to the limit in a search for legitimacy. They also fail to
account for advances in technology that are rapidly reducing the impact of natural gas drilling. The justifications made now for regulations are even less likely to be legitimate five years from now. The regulations need to anticipate this and allow for the future
reduction in the scope of regulations as advances are made. The industry should not be handicapped in the future with levels of regulation based on today's technology and
impacts. Revisions are needed today to ensure the flexibility is there tomorrow to reduce regulations, if the circumstances that led to them no longer apply - which can easily accomplished by substituting threshold water quality standards for the arbitrary development standards found in Section 7.5 and elsewhere.
3.4 The definition of Agricultural Land doesn't allow for the the constantly changing patterns of land use and shouldn't be date specific. The page 8 definition of Best
Management Practices should also extend to gas industry best management practices, which may be the best method of addressing several concerns. All regulations in this document need to allow for technological change and the evolution of best management practices, which demands removal of arbitrary standards such as those

found in Section 7.5.
3.5 Critical habitat discussions have absolutely no place in this set of regulations. The
USFWS and the states already handle this and it falls far outside the scope of what the DRBC should be addressing. It is another open invitation to manipulation of the approval process by those with special interest agendas. Moreover, the "or not" statement on page 9
that critical habitat need not actually be habitat at all reveals the opportunity for such manipulation. It reflects a "whatever we decide mentality" that pervades these regulations. It should be deleted along with all references to critical habitat in the regulations. This is a matter for the states. The definition of earth disturbance is also far too broad, encompassing normal farm practices and even stockpiling of material, which is ludicrous. It is, likewise, already regulated by the states and should be deleted. All such overly broad definitions and arbitrary standards, such as those found in Section 7.5, should be deleted.
3.6 The definition of forested site is poorly worded, includes standards that belong elsewhere and is, once again, locked into a specific point in time, which fails to reflect the continually increasing forestation of the area. The intent of the page 10 language is, obviously, to avoid forested areas, but this is unnecessary given the natural incentive drillers already have to select unwooded sites and the increasing forestation of the area (which is adding more forest annually - an average of 907 acres per year in Wayne County alone over the last 49 years - than gas drilling will ever remove). It is also counterproductive in incentivizing the consumption of agricultural land and failing to recognize forested ridge land is often where it is most possible to avoid wetlands.
Indeed, a detailed analysis of 1,000 acres in Damascus Township, typical of the upper basin, by a competent engineering firm, found no sites anywhere on this tract that will not be excluded by one of Section 7.5 standards, 97.5% being removed by the 500' setback and 20% slope restriction alone (see Appendix B). Worse, such small areas that are potentially suitable but are not large enough for a well pad (under five acres), are located on a forested plateau that is impossible to access and impossible to clear under these regulations without variances. The regulations simultaneously push drilling toward and away from forested areas. The DRBC can't have it both ways

and this obsession with preserving already growing forest land is absurd. Also, failure to evaluate regulations prior to release reveals sloppy attention to detail or a deliberate effort to kill natural gas development. Setbacks must be removed and all forest preservation provisions, which have no place in natural gas development regulations, including but not limited to all of Section 7.5, must be deleted.

3.7 Attempts to classify high volume fracturing are completely unjustified by the facts. If

fracturing is not limited by these regulations, which do no more than require disclosure that is already occurring, why is there a distinction between low and high volume? The answer is obvious - this is simply an attempt to say fracturing is being regulated, when in fact it is only be made more difficult. Fracturing has never polluted a well, which the DRBC clearly knows, yet is pursuing a policy of classifying fracturing and superseding state regulation of the process, without doing anything meaningful to change it. This is, of course, because it doesn't need changing. These fracturing classifications are meaningless and should be deleted along with all duplication of state regulation of fracturing.

3.8 The definition for a Natural Gas Development Project is far too inclusive, encompassing everything from pipelines and compressor stations (already regulated by public utility commissions) to "support vehicle fire cleaning" and "dust control on access roads." This is totally unacceptable and puts the DRBC in charge of activities that can and should be regulated by municipalities and the states (if at all). Since when does the DRBC mission have anything to do with compressor stations or tire cleaning? This is a totally absurd attempt to become the master of everything having to do with natural gas. It cannot stand. The project definition should be limited to the water withdrawals and discharges and to those of 100,000 gallons per day or more. These regulations move from this common sense threshold to the point where the DRBC is seriously proposing to regulate dust control, which is simply beyond the pale. All such all-encompassing regulations that duplicate what the states, localities and public utility commissions already regulate should be deleted.

3.9 The definition of pollutants, incredibly, lists rock and sand. This exemplifies the "reach too far" that this set of regulations represents. It is utterly ridiculous and should be corrected. All such micro-management should be deleted from the regulations.

3.10 There are, incredibly, no time limits on DRBC review of applications. There are several references on page 17 to time limits imposed on applicants, but no time limits on action by
the DRBC, as are provided under the Pennsylvania Municipalities Planning Code, for example, even .the regulations would address many of the same matters. The inexcusable delay by the Commission in dealing with the Stone Energy application illustrates the need for deadlines as a simple matter of ensuring due process for applicants. There must be built in accountability and deadlines on DRBC action, with deemed approvals for failures to act, along with the deletion of Section 7.5, which produces many of the potential land use conflicts.

3.11 Docket modification procedures and notice requirements are too subjective and far-
reaching. Sub-section (h) on page 18 gives the Executive Director too much arbitrary

power, which should be carefully limited. Also, the public notice procedure is almost guaranteed to produce controversy as every landowner within 2,000 feet is required to be given notice, which naturally inspires the belief on their part that they have some standing and right to veto an application in their back yard. It is impossible to reliably notify everyone within that distance and the failure to reach some will become a basis for lawsuits alleging improper notice. Moreover, the regulations are inconsistent as to proof of notice. Notice requirements should be limited to directly adjoining landowners and notice in
local newspapers, anything more is bureaucratic overkill that will complicate the process for no good reason.

3.12 Financial assurance requirements are unnecessary, redundant with state regulation and likely to discourage drilling. The provisions on page 19 are, once again, an exercise in matters which are properly the purview of the

states and have nothing to do with the core mission of the DRBC, which imposes no similar requirements on most other water uses under its jurisdiction. Sub-section (6) on page 20 fails to provide for notice and, therefore, is a violation of due process rights that must be corrected. Moreover, the $125,000 per well financial assurance would, on a 1,280 acre unit pad with 20 wells, require $2.5 million of
guarantees. That is clearly arbitrary and excessive. Worse are the vague procedures for bond release and claims, which are so vague as to make it impossible for companies to secure the bonding required. Sub-section (9) on page 21 indicates financial guarantees required by the DRBC will be in addition to state requirements. What possible justification exists for this overkill, especially when the regulations are supposed to defer to the states on most matters? There is none. Indeed, there is a direct conflict between what is stated here and on page 7. Pennsylvania requirements are currently too low but are being revised upward and, therefore there is simply no justification for this. DRBC guarantees should only apply to items not already guaranteed through the states.
3.13 The provisions for reducing financial guarantee amounts based upon performance are very good and are practical but do not justify the regulation itself given what the states already do. Additionally, the provisions on page 24 for "excess financial assurance" are never defined, explained or justified. They are very poorly drafted, not explained, seem excessive and essentially require every company doing business to contribute to a fund of $25 million, when they may only be engaging in minimal activity, while allowing major
operators to cap their expenditures at some proportion of the $25 million. The entire financial guarantee section is obtuse, of dubious value and should be deleted.
3.14 The regulations appear fee driven and are one-sided in their application. Sub-section (5) on page 27 relating to alternative fees should work both ways and allow for the same approach when costs are likely to be less than standard fees. Otherwise, this is an invitation

to open-ended fees. Also, on page 29, what does the $2,000 fee apply to - each well, each pad or each company's program? Fee language is unclear and should be for more specific.
3.15 The violation reporting system is ripe for abuse, requiring an investigation and mitigation plan in the case of virtually any complaint. There needs to be a method of
dismissing frivolous complaints. The language on page 32 is far too loose. Also, subsection (ii), on page 46, needs a mechanism for discouraging such complaints Violation handling should provide for a pre-investigation to ascertain the legitimacy of complaints before proceeding on them and all reports should be subject to a burden of proof.
3.16 The provision proscribing use of any water not approved by the DRBC is not reasonable. A landowner with a pond on their property, for example, ought to be able to supply up to a specified amount of that water without DRBC approval, as is the case now for several other water uses than can easily require more water than gas development. The language on page 35 would not permit this.
3.17 The regulations make misleading and extraneous unsupported statements about the amount of drilling that is expected to place, as if to justify over-the-top regulations, thereby discriminating against natural gas development and the rights of landowners to use their on-site water resources. The statements in sub-section (b)(1), on page 35, to the effect "thousands" of natural gas projects are expected, is not warranted and very
inappropriate. Major companies are estimating no more than 300 projects in Northern Wayne County, which is the primary gas region. It could be far less. There is no need for hyperbole in these regulations and all guesses as to the number of projects should be deleted. Likewise, it is not clear compressor stations will have any impact on water resource management and they should be deleted from the list. Finally, owners of farm ponds and water bodies wholly contained on their properties should have the right to use those resources for natural gas development without restriction. All hyperbole and extraneous regulations that unreasonably discriminate against natural gas development and use of on-site water resources should be eliminated along with all of Section 7.5
3.18 The regulations make long-term assumptions that are highly questionable. The water conservation provisions on page 58, for example, raise the question of how water used for gas production is 100% consumptive, as implied earlier, if the water is to be recycled. Is it true, for example, that no portion of the water used for gas projects will be

returned to the aquifer or surface water? It may be today, but will that be the case tomorrow as recycling

of the water used becomes more common and water treatment processes are improved? The fact the DRBC intends to charge repeatedly for the recycled water on a well pad indicates the fallacy behind the entire "consumptive use" assertion. Water recycled from well to well should not be considered a consumptive use, as anything else is little more than a fee-generating regulation.

3.19 The regulations inappropriately insert the DRBC into private contracts. It is not necessary for the DRBC to interfere to this degree with contracts between private parties, as set forth in sub-section (vii) on page 38 and later on page 40. Any language that would insert the Commission into private contracts should be deleted.

3.20 The regulations include unusual provisions that have only a tangential relationship to gas drilling. The invasive species provisions on page 43 are unnecessary and atypical of what is required with other water uses but, in any case, may well require the use of the very chemicals that many anti-drilling advocates despise. This invasive species provision is overkill and should be deleted, as it is a matter of state regulation.

3.21 Water well monitoring is part of the continuous monitoring that is far preferable to any cumulative impact analysis. The water well monitoring provisions on page 46 should specify a distance of no less than 1,000 feet. All standards included within these regulations should be performance oriented and geared toward continuous monitoring, which is practical, and cumulative impact analysis, which is not.

3.22 The Natural Gas Drilling Plan is written awkwardly and is unworkable in its current format. Language on page 50 assumes a company's land interest will be relatively contiguous, but they may not be at all. Also, some companies may hold positions in both Marcellus and Utica Shales in different areas of the basin. Moreover, these positions are constantly changing. This entire process is unworkable as a result. It is far too complicated and bureaucratic in nature. It can easily become an obstacle to approvals and is still another open door to unwarranted land use regulation. It is drafted to be a set of umbrella standards
and back door cumulative impact analysis, both of which are highly impractical. These provisions are bound to become outdated and outmoded by technology the day they are adopted. All provisions for a Natural Gas Development Plan should be deleted along all of Section 7.5.

3.23 The regulations require too much extraneous data be submitted with applications. There is no reason to identify slopes between 15% and 20% slope or to map critical habitat, as required on page 53. The former aren't strictly regulated and the latter is outside the core DRBC mission. There is, likewise, no need to map forested areas as required on page 54

(forests are anything but threatened, as noted above) or natural heritage areas. More importantly, the relevance of mapping them for constantly changing leased areas is not at all apparent. The obsession with forest cover on page 55 and elsewhere, despite such cover increasing in acreage every year, is not warranted and the preference for sites that are not forested should be deleted, They will be naturally preferred but forested sites have advantages in certain circumstances and there is simply no threat involved when forestland is increasing as it is today. Likewise, the preference for sites under 15% slope is arbitrary and eliminates all potential sites if other setbacks are also to be addressed. Also, why are lease area maps (see page 56) necessary? This is not the business of the DRBC and such maps are constantly changing. Finally, why is the DRBC requiring a circulation plan over which it has zero authority to enforce? This is a inexcusable grabbing of authority from states and localities that reveals a mania for control over every aspect of gas drilling by an
empire-building agency with delusions of grandeur. The regulations need wholesale trimming back to the basics of allocating water use, monitoring water quality and managing waste disposal.

3.24 Stormwater management is already heavily regulated by both New York and Pennsylvania and should not be further complicated by the DRBC interjecting itself in this process. The stormwater provisions at the top of page 60

are redundant with state regulations, a fact even the most elementary research would have revealed. The mitigation provisions are redundant with earlier provisions of these regulations. The failure to recognize these redundancies is a textbook illustration of why the DRBC is ill-equipped by virtue of its inexperience to regulate natural gas development on its own. The regulations need to be revised to put the Commission in its proper place as an involved agency but not the ultimate regulatory agency except as to matters of water allocation.

3.25 The regulations unfortunately contribute to the fallacy that hydraulic fracturing threatens water well supplies. Provisions on page 61 for water well monitoring are good,
but for reasons having nothing to do with hydraulic fracturing, as suggested by the title. There is no need to further confuse shallow gas migration, which is the real reason for this monitoring, with hydraulic fracturing, as the Dimock case has already done via the deliberate distortions of anti-drilling advocates. All extraneous editorial material in these regulations simply must deleted.

3.26 There should be an incentive for use of closed loop systems. Such systems should be
more easily permitted and this is the type of criteria that should qualify applicants for Approval By Rule approvals, as opposed to the poorly thought out site requirements laid out earlier. The regulations on page 65 and 66 also need to provide for some on-site
treatment via the portable treatment units GE is now producing and/or such innovative

measures as using wood chips to absorb fluids, which chips are then hauled off-site and burned in units with scrubbers. The regulations need to be revised to include incentives for use of industry best management practices.

3.27 The regulations have been fashioned to serve too many interests at once and are not only redundant with state regulations, but also internally so. They are ambiguous and the procedures overlap to such a degree they are often incomprehensible. They reference internal DRBC documents to which the public has no ready access and which can only be researched legally, hiding much of the real regulation. They are naively drafted in supposing that natural gas development is a static rather than dynamic process. They make little allowance for evolution of technology. They establish arbitrary standards and requirements with no foundation in science or industry best practices. They are fee-driven
in many places. They are impractical in others. They do not achieve the proper balance between objective standards and discretionary review authority. They include no duty on
the part of the DRBC to act in a reasonable time frame. They set the stage for endless controversy and conflicts with the states. These regulations need major streamlining that can only be accomplished by rejecting the current structure and using the well- tested SRBC regulations as a base.

Summarizing, this draft set of regulations is seriously flawed. It must be thoroughly streamlined down to the basics. Section 7.5 must be completely deleted along with all other vague standard and statements having little or nothing to do with natural gas development or land use regulation. There are very effective state programs already in effect and the DRBC regulations should be confined to dealing with water allocation, water quality monitoring and waste disposal. Everything else must go, because there is far too much at stake, including the property rights of landowners and the economic needs of the upper basin, which are great, to say nothing of the importance of natural gas to our national energy independence or its value as a clean and economical fuel source for the region's urban populations. The upper basin has sacrificed much while maintaining the clean water that population enjoys. Its population is stagnant, its school enrollments are declining, its manufacturing is gone and its agriculture has largely disappeared. Incomes are 30-60% lower in the upper basin, than in the lower and mid-basin regions. Natural gas development is essential to the economy and well being of residents, whose quality of life is not improved by living in the pastoral poverty of rural Appalachia. Failure to produce a workable set of regulations for natural gas development will have real world consequences.